

The Oklahoma City Bombing Trial Transcripts

Friday, April 24 (afternoon)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,
Plaintiff,
vs.
TIMOTHY JAMES McVEIGH,
Defendant.

REPORTER'S TRANSCRIPT
(Trial to Jury - Volume 61)

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 1:42 p.m., on the 24th day of April,
1997, in Courtroom C-204, United States Courthouse, Denver,
Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
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Houston, Texas, 11/00/, appearing for Defendant McVeigh.

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PROCEEDINGS

(Reconvened at 1:42 p.m.)

THE COURT: Be seated, please.

(Jurors in at 1:43 p.m.)

THE COURT: Mr. Jones, you may resume.

OPENING STATEMENT CONTINUED

MR. JONES: Ladies and gentlemen, this morning Mr. Hartzler outlined for you the Government's evidence and proof as he saw it concerning the role of a fictional account, The Turner Diaries, would play in this case. I want to take now the opportunity to tell you what our evidence will be and the interpretation that we think is drawn from that proof and evidence.

The Government's argument and proof is that The Turner=20 Diaries was a blueprint for the Oklahoma City bombing in two ways. It was first an intellectual blueprint in the sense that Mr. McVeigh read it and believed in it and passed it on to his friends, because the bombing of the building in The Turner=20 Diaries, which is analogous to the bombing of the building in Oklahoma City under the Government's proof, was done to wake up America; and that, the Government contends, is what Mr. McVeigh was attempting to do in bombing the building.

And the second way The Turner Diaries is a blueprint is that the actual mechanical and technical means to blow up the building in Oklahoma City are found in The Turner Diaries, that it is, if you will, a cookbook, a recipe, on how to do in Oklahoma City what Earl Turner did in Washington, D.C.

The proof however that we will offer is that the narrator -- that is, the first-person account in The Turner=20 Diaries -- never indicated that the bombing of the FBI headquarters was done to, quote, "wake up America," close quote, or, quote, "to send a message to the government," close quote, or for that matter to the American people.

The Turner Diaries will be in evidence, and the proof will show that the expressly stated purpose for the fictional bombing to destroy the FBI headquarters and the subbasement was that it had a bank of computers which were to be used for implementing what the author described as an Orwellian Big Brother style of an internal passport system which would enable the FBI to keep a record of whereabouts of the citizens at all times, a fictional account clearly distinguishable from the Government's proof.

The second reason for the fictional bombing in the book was to hamper the FBI's campaign of rounding up members of the organization to which the first-person narrator, Earl Turner, belonged.

At page 30 in the book -- and you will be -- have it into evidence and you can read it for yourself -- the author states, "Apparently revolutionary command has decided to take the offensive against the political police before they arrest too many more of our legals or finish up setting their computerized passport system."

At page 36 a few pages later. the author states. "The

the page or a few pages later, the author states, "The third reason for the bombing of the FBI building is the revolutionary command feels that it is essential to strike the system immediately with a blow which will not only interrupt the FBI roundup of our legals, at least temporarily, but will also raise morale throughout the organization by embarrassing the system and demonstrating our ability to act."

From what Williams said, I gather that these two goals have become even more pressing than the original objective of knocking out the computer bank.

Well, the evidence will show the FBI isn't even in the Murrah Building in Oklahoma City. Its headquarters were at 50 Penn Place, some 4 or 5 miles away. The proof is that in The=20 Turner Diaries, the motive for bombing of the FBI headquarters was not the motive of the Government's proof ascribed to Mr. McVeigh. It was the need to destroy a specific military target in an ongoing war that was already in place between the government and the revolutionary organization. In short, it's a work of fiction.

Now, the second part of the Government's proof, as Mr. Hartzler outlined it, is to say that The Turner Diary bomb is the blueprint in composition, design and delivery of the so-called Ryder truck bomb allegedly driven by Mr. McVeigh.

Well, in the fictional account in the book of the bombing of the FBI headquarters in Washington, D.C., the explosive was ammonium nitrate mixed with fuel. The detonator was homemade lead azide, and the booster was commercially manufactured dynamite.

The composition and construction of the bomb, while you will receive it into evidence in this book, are found on pages 32, 35, 36 and 38; and they are not, the proof will show, the composition, design and delivery of the Government's theory of the bomb in this case.

The Government's proof may be that something else was added: Anhydrous hydrazine and nitromethane. Nitromethane is not mentioned anywhere in The Turner Diaries as a component of the bomb. If the person that detonated or manufactured the bomb for Oklahoma City had a blueprint for the bombing, it came from something other than The Turner Diaries.

In the fictional FBI bombing in The Turner Diaries, a key element was to deliver the bomb into the basement headquarters where it would be confined and could do the maximum structural damage. The FBI bombing in The Turner=20 Diaries is much closer to the World Trade Center where a truck was driven into the basement than it is to the Oklahoma City bombing, which was a truck bomb outside the building.

The Turner Diaries is a novel, the proof will show. Tim McVeigh possessed it and praised some aspects of it, particularly its message on gun control. It is 19 years old. That's how long its been available. We submit the evidence will show it is not the blueprint for anything.

Now, if I could, I would like to turn my attention to the proof concerning the evidence in the case.

Mr. Hartzler told you that he would call as witnesses to offer evidence Michael and Lori Fortier. He told you, "We could prove the case without them," that they are certainly not dependent upon them. Here is what the proof will show: They

cannot prove the case without Michael Fortier; for under the evidence we will present, if they could, they would have charged Michael Fortier.

The proof will also show -- and Mr. Hartzler alluded to it -- that Mr. Fortier has pled guilty but he has not yet been sentenced. His wife received a form of immunity, which he described for you, so she cannot be prosecuted at all. The proof is that under the Government's theory, either one of these individuals, if what they say is true, could have stopped this bombing. They did not.

The proof will also show that at the conclusion of this case, Mr. Fortier at some time will be sentenced; and part of his plea bargain is that the Government may move for a downward departure of his sentencing guidelines. What those are will be explained by witnesses, but basically they will show that Mr. Fortier could face up to 23 years in prison or he could be sentenced to as little as two years in prison. But the proof will certainly indicate that whatever it is, I don't have any influence on it. I don't move for a downward departure. I can't move for an upward departure. The only people that can assist Mr. Fortier when his sentence day comes is the Government, not Mr. McVeigh's counsel.

Mr. Fortier will admit to you that I cannot grant him immunity. I don't even have the power to ask for it. I don't have the power or authority to seek the death penalty of him. I don't have the power or authority to seek the death penalty for his wife. I don't have the authority to present evidence concerning them to the grand jury. I haven't even talked with the gentleman. All of that he will admit.

The Government has the power to arrest him; to indict him; to charge him with an offense that carries the death penalty; to arrest, indict and charge his wife and expose her to the death penalty; to determine what charges will be filed. More importantly the evidence will show what charges will not be filed and, as I've already indicated, what sentence he will receive.

He will admit to you that he has spent more time with Government prosecutors going over his testimony than has been spent with any other witness in this case. I have yet to see the man, and he will acknowledge that.

Michael Fortier was born in Maine. He moved to Kingman, where he lived at the time of the events described in the indictment, when he was in elementary school and he grew up there, out on old U.S. 66, now Interstate 40 to Los Angeles. He attended school there and then after high school completed two years in a community college, known as the Mojave Community College; and he entered the military, he will admit, and the Army from May of 1988 until May of 1991. And it was while he was in the Army that he met Tim McVeigh and Terry Nichols and, of course, others.

He will tell you that he had basic training at Fort Benning, Georgia, where he met Terry Nichols, who was his platoon guide. He also met Tim McVeigh in basic training, and they became friends and roommates. His permanent base, like Mr. Nichols and Mr. McVeigh, was at Fort Riley, Kansas.

When operation Desert Storm came along, I believe

Mr. Nichols was already out of the Army. Mr. McVeigh went to Saudi Arabia. Mr. Fortier did not. He was discharged in May of 1991 where he will tell you he returned to Kingman, Arizona.

He had known the lady that became his wife, Lori Hart, from high school. They lived together in Manhattan when he was at Fort Riley. She came out, was with him. They had a child, and then he married her in July of 1994 at Treasure Island resort hotel in Las Vegas, and Tim McVeigh was his best man. The Fortiers have a daughter; and at the time of this event and his questioning by the Government, he was expecting their second child.

After being discharged -- and he received an honorable discharge from the military -- he worked at the TruValue hardware store in Kingman and attended community college. He quit his job at the store in December 1994 over some disagreement. That's irrelevant to these proceedings.

He claimed to have had a crushed disk from which he received medical treatment from the Veteran's Administration Hospital in Prescott, Arizona; and he complained that he had back problems which made it difficult for him to sit at a desk. In fact he gave back problems as the reason for wanting to rent a large car from the rental agency in Manhattan, Kansas, at the airport in December 1994 in the incident that Mr. Hartzler described to you.

He was out of work during much of the time that we're talking about here, supposedly because of these medical problems. He and his wife lived in a trailer house in Kingman; and during part of the time, Mr. McVeigh lived there with him. But Mr. McVeigh also at different times had a different place that he lived there in Kingman away from them.

Michael and Lori Fortier's political beliefs were very similar to Tim McVeigh's. That's one of reasons for their friendship. They were completely aware of Mr. McVeigh's government theories, and they were also completely aware -- and we will introduce evidence to that effect -- of the Government's theory in this case about Tim McVeigh long before they made any statements to the FBI concerning that theory. In other words, the proof will show that what they told the Government they had already read about in the Kingman Daily=20 Miner and the Arizona Republic and seen on television and probably heard on the radio what the Government's theory was.

Beginning on April the 19, 1995, and continuing for almost a full month until May 17, 1995, the Fortiers read countless newspaper articles, watched constant television coverage concerning the Government's investigation of the Oklahoma City bombing. They will admit to you that they studied these news accounts before making any statements which would tend to support the Government's theory.

Aspects of the Government's case which we will introduce which appeared prominently in the newspapers and media sources directly available to the Fortiers include the following: That the Government believed that the bomb was carried in a Ryder truck; that the Government believed the truck was rented at Elliott's Body Shop in Junction City, Kansas; that the person that rented the truck had used the alias Robert Kling; that the Government believed the bomb was constructed at Geary Lake State Park; that the Government

CONSTRUCTED AT GEARY LAKE STATE PARK, THAT THE GOVERNMENT believed Tim McVeigh left a getaway car in Oklahoma City on April 16, 1995; that the Government believed that Terry Nichols and Tim McVeigh had constructed the bomb and that Tim McVeigh had driven the truck which carried the bomb; that the Government believed that storage sheds were used to conceal the components of the bomb; and that the Government believed the bomb was constructed of ammonium nitrate and fuel oil contained within plastic barrels.

All of that Michael Fortier knew was the Government's theory before he began cooperating with the Government.

Not only did they read these accounts in the Arizona=20 Republic newspaper, they had access to the Kingman Daily Miner, their hometown newspaper, which was full of details concerning it because the FBI was conducting a wide-ranging investigation in Kingman.

The proof will show that Michael and Lori Fortier's subsequent statements were designed to support the reports that they had read about that was the Government's theory before they decided to cooperate.

In fact, Michael Fortier would admit to you that he went so far as to confront the FBI with a copy of the Arizona=20 Republic newspaper of Sunday, April 23, 1995, concerning what he said were false reports. Notations and highlights that Mr. Fortier set forth in the newspaper itself, include "never knew him to shoot illegally," "not true to my knowledge," "anyone charged not convicted should fear for their lives," "guilty until proven innocent."

In reference to Mr. Nichols frequenting Mr. Fortier's home, Mr. Fortier wrote, "Never, ever, pure fabrication, which will be taken as true," and, quote, "Never heard of this story," close quote.

So the evidence will clearly show that he followed the Government's investigation and knew what they were doing from the newspaper. The evidence will show that these reports that he read, which he now supports, before he began to cooperate with the Government, he vehemently denied to the FBI, to friends, to CNN, Los Angeles Times and anybody else that talked with him.

The Government will offer evidence and proof, we believe, that Mr. Fortier visited various sites associated with this case under the Government's theory. But our evidence is that Michael Fortier knew these sites. He had lived in Junction City, Kansas. He had been at Fort Riley. He had been through Herington. He knew where Geary State Lake was. He knew all of this area because he and Lori had lived there during the time that he was in the military. He had been stationed at Fort Riley for three years and lived in Manhattan, Kansas, right in the center of this area, for two of those years. He had also traveled through Oklahoma City with Tim McVeigh when both of them were in the service in 1988.

But in addition to his military service, the evidence will show that both Michael and Lori Fortier had the same political philosophy attributed to Tim McVeigh and, incidentally, Terry Nichols. Both Michael and Lori were outraged over the Government's actions at Waco, and Michael Fortier told the FBI as much. Both possessed and used

firearms, and Michael Fortier possessed explosives; and they possessed all of same literature or certainly much of it that was found in a box that one of Jennifer's friends was keeping of Tim McVeigh's belongings. Michael Fortier possessed a copy of what's called The Citizens' Rule Book. He was a subscriber to the Spotlight newsletter just like my client and a subscriber to the Patriot Reports, and he possessed his own copy of The Turner Diaries.

Michael and Lori Fortier, we will prove, proclaimed Tim McVeigh's innocence to the world repeatedly. They even prepared a written press release that Lori Fortier wrote out which Michael Fortier delivered in an interview with Sean Calebs of CNN on April the 26th, 1995.

Beginning on April the 21st, the proof will show, Mr. Fortier made seven separate detailed statements to the FBI in which he denied knowledge of the bombing and proclaimed Tim's innocence. Lori Fortier was present for most if not all of these statements.

Even after Mr. Fortier began cooperating with the FBI on May 17, 1995, he claimed that he did not know the guns provided by McVeigh had been stolen in this robbery that the Government will introduce evidence concerning; and Mr. Fortier at that time made no mention of the Marion County quarry burglary that Mr. Hartzler mentioned to you. But after he had numerous contacts -- and there will be proof of those -- with agents, then Mr. Fortier remembered those details and added to them.

The Government obtained court-ordered surveillance by electronic means of Mr. and Mrs. Fortier. They followed them when they left their apartment. They made their presence well known. They kept surveillance logs -- you'll see them -- and were following them almost heel to toe. But they followed them in a way that the Fortiers did not know because they had made, as the law permits, an application to the district court out there to obtain what we call a bug, placing it inside the Fortiers' house so that every word Michael and Lori said was secretly recorded without their knowledge. And in addition, they had a tap on the telephone so that whoever called -- and most of the phone calls were from media sources seeking interviews -- but whoever called, their father, their mother, their friends, their brother, those conversations, unbeknownst to the Fortiers, were secretly tape-recorded; and you will hear some of them.

On April the 21st, Mr. Fortier was questioned by the FBI; and he stated to them that he knew that Mr. McVeigh had been charged because of TV coverage, but he told the FBI that he did not think Tim McVeigh was capable of participation in the Oklahoma City bombing.

He was interviewed a second time on the same day by the FBI, and this time he told the FBI that he had not seen or had contact with Terry Nichols since Mr. Fortier was discharged from the Army. He also told them that he had no knowledge of or complicity in the bombing.

The next day, April 22nd, Mr. Fortier told FBI agents that the Oklahoma City investigation was a witch hunt, and he stated unequivocally that he did not believe McVeigh did it.

The following day he was reinterviewed, and Mr. Fortier told the FBI that Mr. McVeigh had never spoken generally or specifically about any bombs; and it was Mr. Fortier that said that he had not cried over the children killed in Oklahoma City because children are being killed all over the world.

In a second interview on April the 23rd, 1985 (sic), Mr. Fortier told agents that he had never been involved with explosives and only discussed guns with the Government -- and the Government with Tim McVeigh. He again told the FBI that he picked up no indication whatsoever from Tim McVeigh that Mr. McVeigh would commit the Oklahoma City bombing. The next day he was again interviewed; and on April 24th, he again told the FBI, "I have no knowledge of the bombing."

On May the 1st, the FBI warned Mr. Fortier they were going to search his house, they had obtained a search warrant. The evidence will show that ordinarily search warrants are executed and carried out without calling somebody on the phone or telling them they're going to be searched, because of course they might hide or destroy evidence. You get the search warrant, you go out and search somebody's house.

Our proof is this: The Government knew that Mr. Fortier had drugs, he used them, maybe distributed them, possessed them. They didn't want to find drugs in his house, so they told him they were going to search it. Mr. Fortier took the drugs out, gave them to his next-door neighbor, and there were no drugs there when the FBI arrived a few minutes later.

On May the 6th, Mr. Fortier was served with a grand jury subpoena, and he told the agents he didn't think he could be of any additional help because he didn't know anything; and then a few days later -- and there will be evidence on this -- something happened. On Wednesday, May 10th, an article appeared in the Phoenix Gazette which indicated that Terry Nichols had now been charged as a direct participant in the Oklahoma City bombing. Mr. Fortier read this article, and he now understood that Mr. Nichols as well as Mr. McVeigh could face the death penalty if convicted. He also understood from the article that Mr. Nichols was being charged not only as a direct participant but as an aider and abettor of the crime.

The article he read indicated that Mr. Nichols and Mr. McVeigh had a long association, just like Mr. Fortier and Mr. McVeigh had; that Mr. Nichols and Mr. McVeigh had been through basic training together. And Mr. Fortier will tell you he had been through basic training with them; that they had sometimes shared a house together. Mr. Fortier will tell you that he and Mr. McVeigh had shared a house together.

The article indicated that the FBI and authorities had found guns, ammunition, antigovernment literature and other material at Terry Nichols' house.

Mr. Fortier will tell you that he had guns and ammunition, explosives and antigovernment literature at his house. He perceived he would be next, our proof is. He had a long association with Tim just like Terry. Like Mr. Nichols, Mr. McVeigh and Fortier had gone through basic training together, they both shared a house together, they both had fertilizer at their houses; and like Nichols, Mr. Fortier had

fertilizer at their houses; and like Nichols, Mr. Fortier had guns, ammunition and antigovernment literature.

Two days after Terry Nichols had been charged as a participant in the Oklahoma City bombing, on May 12, 1995, Michael Fortier contacted the FBI and told them he wanted to cooperate. Prior to this meeting with the FBI at which he had wanted to cooperate, in the sanctity of his own home, Mr. Fortier told, through these wiretaps and bugs, his closest friends and his family that he had no knowledge of the bombing and that Tim McVeigh was innocent.

In the privacy of his home and on the privacy of his telephone away from the television and newspaper and FBI agents outside, he specifically stated the following: He told his brother John that the FBI played games, lied to him and used intimidation against him and his wife. He told his brother John that the FBI implied that they were going to change the sketch of John Doe 2 to make it look like Fortier, and he repeated those concerns in a nationwide interview on CNN.

He told his brother John that the FBI had planted earplugs in his Jeep. He told his friend Lonnie Hubbard that "The FBI harassed the fuck out of me." He told Lonnie Hubbard that, quote, "I don't know jack," close quote, about the Oklahoma City bombing.

He told his father that he had been truthful to the FBI when he said he had no knowledge, and he told his father that he didn't believe Tim would ever do anything like the Oklahoma City bombing. He told his mother and his brother, Irene Fortier and Paul Fortier, that the FBI had been lying to his family; and he then said, "All I know is they don't tell you the truth."

But he didn't just make these statements to his family in the privacy of his home. He repeated them publicly. I've already mentioned the handwritten press release. And in the statement, Michael and Lori Fortier say the following: "I would also like to say to everyone that Timothy McVeigh is a close friend of my family and mine. He stands accused of the bombing of the Alfred P. Murrah Building; but from knowing him, I believe in no way he was responsible for this crime. This country has been a witness to how the alleged suspect, Timothy McVeigh, has already been crucified by all the lies put forth by the media. We have all seen how the alleged suspect, Timothy McVeigh, has been portrayed in the media; and it truly sickens me when I see my friend's -- yes, my friend's -- face portrayed on the front of Time magazine as the face of terror. All of this for what reason? Premise was he was arrested and charged in connection with the bombing of the Alfred P. Murrah Building. It was only because he fit the description of a composite sketch. In this country there are probably a half a million people that could fit that sketch. Hell, for that matter, there are probably a lot of people who fit it better than Tim. What I mean by this is Tim's actual physical description is 6' 2" to 6' 3", 160 to 165 pounds, male, far from the composite sketch of John Doe 1's description of a 5' 8" to 5' 11", 180- to 185-pound male. They better have more than this to arrest the man; but then again, they needed somebody to arrest for this crime." That's what he said.

The proof will show that on April the 27, 1995. Mr.

and Mrs. Fortier at their own initiative traveled to a park near their home for the purpose of an interview with CNN. He gave a detailed interview to the reporter, and he said the following, in part: "I have spoken with the FBI, and I get the impression that sketch is being modify to fit my face. I mean that I know my friend Tim McVeigh is not the face of terror reported on Time magazine. I cannot say that. See, everybody just assumes that he did it automatically, and everybody wants to know why he did it or, you know, what he was thinking and stuff like that. The only fact is that this man was caught speeding on a highway in Oklahoma, and that is his only crime; and that why he speeds, I don't know. I'm not sure what you're insinuating what Nichols said; but no, no, I don't believe that Tim blew up any building in Oklahoma. There is nothing for me to look back upon and say, ah, yeah, that might have been. I should have seen it back then. There was nothing like that, you know; and everybody should be supportive of him because he's an innocent man."

From time to time, the proof will show, Michael and Lori Fortier checked and double-checked to be sure that their statements were consistent before they made their first joint statement to the FBI.

On May the 17th, 1995, in a Motel 6 room in Oklahoma City, Michael and Lori Fortier had a one-hour, private meeting to discuss what they would say to the FBI.

We will offer evidence that they have been in constant communication ever since then.

Mr. Hartzler told you that the Fortiers would admit, under the Government's proof, that they were users of amphetamines and marijuana. The proof will be they were daily users of amphetamines during the period of time for which they claim to have knowledge.

Mr. Fortier was a daily seller of amphetamines, both Michael and Lowry used marijuana; and the evidence will show, as I've already indicated, that the Government wasn't interested in pursuing that; but Mr. Fortier didn't know that. Mr. Fortier's maximum punishment, under the charges that he pled guilty to, is 23 years but he faces over a hundred years if he had been charged with the other crimes for which he was not charged, multiple counts of drug use and possession and lying to the ATF.

Our proof is that what he could have been charged with that he did is far greater in its severity than that which he pled guilty to but didn't do; and of course, as Mr. Hartzler told you, no charges were filed against his wife whose drug use and habit was almost as great as Mr. Fortier's.

The FBI repeatedly told Mr. Fortier in the interviews that participants in the Oklahoma City bombing would face the death penalty. Our evidence is that Terry Nichols appeared to be in the same circumstantial position by Mr. Fortier and that Mr. Fortier could read the writing on the wall.

In the plea negotiations that Mr. Hartzler has referenced the government offered Mr. Fortier a deal which allowed he and his wife to escape death itself. Mr. Fortier believed, and he will tell you, that under the deal he could receive as little as two years and his wife would not be

prosecuted at all.

The deal, as I indicated, and you'll see it in evidence, provides that the Government will file a motion for a lower sentence in the even Mr. Fortier, quote, "cooperated," close quote.

The bottom line was, and is, that under this agreement which will be introduced, in order to testify against Tim -- Mr. -- Mr. McVeigh, Mr. Fortier would avoid a federal prison sentence in excess of 50 years for false statements to the FBI, false statements to the ATF and drug possession and distribution all of which, the proof will show, are totally unrelated to the bombing of the Murrah Building; but in the Oklahoma City bombing case, under the agreement, he escapes capital prosecution and his wife avoids prosecution altogether.

Our proof is that under such circumstances Mr. and Mrs. Fortier could only be expected to say whatever the Government wanted to hear, and we will prove they tailored their testimony to fit what they already new about the prosecution's case and theory and save their own skins at the expense of the truth.

We will prove that Mr. Fortier's testimony against Mr. McVeigh is the product of fear and intimidation, that he proclaimed Mr. McVeigh's innocence to his closest friends and the world and changed when Mr. Terry Nichols was charged.

Mr. Hartzler told you, and it's true that the Government will introduce evidence of -- in various ways to describe the Darrell Bridges debt card, Spotlight debt card, the telephone card, but we're all referring to the same thing. The material is put together in some kind of summary that you may see later, but basically here's what the proof will show: A telephone debt card is not of the same thing as a telephone credit card or direct distance dialing.

You have a telephone credit card and you call from your home in Denver to New York City, there is an electronic chain of billing. A call from your home or your office or a

pay phone to the place in New York City that you call, and if you use direct distance dialing, you pick up the phone, you dial 1-212, whatever the number is, a record is created because you, or whomever's phone you are using, is charged a tariff and part of that tariff is dependent upon several factors, where you called from and where you called to, whether you called in the morning or after 6, whether you called on a holiday or workday, whether you had operator assistance or not, whether you called person to person or station to station. All of that information is necessary for billing.

And the telephone debit card, none of it is necessary except one thing, where the call was placed to. Because the telephone debit card charges 25=9B a minute whether you call across the street or across the nation. It doesn't make any difference where you called from or how or the time of day, it's only important where you called to; and it's the same whether you called Evergreen or Bangor, Maine.

Now the way that works is, is that this Spotlight, which is a newspaper put out by Liberty Lobby in Washington, D.C., which is kind of a political organization, advertised

these debt cards; and in fact debt cards are a new and fast growing way that people use the telephone. You have to put the money up front. So the company's already got your money, and you can put \$25, \$50, a hundred dollars up, you send them a check or money order, they put it in an account.

Spotlight is the company -- and I'm not sure of its full legal name, but that's, for ease of convenience, what we'll call it -- they market this debt calling card service. People fill out an application, they pay the money to open an account, and they get the card.

Now, you don't need the card to make a call. All you need to know is the number. So anybody that knows the number can make the call. It's not something you slide in the machine and slide back out. You can surf a number, you can steal somebody's number, you can memorize your number, or you can carry the card and pull it out when you get ready to make the call.

There's a second company that figures into these transactions when you're making these calls, and that's a company called OPUS. I'm sure that stands for something but I don't remember what it is. That's the company -- remember Spotlight advertises a card and they sell it. Well OPUS is the company whose job it is to facilitate the billing for the Spotlight debt card calling customers.

These Spotlight customers prepay money into an account and they're given a number and this account is managed by OPUS; and then OPUS, through various computer systems, subtracts the cost of each call, which is 25=9B a minute, from the customer's account.

Anyone who has the pin number -- and that's what it's called -- of a particular Spotlight account, like a traditional calling card number, would be able to charge calls to that person's account.

One of the problems that the proof will show with the Bridges card record in this case is that the original design of the Spotlight calling card system was not to provide a trail from the calling party to the called party, not because they were trying to help the customer but because it wasn't needed so they didn't want to create more work and spend more money in a competitive market than what was needed. All they needed to know was how long you were on the phone, and as many minutes that you were on the phone they took 25=9B off.

The card didn't carry a camera with it, so who made the call is not in and of itself part of the telephone records; so there is, of course, a record of the call coming in. I make a call or Michael Fortier makes a call or Tim McVeigh makes a call, let's say, from Lockport, New York, and he wants to call Denver, so the mechanics -- and these experts will tell you about it -- you pick up the phone, any phone, and you dial an 800 number, 1-800-Spotlight or whatever it is, and a phone rings. It might not really ring, it's all computers, but to make it simple, a phone rings and somebody there picks up that phone and so now you're connected; and you punch in your pin number. 1, 2, 3, 4, 5, 6, 7, 8, and electronically you're then ready to make your call. So you make the call.

And then there's a record from the place where the call came in at OPUS or wherever it might be. Los Angeles. to

call came in at 3:00, or wherever it might be, Los Angeles, or where the call is received, say Denver, Colorado.

But here's our proof, to go back and say that this call in Denver was made from this pay phone in Junction City is not certain, and the reason that it's not certain is because there are three clocks. There's three forms of billing along the way, three records kept, and the clocks aren't synchronized so they're off; and this call to Denver, which may or not -- may or may not be from Junction City is not the only call OPUS is handling. It might be the only call, and the records will show it, at 3 a.m. in the morning, but at nine o'clock in the morning there could be several thousand people using their debt card calling at the same time and then their calls are filtered out but they're not linked up except in narrow, specific circumstances.

You see these computers systems that have to arrange this, unlike the debt card -- unlike the credit card on direct distance dialing, our experts or the Government experts will tell you, were not designed to work together to produce a summary of the details of each call like you get each month. When you get your phone call at the end of month you have a credit card for direct distance dialing, it will say call from Denver to Longmont or call from Denver to Kansas City on such and such a date, such and such a duration.

But that's not the way the debt card works. The Government experts spent over 2,000 hours trying to match and study these cards and I believe the proof will show on cross-examination that there were many, many mistakes and they continue to be mistakes. Just the other day, it will be introduced into evidence, there was a new summary that corrected 35 mistakes.

For example, almost two years after they had access to it, this new summary shows a new call being placed with the Bridges calling card that they hadn't found before. The Government's expert has changed the location to where a call was placed from the Bridges card from the Traveler's Motel to a Minimart pay phone, and changing the city from where the calls were placed, from, for example, Kingman, to Bullhead City.

These mistakes, which we will go over with you on cross-examination, are typical of the mistakes made in trying to show something because the various components of the system are not synchronized.

One of the computer systems gathers information about where a call was placed from. The OPUS system gathered information about billing and customer identification, and the third system gathered information to whom the call was placed.

In order to accommodate the Government's theory that specific phone calls to chemical companies or arms companies or certain individual's homes were placed by my client or Terry Nichols they used an eight minute window of time. They used different methodologies but changed the methodology; so if Methodology A would support that, well, maybe this call was made from Junction City to a chemical company in wherever, Fargo, North Dakota, and then later you couldn't use the same methodology on a subsequent call because it wouldn't prove what you wanted to prove. It wouldn't prove it was made from Junction City or Kingman where the Government's theory was.

So to get around this or to try to get around this the Government's experts in his charts program, used an eight minute window of time in which to arbitrarily chose whatever call he felt best fit the place where they wanted to make the call originate.

Sometimes -- and these records will be introduced, you'll see them -- they had two, three, four or even more choices from which to choose. They always chose the one that fit the theory that it was Tim McVeigh or Terry Nichols making the calls.

Now, Mr. Hartzler made reference to it, and it will be in evidence, and that's the telephone call to the Ryder truck. Here's what the evidence is going to show about that and arguable that's the most important call we've got here. It also relates to the evidence concerning Tom Manning and it relates to the evidence of who rented the Ryder truck.

So the evidence is going to concentrate on that morning that Mr. McVeigh purchased the old Mercury from Tom Manning.

Initially, when the Government's agents were working on this case for a period of several weeks they thought the phone call to Elliott's had come at about 8:44 in the morning from a pay phone at Fort Riley. That was the call that rented the Ryder truck. We'll show you the chart. It will be introduced into evidence showing it.

Well, during that same period of time they're questioning Tom Manning about the circumstance of the purchase of the Mercury Marquis, and the evidence will show that Tim's car, a car that he had had for a number of years, had been involved in some kind of accident and he gotten another car, I think, from James Nichols and it wasn't working. It came in, I think it just barely made it into Manning's Firestone store, belching smoke, whatever.

So he asked Mr. Manning if he had a car that he could buy. Tom Manning will tell you -- he'll testify here by deposition -- that he knew Tim McVeigh, he had been in there, traded with him in the past. So he said, Yeah, I've got a car. He had this old Mercury, and I believe it was 17 years old. This is the Mercury that the government will contend that Mr. McVeigh drove to Oklahoma City and this is the getaway car. This is the getaway car that Mr. McVeigh is purchasing. It was 17 years old.

I believe that Mr. Manning paid \$50 for it. He sold it for \$250. He actually sold it for 300 and gave McVeigh back \$50.

He testified, and you'll hear it, that this car had 97,000 miles on the odometer that were showing -- of course it could be 197 or even 297, depending on how many times the odometer had turned over in this 17- to 19-year-old Mercury Marquis.

And In addition to that the fuel gauge permanently registered on empty. The needle was always over on E. And on top of that, the transmission didn't also work so when he told Mr. McVeigh the car, he also sold him some cans of transmission fluid and then watched as Mr. McVeigh drove this 17- to 19-year-old Mercury Marquis that had 97,000 or 197 or 297,000

miles on it, with the fuel gauge permanently on empty, and with transmission fluid in the back in case the car had a problem, was the getaway car that Mr. McVeigh drove to getaway from Oklahoma City.

Well, the FBI interviewed Mr. Manning eight times. Now either he didn't tell them or he told them and they didn't write it down or they didn't ask, he never once mentioned that Mr. McVeigh, while he was buying the car, left the store and came back.

He didn't mention that until about a year and a half later -- it might have been shortly less than a year and a half -- he had a conversation with one of the prosecutors in this case, just before he gave his deposition in Topeka, Kansas, two days after the election last year; and for the first time he remembered that Mr. McVeigh left his business. Or if he had remembered it before, nobody had thought it important enough to write down in his statement.

Now he remembered. Well, our evidence will be that now something else had happened and that something else was that the phone call to Elliott's wasn't at 8:44, the new theory was that it was at 9:53. Well, if it was at 9:53, from the bus station down the street from the Firestone store, and certainly within walking distance, then it couldn't be made by Tim McVeigh because Tim McVeigh is down at Manning's buying this old car.

So now Mr. Manning says, I remember he left. Well, of course, if he left, he didn't make the call if he left at the same time the call was made.

But Mr. Manning testified -- and you'll hear it -- that that's not what happened, that Mr. McVeigh was gone for 10 or 20 minutes -- 10 to 15 minutes and got back about 10:20. Even under the most extended interpretation of when Mr. McVeigh left, he left seven minutes before the call was placed. That is what the evidence is.

Then, as Mr. Hartzler told you, our proof is -- and maybe their proof -- is during the record that this call to Elliott's was made on the pin number that was the Darrell Bridges debt card. Well, there's a computer glitch and just it so happened at that moment it didn't record the pin number. That's the explanation given; but the explanation is that has

to be Mr. McVeigh because two minutes before there's a phone call to Terry Nichols house which is charged to the Bridges record. That's the proof. That's the evidence.

But the evidence also is that Vickie Beemer, who works at Elliott's, said the call came at 10:30; so the proof is, it came at 8:44 from Fort Riley to pay phone, 9:53 from pay phone to bus station, or somewhere else at 10:30 according to Vicki Beemer.

No one observed Tim McVeigh at a pay phone placing phone calls when these calls were allegedly placed as the Government says they were. All of that will be introduced into evidence.

For example, Richard Greenwald, who is a businessman, was interviewed regarding a phone call to his business on October the 14, 1994; however, the Bridges summary, that will be introduced into evidence, the most recent version states the

be introduced into evidence, the most recent version states the call occurred on October 24, ten days later.

There are two Government witness statements from him that give two different call times for this one call, both of which are different from the Government's most recent summary.

In the summary that will be offered here, which the government has shown us, there is an earlier summary, the second or third version, which we will introduce which tries to track these calls which reveals that two of these so-called Bridges calls were placed two minutes apart from different locations 25 miles apart. One call being placed from Kevin Nicholas's house and the other placed from Terry Nicole's house, both calls placed to Bill McVeigh's residence in Lockport, New York.

However, after this matter had been studied a little bit more these theories were changed and this proof was changed because it would mean there were multiple users of the Bridges card because the same person couldn't make a call from two different locations two minutes apart 25 miles apart; and the Government's theory is it's only Mr. McVeigh and Mr. Nichols.

There's another call that's important in this case. In the earlier version it was reflected that Bridges electronic records and charts show that a call was placed from Junction City, Kansas, at 2:51 p.m. to a Charles Kirby; however, the Government agents apparently discovered, under our proof, that two minutes prior to this call to Charles Kirby a call was placed with the Bridges card from St. George, Kansas. This is the call that was 25 miles apart between St. George's and Junction City, Kansas. This would have meant that other people besides Mr. Nichols and Mr. McVeigh had access to the Bridges calling card.

The new evidence is that the Bridges summary reflects that the call is placed to Charles Kirby, St. George, Kansas, now instead of Junction City.

Well, our proof is this: The Bridges summary is not an electronic telephone summary like you receive. It is a summary prepared from a lot of different records by FBI agents design to shape the telephone evidence to the theory in the case that the calls are made by Tim McVeigh or Terry Nichols.

Our proof is that the Bridges calling summary is not what it purports to be and cannot be relied upon.

Mr. Hartzler spoke to you about Mr. Glynn Tipton. Here is the defense proof with respect to Mr. Tipton who is the gentleman that allegedly had a contact with a man named John, last name unknown, who attempted to buy nitromethane and anhydrous hydrazine from Mr. Tipton during the week of October 1st in Topeka, Kansas. You remember Mr. Tipton, and the proof will be, was the sales manager for a company named VP Racing Fuels which operated, at least in that part of the country, out of Manhattan, Kansas.

The Government will offer evidence showing that a review of the Bridges card shows a phone call to VP Racing Fuel on October 7, 1994, at 2:22.

The FBI contacted Mr. Tipton at the racing fuel place on May 1st about seven months later. After this original contact with this individual named John, Mr. Tipton didn't contact the FBI, the FBI contacted him because of this

purported call on Bridges summary.

Mr. Tipton was asked who called his business using a credit card call number in the name of Darrell Bridges. Mr. Tipton remembered right away that on the weekend of October the 1st he had been working at the Sears Craftsman National Drag racing in Topeka, Kansas, and that a man name John approached him and asked him if he sold anhydrous hydrazine in 55-gallon barrels. Mr. Tipton said he would have to check his records and get back to the agent -- I'm sorry, Mr. Tipton told John that he would have to check to see if he had it and get back to him.

The next day was Monday. John did not give Mr. Tipton a phone number because he said he was in the process of moving; but Mr. Tipton remembers that he gave this John one of his cards. On Monday, October the 3rd, Mr. Tipton called Wade Grey; now Mr. Gray is the purchasing agent for Texas Allied, these chemical supply. They're the ones they get this fuel from. And Tipton told this gentleman about his encounter with John.

Now, up to this point Mr. Tipton would tell you that he didn't have a clue that there was anything unusual about this request. He had even quoted John, according to himself, a price of 55-gallon barrel of nitromethane at \$1200; but Wade Grey advised Mr. Tipton that Texas Allied didn't handle anhydrous hydrazine and if anhydrous hydrazine was mixed with nitromethane the combination could make a bomb.

You will hear the testimony of Wade Grey and Glynn Tipton about their various attempts to contact the ATF in different cities and to report what they thought was a suspicious inquiry, but for whatever reason the matter was not pursued.

Mr. Gray will tell you that one week after the Oklahoma City bombing he received a telephone call from Mr. Tipton who advised him that he had seen the arrest of the person arrested in the Oklahoma City bombing case and that the individual looked identical to the guy who had come up to him at the race track in that October.

But Mr. Tipton and Mr. Gray didn't call the FBI to report their suspicions, even though they say that they had seen Mr. McVeigh and that he was identical to the John that had approached Mr. Tipton at the race track.

As there's an FBI agent, special agent, named Doyle who made the first contact with Mr. Tipton after the bombing. He was there to inquire about this phone call that they thought they had found. They got together and met.

Mr. Tipton was interviewed on June 29, 1995, this time by another agent. During this interview he had far greater knowledge of the uses of racing fuel and nitromethane and anhydrous hydrazine and how they are sold. He even told this FBI agent that it was quite common for someone to buy 55-gallon barrel of racing fuel or nitromethane and that names are rarely put on the sales invoices because it was so common.

He will tell you, when he's called to the stand, that he received one other phone call from the person he knew as John. After that he never heard of John again. He never saw John again until Mr. Tipton heard through the media that the

prosecution's theory that the bomb was made of ammonia nitrate and diesel fuel, he didn't even have a reason to think of John.

Mr. Tipton will testify in this proceeding and he will tell you about the various descriptions of this John that he saw. They do not match, our proof will be, Timothy McVeigh. Mr. McVeigh does not have brown hair and he doesn't have medium colored skin. He's not 5'8 or 5'10. He's considerably taller.

Our proof is that the John, whoever he may have been, was so unimportant to Mr. Tipton that even though for a brief while he thought he was identical to Tim McVeigh, he wasn't convinced enough himself to call the FBI and share with them his suspicions; and it wasn't until after the FBI came to see him followed by an NBC camera crew a little while later that he began to believe that Mr. McVeigh was this John who, by his own statement, was making an inquiry concerning a routine purchase of nitromethane.

There is a series of four, I believe it is, storage units Mr. Hartzler made reference to. These storage units, I believe there's one of them in Kingman, Arizona; and the other three are down around the Herington, Junction City, Kansas area, and Council Grove and other places.

As Mr. Hartzler told you, the Government's proof is that all of these chemicals and fertilizers and other things that went into make the Oklahoma City bomb were placed in these storage units.

Well, the FBI sent out people from the laboratory and they ran a series of chemical tests to see whether there was any chemical traces or residue traces of these various things that supposedly were in the bomb in these storage sheds. If they had been stored there for several months then presumably there would be some evidence of some residue, but they didn't find any.

Terry Nichols, our evidence will show, had a lot of judgments against him. He didn't always deal in his own name at the gun shows or businesses that he was involved in. He was running from his creditors. Mr. McVeigh had some credit problems.

Most of these units are right around the area where Mr. Nichols lived and was storing things, and our proof is that these storage units had absolute nothing to do with the Oklahoma City bombing. They were rented under aliases, there's no question about that; but exactly who rented them and what was placed in there and who had access to them and who took it out is an area where the evidence is going to conflict.

And in the final analysis the Government's proof will rely upon Michael Fortier who says that he came to one of these units in Kansas, but Mr. McVeigh went in it and there was some kind of mattress in there and Mr. Fortier himself could not tell what everything in the unit was because there was a mattress and some other items in there. It may have even been in the evening and his vision of what he saw was blocked.

Our proof is that Tim McVeigh had strong political views against the government, no question about that; that he communicated those views to other people; that he talked about them with his sister Jennifer; wrote about them to his friend Steve Hodge and maybe Dave Darlak and with people that he knew

in the Army.

He sold copies of The Turner Diaries at gun shows and had a business of selling things at gun shows. Usually at these gun shows they would have what they called 200 tables, which would be a good size gun show, and that from those items

he supported himself; and that Terry Nichols did the same thing.

In fact, there's a videotape, which you will see, of Terry Nichols ordering cards in his own name from the Kinko's at Manhattan shortly before the Oklahoma City bombing was going off.

And as Mr. Hartzler says, fertilizer was found at Terry Nichols house, and indeed it was, along with two pound sacks that Mr. Nichols sold it in at gun shows. And certainly the proof will be that Mr. Nichols, Mr. James Nichols' brother, who is a farmer in Michigan, and Mr. McVeigh and some of their friends from time to time exploded pop bottles, so-called pop bottle firecrackers, up in Michigan. But these are not the type of bomb, either in composition, design or mixture used in the Oklahoma City bombing case.

Mr. McVeigh arrived in Junction City, Kansas, on Thursday from Kingman, Arizona. He had been living in a motel there. His dad lived in New York, he came out of Kingman, up the highway and got to Junction City, Kansas.

I've already told you that he bought the automobile because his car gave out as he pulled himself into town. And after he got this car he drove down to the Dreamland Motel, which is owned and operated by a lady named Lea McGown who will testify in this case. Ms. McGown, a very industrious woman, I think she's originally from Germany, and she operates this motel and lives there and says that she only leaves two days a year, Easter and Christmas, and she's kind of there 24 hours a day. And she at got a daughter, Kathleen and her son, Eric, and sometimes they help her out with the motel.

The proof will be that Tim McVeigh comes into the motel and registers under his own name, Tim McVeigh -- that's what she will testify to -- fills out the registration card and goes down and is given Room 25, which is pretty close, maybe a door or two within sight or distance of Ms. McGown's office.

Now, her memory is that she saw him in a Ryder truck, but the proof is that the Ryder truck that carried the bomb here wasn't rented until Monday afternoon at 4:30. When asked how she could reconcile that, Lea McGown said it couldn't have been on Monday because Easter doesn't come on Monday, it comes on Sunday; and she remembered it. In fact she remembers it so well that she told her son, "Go down there and tell Mr. McVeigh to move that Ryder truck because it's blocking somebody else's door." There was a day sleeper that lived down in that area of the hotel.

Now, I wasn't there. I don't know whether she saw Mr. McVeigh in a Ryder truck, or she saw a Ryder truck and Mr. McVeigh wasn't in it, or she saw Mr. McVeigh; but there was about 25 to 30 to 50 people in and out of this motel every day, and they saw Mr. McVeigh at times inconsistent with the Government's proof in this case.

Now, the proof is that a phone call was placed from

Now, the proof is that a phone call was placed from the Dreamland Motel to a Chinese restaurant. Hunan's, I think it is. And somebody in the name of Robert Kling, according to the restaurant records, ordered some Chinese food to be delivered to Room 25. That's what the written record of proof will be.

Jeff Davis, who was the delivery man, took the order to the Dreamland; and when he got there, there was a man standing in front of a door and the door was open and the man paid him and gave him a tip and took the order that had been placed for Robert Kling. Jeff Davis will tell you that the man he gave the Chinese food to was not Timothy McVeigh. That will be the evidence.

Timothy McVeigh was staying at the Dreamland under his own name. Robert Kling rented the Ryder truck. The Ryder truck call was made, according to Vickie Beemer, at 10:30 in the morning to reserve the truck. There was a little conversation on the phone about size of the truck and what was needed and how much deposit was made. And she will tell you that she told Mr. Kling that he had to come in and make a deposit Saturday morning in order to keep the truck -- and Elliott's wasn't open all day on Saturday. It was only open for certain periods of the day in the morning -- and that Mr. Kling would be -- or Mr. Elliott would be there.

On Saturday morning, an individual identifying himself as Robert Kling appeared at Elliott's; and Mr. Elliott was there, and he paid him for the rental of the truck and advised that he would pick up the truck on Monday afternoon. The description that Mr. Elliott gave of the person that came, according to the proof, was that he was about 5' 10" to 5' 11", medium build, weighed 100 to 185 pounds. That was Robert Kling. The proof is that Tim McVeigh is a tall, skinny guy anywhere from 6' 1" to 6' 2" and weighed 161 pounds.

On Monday afternoon, there is a videotape at McDonald's -- there are two McDonald's in Junction City. If you're going from the Dreamland Motel to McDonald's, it's shorter to go to the one in town if you are going by miles, but it's quicker if you're going to the one on the interstate because there's less traffic. You can get right down there from the Dreamland. You just simply exit the Dreamland, get on Interstate 70, go to the next exit, and there's McDonald's. That McDonald's is about a mile point three to a mile point five from Elliott's, which is further west and on an incline up on kind of a little bluff overlooking Interstate 70.

Now, there's a taxicab service in Junction City, and there's a man that works for the taxicab company; and when he was questioned by the FBI, the proof will be, he denied that he had carried Tim McVeigh to McDonald's. He'll testify -- and he has a severe diabetic problem. And the FBI was with him that day and they were with him the next day, and then he changed his story and he said, well, it must have been Tim McVeigh that he took; but his original thought of who his customer was, was it was not Tim McVeigh.

Whether Tim McVeigh took a taxi there or not is an issue for you to determine, but there isn't any dispute; and the evidence is clear that Tim McVeigh is in McDonald's. He's there, and Mr. Hartzler gave you the time; and he was last seen

at McDonald's at approximately 4:00. There is a little clock on the picture, as I recall, and you can see him with his food in his hand. You can also see the clothes that he is wearing.

Approximately 15 minutes later, Robert Kling and another man walked into Elliott's. Robert Kling is wearing military fatigue-type clothing. In the picture at McDonald's, Tim McVeigh is not wearing military fatigue-type clothing. When Kling and the other man enter Elliott's, there are three people that clearly see them that day: Vickie Beemer, who works in the front office; Mr. Tom Kessinger, who works there; and Mr. Eldon Elliott, who owned it. There is a computer that indicates when the transaction to rent the truck ends. There is a lease agreement that Robert Kling has to sign to rent the truck. The proof is Tim McVeigh's fingerprints are not on the lease and Tim McVeigh's fingerprints are not anywhere in Elliott's.

The office at Elliott's is very small, probably no larger if as large as the area that you, as members of the jury, sit. There are photographs of it. There's a camera. The transaction at Elliott's and the evidence connected with it is as follows: On April the 17th, which is the Monday, Tom Kessinger is working at Elliott's Body Shop and he takes an afternoon break, and that break is between 4:15 and 4:30. To take his break, he walks into the front office and sits down. At some point in this period, two males come in and they are conversing with Vickie Beemer about renting the truck. The first individual -- and we'll call him Subject No. 1 -- the proof will show according to Kessinger, was very talkative and acted very nervously. According to Mr. Kessinger's description, this man was 5' 10" tall, weighed 175 to 185 pounds, had green or brown eyes, and rough complexion or acne.

Tim McVeigh's picture was taken before the week was out. He didn't have rough complexion and he didn't have acne and he didn't weigh 175 to 180 pounds, and he wasn't 5' 10".

When the FBI and the law enforcement officials discovered the VIN number on the Ryder truck from that axle that flew and hit the Ford Fiesta, the closest FBI agent to Junction City was a gentleman by the name of Scott Crabtree, who was stationed in Salina; and he went immediately to Junction City. Somebody called ahead to see who was there and told them what they were coming about; and even before the FBI agents got there for their interview, the proof will be that Beemer and Kessinger and Elliott started talking among themselves trying to remember what the person that rented the truck on Monday looked like and how many there were, and Eldon Elliott asked Vickie Beemer, "Did he have a beard?"

Tom Kessinger, once the FBI got there and interviewed him, apparently had the best memory of what the person looked like; so he met with an FBI visual information specialist named Raymond Rozycki, and they went down the hall and had a meeting in which they attempted to describe the man who rented the truck had carried the bomb that killed these people.

As they're sitting there, Kessinger is telling Rozycki that Subject No. 1 was accompanied by a person that was called later, for ease of reference, John Doe 2. And according to

Kessinger, this man, John Doe 2, wore a black T-shirt and had a tattoo on his left arm. He wore a baseball cap with white and blue zigzag patterns; and as Kessinger is telling this to Rozycki, Rozycki is writing it down.

On April the 20th, Kessinger describes the second man as 5' 10", weighing 200 pounds, heavy, well-built, and brown eyes. Kessinger said that John Doe 2 had brown hair and a smooth complexion.

Subject No. 1, Kling, the man who rented the Ryder truck, was wearing a camouflage uniform on April the 17th, according to Kessinger, when he walked into Elliott's. On April the 24th, Mr. Kessinger helped prepare a composite drawing of John Doe 2's hat, the one with the white and the zigzag patterns.

On April the 27th, Mr. Kessinger provided to Sergeant Robert Story of the Junction City, Kansas, police department and Special Agent Ronald Rozycki from the FBI a statement of what he had seen. He told them in this statement that John Doe 1 or Robert Kling was the only individual that he had actually heard speak. He said that John Doe 1 had a different looking jaw line and it was for that reason that Kessinger looked at him so often but that John Doe 2 was muscular and had a V-shaped body.

Mr. Kessinger told Mr. Koziol that John Doe 2 always wore a hat while in the office and it looked like, from what he could see, that he had a good tan.

On April the 29th, Mr. Kessinger assisted in preparing yet another composite drawing of John Doe 2, this time with a profile.

On April the 30th, 1995, for the first time Mr. Kessinger was shown a photographic lineup and asked if anybody in that lineup looked like Subject No. 1 or Robert Kling. Mr. McVeigh was arrested by State Trooper Charles Hanger on April the 19th on state charges, held in the Noble County Jail until the afternoon of Friday, April the 21st, when he was then let out and the picture of him in the orange jumpsuit or prison garb that so many of you remember was shown to the world.

On Saturday morning when Mr. McVeigh was being held in Oklahoma City, a lineup was held and various people asked to come down and see if they could identify the individuals in the lineup, one of whom was Tim McVeigh. Tom Kessinger was not asked to come to Oklahoma City and neither was Vickie Beemer and neither was Eldon Elliott.

On April the 30th, seven days after Mr. McVeigh's image had been around the world, our proof will show, numerous times, Kessinger is approached and asked if he can identify the person that rented the truck. By April the 30th, 1995, Tom Kessinger knew that the Government had charged Tim McVeigh with the Oklahoma City bombing and believed he had rented that truck and had driven it to Oklahoma City.

Mr. Kessinger identified in the lineup Tim McVeigh and said, "This is the person that came in."

Mr. Kessinger himself will testify that Tim McVeigh had been seen by him coming out of the Noble County Jail wearing this orange jumpsuit, shackled and chained and surrounded by FBI agents and sheriff deputies. He knew who the

surrounded by FBI agents and Sheriff deputies. He knew who the Government thought had rented the truck and set off the bomb.

Mr. Kessinger, even though the FBI advised him not to watch media coverage, occasionally caught glimpses of it on television.

In fact, on May the 2nd, 1995, he telephoned Special Agent Scott Crabtree and said that he had been watching television, briefly switching channels, and had seen a media depiction of John Doe 2 on television. Mr. Crabtree reminded him again that he wasn't supposed to watch the media or be influenced by it.

Mr. Kessinger was contacted again on May the 8th by the same two FBI agents, Doyle and Koziol. On that date he did not tell Koziol or Doyle that he had been mistaken about John Doe 2.

On May the 23rd, Kessinger himself was contacted again, but this time by FBI Special Agents West and Dobson, again to talk about what he knew. He did not tell West or Dobson that he had been mistaken about John Doe 2.

The next month, in June, the evidence will show Kessinger was shown a photograph of a cap worn by a man named Todd Bunting on April 18, 1995.

Our evidence will be that Kessinger and Beemer and Elliott, if they identified anybody, were confused and when they were describing the people that were in on Monday afternoon to rent the Ryder truck that carried the bomb, the actual physical description they gave was of the two men that came in 24 hours later at the same hour and rented a Ryder truck, Michael Hertig and Todd Bunting.

When the FBI agent showed a photograph of the cap worn by Mr. Bunting -- by Mr. Bunting, he wore this cap -- they covered up the face so that all you could see was the cap. Kessinger looked at it and he said, This is not the cap, not the cap worn by John Doe 2 on April 17, 1995.

Kessinger again said John Doe 2 accompanied Kling when Kling rented the Ryder truck.

In November of 1996, a year and a half later, the evidence will be that Mr. Kessinger decided that Todd Bunting was in fact John Doe 2. He reached this opinion after meeting with the Government prosecutors. He had had meetings, according to the evidence, on April the 19th with Mr. Crabtree; on April the 20th with Mr. Rozycki, two meetings with Jean Boylan, that's an artist that the FBI used, a composite sketch artist; a meeting on April 24, one on April 27, one on April 29, one on April 30, May 2nd, May 3d.

In all of these meetings Mr. Kessinger did not change his description of John Doe 1 or the statement that John Doe 2 was accompanied by Robert Kling. That change occurred after he met with the prosecutors.

The second person present was Eldon Elliott, the owner -- I can finish Mr. Elliott or pause here.

THE COURT: Well, how much longer do you think it will be entirely?

MR. JONES: 45 minutes.

THE COURT: Then I think we'll pause here.

Members of the jury, we'll, as usual, take a rest stop; and again, please continue to avoid discussion of

anything in connection with this case, as I'm sure you will.

You're going to hear me say this all the time. You're going to get tired of hearing me say it, but it needs to be in the record that I always caution the jury when you leave the courtroom. So you're excused now and we'll be back in about 20 minutes.

(Jury out at 3:17 p.m.)

THE COURT: We'll recess for 20 minutes.

(Recess at 3:18 p.m.)

(Reconvened at 3:37 p.m.)

THE COURT: Please be seated.

(Jury in at 3:38 p.m.)

THE COURT: Mr. Jones, you may continue.

MR. JONES: Ladies and gentlemen of the jury, before the recess, I was describing to you what the three people at Elliott's remembered about the two men that came in to rent the Ryder truck that the FBI says carried the bomb.

From both the standpoint of the Government's evidence and ours, this is the critical event; and that is why I'm spending the time to tell you now, because we won't put on our case until much later, what we believe the evidence will show.

I have described for you what I believe the evidence will show Mr. Kessinger remembered as one of the people that was in the room the entire time Mr. Kling was. Mr. Elliott was not in the room except briefly.

I left off by telling you Mr. Elliott's memory as I believe the evidence will show it. Mr. Elliott, as Ms. Beemer had said to Mr. Kling, was working at his body shop. And I should say parenthetically that the rental of Ryder trucks is incidental to his body shop. His principal business there is he's got a body shop; but he's also got the Ryder truck franchise, and it's hooked up by the computer system to the Ryder office, wherever the corporate headquarters are.

In any event, be that as it may, he was working that Saturday morning, as he did most Saturday mornings, at his shop on April 15, 1995.

This fellow Kling comes up to him, and they have a brief conversation about putting a deposit on the truck. This is about 8:45 Saturday morning.

Kling paid the entire sum, which was exactly \$280.32 to rent the Ryder truck. Elliott's memory was that Kling was approximately the same height as Elliott, and Elliott will testify that his height is about 5' 10".

Kling on this Saturday morning was wearing a camouflage military T-shirt, and he had a wrinkle or a drawn-in mark on his chin.

Kling came back to Elliott's Body Shop on Monday, April 17, 1995; and according to Mr. Elliott, this was about 4:20 p.m. Elliott asked Kling at that time if he had changed his mind about insurance and whether Kling wanted to inspect the truck with Elliott.

Now, this was important to Mr. Elliott, because if Kling wanted insurance, Elliott didn't have to inspect the truck, because if there was any marks on it or damage, it was covered by insurance. But if Kling didn't want insurance, then Elliott had the obligation to take a form and go out and

inspect the truck and mark on the form whatever damage was already on the truck so that presumably when Kling turned in the truck, he wouldn't be charged for damage that was already on the truck before he rented it.

Elliott himself remembers that on that Monday afternoon, Kling was accompanied by John Doe 2, or another man. Elliott remembers that the second man had a hat with blue stripes or lightening on the side of it. He remembers that John Doe 2 talked to Robert Kling briefly and that John Doe 2 was a little shorter than Kling.

Also, Elliott remembers that on April 17, Kling was wearing Army fatigues or military-type clothing when he was in picking up the truck.

The individual with Kling on Monday was described by Elliott as being about 5' 7" to 5' 8", wearing a white cap with blue stripes.

In June of 1995, the Government attorneys showed Mr. Elliott a photograph of a cap worn by Todd Bunting on April 19 -- or actually, the next day, April 18, 1995, the Tuesday before the bomb went off on Wednesday.

Mr. Elliott, like Mr. Kessinger, told the prosecutors that the cap was not the same one worn by John Doe 2.

Mr. Elliott again told the prosecutors that Mr. Kling was with a John Doe 2 when Kling rented the truck.

Mr. Elliott was interviewed on numerous occasions in late April: on the 20th, again on the 20th, on the 27th. He

was not invited down to Oklahoma City. He wasn't shown a photographic lineup. He was contacted again by the FBI on May 8. He told them he had no new information. And on May 19, he was again interviewed, this time concerning the color of the Ryder truck.

And on June 6, 1995, Mr. Elliott was served with a grand jury subpoena. On June 8, approximately 50 days after the Oklahoma City bombing, he was asked for the first time -- on June 8 -- to look at a photo lineup. He had never been asked to participate in the lineup, he had never been asked to look at a photo spread or a photo lineup prior to June 8.

Before that time, he had seen countless media depictions of Tim McVeigh coming out of the Noble County Jail. He admits himself that he saw some of them; but on that day, almost two months after the bombing, shown the spread, he identifies Tim McVeigh.

The third person present was Vickie Beemer. She was the bookkeeper; and she worked the counter at Elliott's Body Shop. She was the one who actually handled the transaction. She stood directly across from Kling almost the entire time. Kessinger -- he'll testify, he'll show you where he was sitting. He was kind of sitting over here. The counter goes like that; but Vickie Beemer is directly across the counter for 10, 15 minutes with this man Kling.

She starts the paperwork. A reservation has been made. It's been prepaid with cash. The truck is there.

According to her, Kling tells her that his birthday is April 19; and Vickie Beemer states to Kling that she had been married longer than Kling had been alive.

She remembered that Kling had telephoned her on

She remembered that Kling had telephoned her on April 14 to do a rate quote. He had provided to her Omaha, Nebraska, as an address. She told the FBI she could not remember his face. She could not remember what Robert Kling's face looked like, but she did remember that a second person accompanied him.

While she could not remember Kling's face, she stated that he was approximately 5 feet, 10 inches tall, medium build. She was interviewed by the FBI on the 19th, the 20th, the 27th, the 28th, May 5, 8, June 6, June 9, June 28, November 14, 1996. In none of these interviews did she ever change her indication that Robert Kling was accompanied by John Doe 2.

On August 1, 1995, the proof will show that Vickie Beemer came before the grand jury in Oklahoma City; and when asked by the prosecutor how certain she was that somebody was with Kling when he rented the truck, she responded, "Without a doubt, a hundred percent sure."

She told the grand jury Kling was 5' 10" to 5' 11".

On Tuesday, the 18th of April, at the same hour, approximately 4:30, two men entered Elliott's. One is about the same height as Tim McVeigh, about the same build, and about the same facial features, except he has a mustache, or at least he did then. The other gentleman who accompanied him is a shorter man with a kind of a tan complexion. He has black hair, has a tattoo, and he's a kind of a stocky fella.

The taller man is Sergeant Michael Hertig. The shorter man is Todd Bunting. Todd Bunting has a hat that has stripes on it, like lightening. It's white and blue. He calls it his Carolina Panther hat.

The proof will show that Mr. Elliott and Ms. Beemer and Mr. Kessinger are mistaken about two men being there on Monday and in their confusion described to the FBI -- honestly, I'm sure -- the people on Monday for the people on Tuesday, or the proof will show that the two people on Monday bear a striking resemblance to the two people on Tuesday, or it will show there was only one person on Monday; and our proof is if they're not even sure about whether there was a second one, how can they be sure what the first one looks like?

But based upon the sketch -- and you will see Michael Hertig in this courtroom, and you see Tim McVeigh, and you'll see the sketch, and you will see Todd Bunting. That sketch was taken around Junction City until it got to the Dreamland Motel; and Lea McGown said, "Looks like Tim McVeigh." And indeed, it does. It also looks like Michael Hertig; and John Doe 2 looks like Todd Bunting, or he could look like the person that Dana Bradley saw exiting the truck.

But based upon Tom Kessinger and Eldon Elliott and Vickie Beemer's description, principally upon Kessinger's, the sketch is prepared. And down the street, registered in his own name, is Tim McVeigh, in Room 25 of the Dreamland. Sergeant Hertig has already picked up his Ryder truck and headed down to the southeastern part of the United States where he lives.

On April 19, Kathryn Ridley and Trudy Rigney, Katherine Cregan, Charlotte Thomas, Raymond Johnson, and Anita Hightower and Robert Chipman were working outside the Murrah Building; and they, too, were killed. And later in the day, Rebecca Anderson, a nurse who came down to help rescue, was hit

-----, -----, -----, -----, -----, -----, -----
on the head by a falling object and died. She lost her life trying to save the others.

Later that day, an alert highway trooper by the name of Charles Hanger is driving on Interstate 35; and he stops an automobile, Mercury Marquis, and he stops it because there is no license tag on the back. He pulls over. The car in front of him pulls off the highway and stops; and he goes up, and there is some conversation. And he notices that Tim McVeigh is carrying a pistol, and so he places him under arrest for the misdemeanor offense of carrying a concealed weapon.

Part of the arrest scene is video taped. Not all of it, but part of it is video taped; and there is a record in the office of the Oklahoma State Patrol at Pawnee, Oklahoma, showing the precise time that Trooper Hanger called in and the precise time that he placed Mr. McVeigh under arrest.

Our proof with respect to that in reference to Oklahoma City will be somewhat different from that of the Government's, but I won't go into that at this time.

Mr. Hanger stopped Mr. McVeigh not because he was speeding, not because of anything that had happened in Oklahoma City, not because he was driving erratically but because he didn't have a license plate on the back of his car. He asked for Mr. McVeigh's driver's license. He noticed the bulge; and Mr. McVeigh, according to Mr. Hanger, told him immediately that he had a gun. Mr. McVeigh cooperated and complied with all of the requests of Mr. Hanger. And the man that the Government says killed 167 people an hour and a half below -- before made no offensive move towards Mr. Hanger, even though he had a number of opportunities to pull the weapon. He was polite and cooperative in every respect. He did not appear scared or nervous.

Mr. McVeigh told Trooper Hanger where he had purchased the car, how much he had paid for it; and Mr. McVeigh further advised Trooper Hanger that he was in the process of moving to Arkansas and had taken one load of his belongings there and was on his way back to pick up another load; and there is evidence that Mr. McVeigh had spent a lot of time in Arkansas over the years and had gone over there to look for real estate in western Arkansas.

Mr. Hanger requested to look at Mr. McVeigh's car, which Mr. McVeigh agreed to. Mr. McVeigh did not have a key, so he told Trooper Hanger to push the button in the glove box and it would open the trunk. Nothing was found in the trunk that was remarkable or illegal.

Trooper Hanger made no connection with the bombing in Oklahoma City and Mr. McVeigh. He put Mr. McVeigh under arrest and drove in to the county seat, which in that county would be Perry, because it's Noble County.

The jail is in the courthouse. When he got down to the jail, because this was a routine misdemeanor arrest, the routine procedure was followed. Mr. McVeigh was booked into the Noble County Jail by Marsha Moritz. Ms. Moritz had Trooper Hanger go into a room adjacent to the booking room in order to change into the usual orange coveralls that Mr. McVeigh had to wear as a prisoner.

Mr. McVeigh's belongings were treated as any other

prisoner's belongings. Smaller items go into a canvas bag, and then that is put into a larger paper grocery sack with the prisoner's other items of clothing. Mr. McVeigh was no exception. The usual practice is to reuse the grocery sack and to reuse the paper sack.

His items of personal property were put into this canvas bag. His other clothing was put into a paper grocery

sack. His name was written on it, just as other prisoners who had used it before had their name written on it, and it was stored in the property room.

No special care or maintenance was taken with the personal property, because it wasn't considered evidence, because Mr. McVeigh's personal property was irrelevant to the charge for which Mr. Hanger had arrested him on.

This is the testimony that the sheriff and the deputy in the jail will give.

And then on Friday, the FBI became involved for the reasons indicated. Mr. McVeigh was waiting to go to court. He was in the courtroom across the hall, when Sheriff Cook got the call from the FBI that something might be up.

So Sheriff Cook took Mr. McVeigh back up to the jail on top of the courthouse there in Perry. Mr. McVeigh had previously called a local attorney, a man by the name of Royce Hobbs; and he had tried to contact a bondsman about making bond on these misdemeanor charges.

But even though Mr. McVeigh had been in the jail since Wednesday afternoon and it was now Friday, he had yet to appear before the judge on this misdemeanor. No bond had been set, so he couldn't get out of jail.

The attorney that Mr. McVeigh called, Royce Hobbs, tried to see Mr. McVeigh three or four times but was denied that right. And finally, along in the midafternoon, got frustrated about it and filed a writ of habeas corpus with the job demanding to see Mr. McVeigh. Of course, at that time, no one knew for sure why he couldn't.

And then at approximately 4:30 Central Standard Time, Mr. McVeigh walked out with Special Agent Floyd Zimms on one side and -- I've forgotten the name of the gentleman on the other side, surrounded by the Noble County deputies and walked into history.

During the rest of the day, the FBI collected the evidence in the Noble County Jail, the clothing. They went out and took custody of Mr. McVeigh's automobile. The automobile was sent to Washington. And while this is going on, people from the FBI are down in Oklahoma City, same time the rescue effort is going on, same time the recovery of the bodies is going on.

This material is sent to the Federal Bureau of Investigation laboratory to be analyzed and collected and reports written.

Mr. Hartzler indicated there could be some criticism of the Federal Bureau of Investigation laboratory. That is not our proof. Our proof will be evidence concerning contamination at the scene, at the laboratory, lack of skilled analysis, using people who are, shall we say, more law enforcement

oriented than scientific oriented. And just like the Bridges card, just like the eyewitness identification and the other matters that we will present in evidence, instead of it being a scientific inquiry, the evidence, our proof will show, was slanted towards the prosecution's theory.

Serious consequences for the FBI and our client grow out of that; and at the appropriate place and in the appropriate manner and with the appropriate witnesses, we will discuss with you in detail those scientific tests and personnel and what happened at the Murrah Building and in the transportation and in the FBI laboratory.

The individuals primarily responsible for the supervision and collection will not give evidence of an expert nature in this case; but they handled it, performed examination and tests, and, our evidence is, contaminated it, misstated it, abused it, manipulated it, and engaged in forensic prostitution.

And then it was given over to people like Linda Jones; and the Government brings in someone from one of the world's most renowned laboratories, all the way in Europe, Linda Jones. But whatever Linda Jones saw or did or whatever Stephen Burmeister saw or did or examined was a Typhoid Mary before they got it.

Tim McVeigh had earplugs. He was a hunter and a shooter, and he carried a gun with him, just like many hunters and shooters do.

He had nitrates on him because that's found on guns and ammunition. And whether he had PETN or EDGN depends upon the evidence of contamination and the qualifications of the people that reached that conclusion. It also depends on whether PETN and EDGN was found at the scene. If it wasn't, it has no significance.

If Tim McVeigh built the bomb and put it in the truck, our proof will be that his fingernails, his nostrils, his hair, his clothing, his car, his shoes, his socks would have it all over them. They don't.

Out of 7,000 pounds of debris, there is less than half a dozen pieces of evidence of a forensic nature; and we will go over each one of them with you. And our evidence will be that they do not prove Mr. McVeigh guilty or a participant in this bombing.

I apologize for the time -- I don't apologize. I take it back. I don't apologize for the time. This is an important case. You know it. It's the only opportunity I will have probably for several weeks, if not several months, before we put on our case. I thank you for your attention, and I believe that you now know what I meant when I said every pancake has two sides.

Thank you.

THE COURT: Members of the jury, I'd remind you again, as I did before we started with the opening statements from both sides, that what Counsel tell you now is in anticipation of what they expect you to hear in the course of hearing testimony from the witnesses and seeing exhibits as we proceed with the trial of the case. So what you have heard today is not evidence.

Our normal time is 9:00 to 5:00; and we would, since

our normal time is 9:00 to 9:00, and we would, since we have almost an hour to go, normally start in with our first witness; but given the condition of the weather and your efforts to get here early this morning, I'm going to get the Good Guy Award for one day and let you go early on one occasion.

But unfortunately, you don't have a window out to the world there in the jury area, but -- and we don't have it here, either; but I'm told that the weather is better than it was this morning and is simply wet. I don't think you're going to have a difficult drive home, at least not as difficult as you probably expected when you came in this morning; but nonetheless, I don't know what the weather is where each one of you live, and I want to make sure that you do get a little jump on the traffic, perhaps, and get home safely.

So that's why -- and we need you; so that's why I'm going to let you go early today.

Now, of course, you know very well that everything that goes on in connection with this case draws a good deal of publicity; and therefore, you can certainly expect that there will be on radio, television, in newspapers, things concerning the case and for that matter in magazines, too, not for what happened today; they don't get out that fast.

But obviously, to be true to your oath, you're going to have to be very, very careful while you're on this jury. And I've indicated to you that I don't want to sequester you. I don't want to keep you from your homes any more than is necessary for you to be here and participate daily in the trial. But it all depends on you; and we have to rely on you to be careful, as you have been. I'm sure you will do it; but of course, again, it's necessary for me to caution you about it.

As you go to your homes, people are going to have a great deal of curiosity about what the day was like for you in court; and you're going to have to say you can't talk about it at all. And the reason is, you know, we have to draw a bright line here. This is not something where I can say you can talk about this but not that. It has to be a bright line; and the bright line is nothing about the case, nothing about your service on the jury. And that's what I'm instructing you to do, not talk about that with anybody and certainly, as I've already said, not even talk among yourselves with respect to anything that is happening in this trial.

Now, we hope that we'll be resuming at 9:00 promptly in the morning, and then we'll start with the witnesses and get into the actual evidence of the case.

So with all that, we'll excuse you for the day and hope that each of you has a safe journey home. You're excused till 9:00 tomorrow morning.

(Jury excused at 4:08 p.m.)

THE COURT: I have a couple matters here that I would take up. Each side filed a notion in limine here. I assume that they've been exchanged so counsel on each side know what we're talking about.

With respect to the one filed by the Government on cross-examination of this witness identified, I don't know -- this is one of those where I have no idea if counsel for the

defense had intended to make a cross-examination on the subject that's contained in the motion. I don't know, Mr. Jones, if you're up on this.

MR. JONES: I don't think any of us at this table are.

MR. NIGH: We haven't seen it, your Honor.

THE COURT: It's hard for me to have you take a position on it.

MR. JONES: May I glance at it for a second and we might --

THE COURT: Yes. Do you want to approach? I'll give it to you.

MR. JONES: May I just stand here for a second, Judge?

THE COURT: Surely.

When is this witness scheduled for?

MS. WILKINSON: The end of next week or early the following week.

THE COURT: Well, we have a little time for him to review it; so it's not as urgent as I thought it might be.

MR. JONES: All right, sir.

THE COURT: The other one is a motion filed for the defense -- by the defense with respect to some photographs. Do you have that?

HEARING ON DEFENDANT'S MOTION IN LIMINE RE PHOTOGRAPHS

MR. RYAN: Yes, your Honor.

THE COURT: I don't see the probative value of these photographs in just looking at them. Mr. Ryan, are you going to address that?

MR. RYAN: I can, your Honor.

THE COURT: Okay. Well, this is a -- we don't want to take the time to move the lectern around, if you don't mind sidesaddle there.

MR. RYAN: I can work sideways.

THE COURT: All right.

As I understand it, there are -- what are there -- four here? Four photographs? Five.

MR. RYAN: There are seven photographs attached to the motion that I've been provided today.

THE COURT: Well, maybe I've miscounted them.

Well, we have numbers here, so we can do that. 974, 967, 975, 978, 980. Yeah. 1005 and 977. You're right.

PLAINTIFF'S ARGUMENT

MR. RYAN: Yes, your Honor.

As your Honor knows, the indictment in this case charges that the defendant, Mr. McVeigh, used a means of mass destruction to cause many deaths and great personal injury. I know that you are quite aware that we have at our disposal hundreds of thousands of photographs that we could use; and the sum totality of the photographs that the prosecution intends to offer here are represented by -- frankly, the first one, 974, I don't even understand what the objection is on that. There is nothing -- I don't see that there is anything objectionable about that.

THE COURT: No. I don't, either.

MR. RYAN: Simply a location that will be identified by witnesses in terms of where certain events took place following the bombing.

THE COURT: Yes.

MR. RYAN: The other six photographs -- let me also digress a little bit to 975, your Honor, which is the third photograph, which is the man sitting on the side there.

THE COURT: There is also a legend on this.

MR. RYAN: Yes. We can delete that legend, of course, and will.

But much has been made of the fact that the ATF was given advance notice in this case by the defense. This photograph is a photograph of an employee of the ATF.

THE COURT: I haven't heard anything about that in the defense opening statement.

MR. RYAN: No, sir, not in opening statement; but if there is any evidence that comes into that effect, that's the sole purpose of this photograph.

THE COURT: All right. So at this point, that doesn't seem to be relevant.

MR. RYAN: We concur, your Honor.

THE COURT: Okay.

MR. RYAN: So as to the other photographs, we're down now to talking about 1, 2, 3, 4, 5 photographs in issue. As I started to say, your Honor, this represents the sum totality of literally thousands of photographs that could be used by the prosecution, could be offered by the prosecution in this case.

We have some obligation in this case to set the stage, set the scene, explain to the jury and to the Court what happened on April 19 following the bombing. It seems to me that this is entirely consistent with what we told your Honor at an earlier point in time when we told you that we would take a very judicious and conservative approach in terms of presenting the evidence with respect to the tragedy and horror of this crime. I think these five photographs are consistent with that.

THE COURT: Who is speaking to this for the defense?

MS. RAMSEY: Your Honor, I am.

THE COURT: Yeah. I -- I think 967 is particularly difficult.

MR. RYAN: Yes, your Honor. This is a child who had lived -- this is not a -- we told your Honor we would not offer any postmortem photographs. This is a child who lived, and her name is Nekia McCloud. In and of itself, it has no real probative value. Its purpose is to demonstrate to the people of the jury, men and women of the jury, what happened to all of the bodies. All of the bodies following this explosion were covered in this chalk-like dust and made the initial identifications very difficult. And we wanted the jury to have some sense for what happened to all of the people who died. We chose someone who didn't die to try to lessen the effect of prejudice that might be caused by showing a photograph of someone who had actually perished on April 19.

THE COURT: And what about 980?

MR. RYAN: 980 is again a -- this gentleman is Tom Hall. He worked at the GSA. He was electrocuted following the bombing, severely injured. He was carried out by police officers and laid here in the street in the first few minutes following the bombing. He also lived, and there will be testimony about him today.

testimony about him today.

There are photographs that are much --

THE COURT: Is he testifying?

MR. RYAN: No, your Honor. There will be someone from the GSA who will testify.

There are photographs that are much more gruesome, much more horrifying of the victims, and even more horrifying than what has been depicted in this photograph. It is not a photograph, I think, that focuses in --

THE COURT: Well, don't you have video of the scene?

MR. RYAN: We do, your Honor. We have that five-minute video that we discussed with your Honor at an earlier time.

THE COURT: And isn't that going to satisfy the probative value of what these photographs would do without -- I mean, that's going to give the whole panoramic scene without so intimate a view of a particular injury or death.

MR. RYAN: It certainly does depict the scene as well as these photographs do.

We felt, your Honor -- truly feel that in light of what is available and in light of what occurred on April 19, this is a very conservative approach by -- the Government has taken in this matter. We will certainly abide by your Honor's decision, of course.

THE COURT: All right. Well, Ms. Ramsey?

DEFENDANT'S ARGUMENT

MS. RAMSEY: I would like to advise the Court there were two more photographs that were provided to us by the Government. I do not have the numbers of those, but they are in sequence with No. 978, I believe.

Yes. 978 and the two other photographs that were given to us this morning are two other depictions at a different angle of that photograph without the people being --

THE COURT: To get back to this 974, I don't see anything wrong with 974.

MS. RAMSEY: 974 is of the day-care center, your Honor; and I believe that it is used to be inflammatory as far as showing only the day-care center and the play area, as opposed to the damage to the building.

THE COURT: Well, I don't think that comes under 403. That's just part of the objective facts of the -- of what occurred.

MS. RAMSEY: That's fine, your Honor.

THE COURT: All right. And 967, Mr. Ryan suggests the significance of the substance here that's covering this child, who, as I understand it from him, has lived.

MS. RAMSEY: Well, your Honor, I believe there will be other testimony from individuals as well that will talk about this coating; and I don't believe -- I think that this picture is especially gruesome, whether the person lived or did not. And I think that it certainly should not come into evidence for the reasons we've cited --

THE COURT: Excuse me. Didn't mean to talk over you.

MS. RAMSEY: That's fine.

THE COURT: Depending upon the significance from testimony of the particular substance here, I would admit this photograph, even though it shows blood and trauma.

And 975, I think you agreed, Mr. Ryan, that you don't need that one.

MR. RYAN: Not at this point, your Honor.

THE COURT: Okay. And actually, on these other three, I'm going to reserve until we see the video to see whether this is really -- whether these are really necessary to prove anything that needs to be proved, or whether it's simply cumulative and could be considered inflammatory.

MS. RAMSEY: Thank you, your Honor.

THE COURT: All right.

There is another matter, and that is late yesterday afternoon, the -- there was a petition of media representatives filed to remove restrictions and some other things. Do counsel have this?

MR. HARTZLER: We do, I believe.

MR. NIGH: We received it today, your Honor.

THE COURT: All right. I intend to hear that on Saturday morning at 9:00, and we'll give notice to the people who filed the petition. And counsel can be ready to take their position -- positions on it.

MR. HARTZLER: Thank you.

THE COURT: We'll recess now till 9:00 tomorrow morning.

(Recess at 4:20 p.m.)

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* * * * *

REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 24th day of April, 1997.

Paul Zuckerman

Pam Andasola
