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

UNITED STATES OF AMERICA,    )

                             )

                   Plaintiff,)

                             )

vs.                          ) Case No. M-95-98-H

                             )

TIMOTHY JAMES McVEIGH,       )

                             )

                   Defendant.)

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

   [Introductions]

    …

         THE COURT:  And Counsel for the defendant?

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

         THE COURT:  I am sorry?

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

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

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

         THE COURT:  If the marshals indicated that he should be cuffed, he should stay cuffed.  That will be it….I appreciate very much the arrangements that have been made for this room to serve as a courtroom.  The Court has found that under circumstances, unusual circumstances, that existed in the federal courtroom in downtown Oklahoma City, the federal courthouse, the reconstruction and other clean-up operations that are going on there, as well as the security and safety of all persons concerned, that we should conduct this hearing in this room….. At this time I am going to ask that counsel confer after the Court makes a statement and a record regarding what has transpired basically since he initially appeared last Friday, and especially with regard to defense counsel. As the defendant knows, at the time of the initial appearance last Friday at Tinker Air Force Base, that Mr. Coyle and Ms. Otto were appointed as counsel to represent the Defendant, both highly qualified and skilled attorneys. I was not aware that there was any problem in connection with their representation until Monday, when motions were filed indicating that counsel desired to withdraw.  After carefully considering those motions, the Court entered an order which temporarily, at least, overruled those motions counsel then would -- Ms. Otto and Mr. Coyle would continue to represent the Defendant, and they are serving in

that capacity here today…..The Court's appointment of counsel is made under statutory provisions that provides that two counsel…shall be appointed for any person that may be charged with a death penalty offense, and those attorneys are required to have certain skills and certain experience….

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

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

         MR. COYLE:  He will stand moot, Judge.

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

         MS. OTTO:  Your Honor, if I may?

         THE COURT:  Yes, Ms. Otto.

         MS. OTTO:  I received the Court's order denying our request for transfer of this case yesterday…..Your Honor, the essence of our motion to transfer, the essence of our motions to have alternate counsel appointed, is simply that this case has been so extraordinary, and has such extreme magnitude that it impossible for any of us who were in downtown Oklahoma City on the morning of April 19th to proceed in this case….. But I have found no case in the history of this country that is of such magnitude as the one we are involved in right now. And certainly as lawyers one of the things Mr. Coyle and I have considered during our representation of Mr. McVeigh is not the actual provision of counsel in an appropriate and effective and zealous manner that is required by the Constitution, required by the cases effectuating the Constitution, but also the appearance of impropriety that might arise. It is really that appearance of impropriety that prompted us to file our request for appointment of the substitute counsel and our request to transfer at this juncture….Now, the events of April 19th were obviously cataclysmic beyond definition.  The A.P. Murrah Building, which is located directly across from the federal courthouse in Oklahoma City, was virtually destroyed, demolished, right on the spot, by a very powerful explosion. The results of that explosion caused windows, doors, and other items within the federal courthouse building to be blown to pieces. The judges' chambers on the north side of the federal courthouse building were shattered where the windows blew in, doors blew in, and people in the building were injured during that explosion. On the first floor, jurors who were deliberating were physically injured.  And one of the judges, the judge who was presiding over that trial, was out on the street assisting her jurors into ambulances. Judge Argo, who is on the first floor at the northeast corner of the federal courthouse, was probably spared from certain death by the fact his windows on the ground floor are bulletproof glass….In my building, my office windows on the north floor were completely destroyed.  Fortunately, I wasn't sitting at my desk at the time.  Fortunately for all of my staff, none of us were injured. We evacuated the building as everyone else did….I think the record should also reflect that I am personally acquainted on a professional basis with the following people…. [list names and occupations of people she knew who were victims of the bombing].I am personally acquainted with every one of these people. I have been down to the federal courthouse, starting now on my 11th year.  I know these people.  I have done business with these people, and although certainly we don't work in the same agency, we have had a cordial, working relationship that places me in the position of knowing on a first-name, by-sight basis, victims of these events….This is a case of extraordinary proportions.  Mr. Coyle was personally acquainted with an attorney who has also been killed as a result of this bombing incident….This is not an instance where publicity has been limited. I respectfully disagree with the Court's characterization that the principal portion of the publicity has been about the factual circumstances surrounding the bombing and the attempted recovery of victims and potential survivors….Now, certainly I will agree with the Court's characterization that a great deal of the media focus was initially on rescue efforts, the suffering of the victims and the victims' families, and the heroic efforts of all parties in attempting to find survivors as quickly as possible.  But it would be very disingenuous to behave as if the identification of Mr. McVeigh as a suspect has been some minor sideline in these stories.  It has been the story. Mr. McVeigh has been the story since he was moved from Perry, Oklahoma; and certainly since his apprehension, the papers and video media have been saturated with stories about him, about the militia, about his family, about other groups all tending to lead or lend some larger conspiracy or larger connection, which is the tendency of all of these facts, that are being presented as fact in various media…..But to say that the publicity is not a factor, to say that publicity is not a factor right at this point, just simply is untenable….Further compounding that is the fact that we don't really have to rely on all of this media coverage.  We don't have to rely on the video pictures and on television and Connie Chung standing there with a bombed-out building in the background.  We know what it looks like because we were all there and we all saw it.  We heard it.  We smelled it.  We lived through it.  We are percipient witnesses.  Every one of us is a percipient witness to this event.  And Mr. McVeigh has the right to have his case heard even at this initial proceeding.  This is not some sideline, some procedural sideline. This is an essential part of this criminal case, and Mr. McVeigh is entitled under the Federal Rules of Criminal Procedure and under the Constitution to have his case heard from the very first instance by neutral and detached people who were not themselves percipient witnesses….You must not let the fact that this is a unique situation in which there is no case precedent cripple us to the obvious and indisputable facts.  We are not people who come to this with perhaps some notion of what went on.  Because we are percipient witnesses, we have our own very personal idea of what happened because we saw it, and we were there.  That is why Mr. Coyle and I filed the motion to transfer at this time, so that this preliminary hearing could be conducted in another venue, in front of another magistrate, in front of another judge, one who wasn't run out of the courthouse by this blast, and Mr. McVeigh to be represented by lawyers who do not personally know victims involved in this, to be represented by a lawyer whose office wasn't largely destroyed by this blast, and to be heard in a truly neutral and detached forum. I urge the Court to reconsider its position with regard to the motion to transfer….We want to be released because we believe it is Constitutionally required.  Right from the very beginning, Mr. McVeigh is entitled to have this case considered by someone other than the persons who lived through these events…..

         THE COURT:  ….Does the United States have any response to the Defendant's

counsel's statement?

         MR. GARLAND:  Yes, Your Honor, with respect to the Motion to Transfer…..       No case, no Court has ever made such a transfer that has ever been recorded.  Part of the reason may well be that because, although Mr. McVeigh may wish to transfer, there are others who are still being sought.  Those people have the Constitutional right to a trial in the state where the crimes have been committed, by the jury in the state and in the district where the crimes were committed.  Without their waiver it would make it impossible for the grand jury to proceed against those individuals.  For that reason, then, we believe the Court's decision against transfer at this time is correct. However, Your Honor, in light of the attorney's statement, I have to once again ask the Court on the record to ask the Defendant whether or not he objects to continuing with this hearing with his current lawyers…..

         THE COURT:  ….The Court has no question that the present counsel who are appearing for the Defendant will serve very professionally and respectfully and competently.  The Court's order stated that their Motion to Withdraw was overruled without prejudice, so that matter can be reconsidered….The order that I previously entered is sustained and will continue in effect. If there is nothing further, I will consider evidence on the probable cause issue.

….

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

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

                     DIRECT EXAMINATION

 BY MR. GARLAND:

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

 A.   Jon Hersley, H-E-R-S-L-E-Y.

 Q.   What is your occupation?

 A.   I'm an FBI agent.

 Q.   How long have you been an FBI agent?

 A.   About 20 years.

 Q.   Where were you assigned?

 A.   To the Oklahoma City office of the FBI.

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

 A.   Yes.

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

 A.   Yes, I have.

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

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

 Q.   Approximately what time did the explosion occur?

 A.   Approximately 9:03 a.m.

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

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

 Q.   What categories are the people who were killed?

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

 Q.   Are there any people still missing?

 A.   Yes.

 Q.   How many?

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

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

 A.   Approximately 400.

 Q.   What is the Murrah Building used for?

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

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

 A.   Yes, it is.

 Q.   Would you describe some of those agencies?

 A.   The U.S. Drug Enforcement Administration, the Bureau of  Alcohol, Tobacco and Firearms, the U.S. Secret Service,  Department of Housing and Urban Development, the Social  Security Administration, and numerous other Federal agencies.

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

 A.   Yes.

 Q.   What caused the explosion of the Murrah Building?

 A.   A bomb.

 Q.   Have the experts informed you as to where the bomb was

 located at the time it went off?

 A.   Yes.

 Q.   Please describe that to the Court.

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

 Q.   How did the experts know that?

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

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

 A.   Yes.

 Q.   What methods are used to trace that truck?

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

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

 A.   Yes.

 Q.   What was that?

 A.   The license plate.

 Q.   I have marked what will be called Government's Exhibit 1 for identification and I am showing it to defense counsel. Do you recognize Government's Exhibit 1?

 A.   Yes, I do.

 Q.   What is Government's Exhibit 1?

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

….

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

 A.   Yes.

 Q.   What was the result of that tracing?

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

 Q.   Was the rental agent at that location interviewed?

 A.   Yes.

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

 A.   Yes.

 Q.   When was that?

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

 Q.   By how many people?

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

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

 A.   Provided his name.

 Q.   Did he provide any other identifying information?

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

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

 A.   Yes.

 Q.   What was the result of that tracing?

 A.   They were both his numbers.

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

 A.   Yes.

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

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

 Q.   Do you recognize Government's Exhibit 2?

 A.   Yes, I do.

 Q.   What is Government's Exhibit 2?

 A.   This is the composite drawing that was prepared.

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

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

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

 A.   Yes, he said it was.

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

         MR. COYLE:  No objection.

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

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

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

 A.   Yes.

 Q.   Had interviewing been done at that hotel?

 A.   Yes.

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

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

 Q.   How long did he stay?

 A.   Until April 18th.

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

 A.   Yes.

 Q.   What was that connection?

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

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

 A.   Tim McVeigh.

 ….

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

 A.   Yes.

 Q.   What was the result of that photo identification?

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

 Q.   What was that room?

 A.   Room 25.

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

 A.   Yes.

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

 A.   Yes.

 Q.   -- from Room 25?

 A.   Yes, there was.

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

 A.   That's correct.

 Q.   Where was that call made to?

 A.   To a local restaurant in Junction City.

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

 A.   Yes.

 Q.   What does it show?

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

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

 A.   Yes.

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

 A.   Yes, Room 25.

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

 A.   Yes.

 ….

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

 A.   That's correct.

 Q.   Did any Dreamland employee see Mr. McVeigh?

 A.   Yes.

 Q.   In what connection did they see him?

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

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

 A.   Yes.

 Q.   How did they see him then?

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

 ….

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

 A.   Yes.

 Q.   Was Mr. McVeigh arrested on that day?

 A.   Yes, he was.

 Q.   Would you explain that, please.

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

 Q.   The reason for the stop?

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

 Q.   About what time was the stop?

 A.   Approximately 10:30 a.m.

 Q.   About how long after the blast was that?

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

 Q.   Where was the stop?

 A.   Near Perry, Oklahoma.

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

 A.   Less than an hour-and-a-half.

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

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

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

 A.   Yes, I do.

 Q.   What is Government's Exhibit 3?

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

 Q.   Where was it obtained?

 A.   From Mr. McVeigh.

 Q.   At the time of the arrest?

 A.   Yes.

 Q.   Does it show an address?

 A.   Yes.

 Q.   What is that?

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

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

 A.   Yes, it is.

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

 A.   Yes.

 Q.   What was that?

 A.   He had a Glock .45 semi-automatic in a shoulder holster, with two magazines.

 Q.   Was the Glock loaded?

 A.   Yes.

 Q.   What kind of bullets did it contain?

 A.   Black talon.

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

 A.   Yes.

 Q.   What is that name?

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

 Q.   Was Mr. McVeigh's clothing tested?

 A.   Yes.

 Q.   What was the results of the test?

 A.   It tested positive for traces of PETN.

 Q.   What is PETN?

 A.   Penta erythratol tetral nitrate.

 Q.   What is penta erythratol tetral nitrate?

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

 ….

                      CROSS-EXAMINATION

 BY MR. COYLE:

 Q.   Good afternoon, Agent Hersley.

 A.   Good afternoon.

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

 A.   No.

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

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

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

 A.   I don't believe so.

 ….

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

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

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

 A.   I have done both of those things, as well as numerous other things.  If you refer to a keeping of the original evidence, I have not been involved in actually handling the original evidence.  I have been involved in tracking and keeping up with copies of that evidence insofar as further-leading investigation material is concerned.   Also, in coordinating the efforts of other FBI offices in the ongoing investigation in an attempt to identify the additional people that were involved in the bombing that tried to prohibit anyone else from getting injured or killed.

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

 A.   Pretty much so.

 Q.   -- to date?

 A.   Pretty much.

 ….

 Q.   Tell us, please, sir, so that I can specify what it is you have been involved in, could you tell us, please, what, for instance, your activities were on the day of Wednesday, April 19th?...

 A.   On April 19th, as most of the FBI agents in Oklahoma City were sent down to the vicinity of the Murrah Building after the bomb blast, I was charged with staying in the office to help communicate the activities of everyone concerned on that date…

 ….

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

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

BY MR. COYLE:

Q.  Agent Hersley, do you have any indication or have but been advised that any individuals saw the Ryder Truck explode?

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

Q.  Okay, so --

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

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

A.  Not that I can recall right now.

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

A.  Yes.

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

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

….

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

A.  No.

…

Q.  Are you aware of any photographs that were taken at any time prior to the explosion at the Murrah Building of the accused Timothy McVeigh in or about the truck that you have described as a Ryder rental?

A.  No.

Q.  And I include in that, so we don't have a semantical difficulty of any sort -- any sort of photographs, film footage, surveillance cameras, any other film of any type that

you are aware of, Agent, that shows the accused Timothy McVeigh anywhere in the vicinity of the Murrah Building on April 19, 1995 at or before… 9:03 a.m.?

A.  [No].

….

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

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

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

A.  Maybe a minute or two.

….

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

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

….

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

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

 Q.   I thought the witness was in a car.

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

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

 A.   He was in front of it.

 Q.   How far in front of it?

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

….

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

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

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

 A.   No.

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

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

 ….

 [Discussion of other witnesses observing McVeigh in the vicinity of the Murrah building is omitted]

….

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

 ….

 Q.   Was she heading in the same direction?

 A.   The Ryder Truck was heading towards her….she was -- she was a meter maid that was at the vicinity of Robinson and Park Avenue.  The Ryder Truck was approaching her.  It was going at a very low rate of speed. She thought the person in the Ryder Truck was going to stop and ask her some questions….However, as it approached that intersection, the driver turned west on Park Avenue and continued on and at that point the meter maid was behind the truck.

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

 A.   I don't believe so.

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

 A.   No.

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

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

 ….

[Discussion of several witnesses is here omitted]

….

BY MR. COYLE:

….

Q.  It says employees of the Dreamland Motel in Junction City, Kansas advised FBI agents that an individual resembling composite number one ,that is, Government No. 2 there, had been a guest at the motel from April 14th through 18th.  Do you know how many employees were interviewed?

A.  At least three.

Q.  Do you know the outcome of those interviews?

A.  No, the outcome of one interview in particular where the manager of the Dreamland Motel was interviewed.

Q.  Has the manager been shown the composite the photo spread or was she at the lineup?

A.  The manager has been shown the photo spread.

Q.  Was the manager shown the photo spread prior to the time that the affidavit was prepared in this case?

A.  No.

Q.  But since that time the manager has been shown the photo spread?

A.  Yes.

Q.  Did she identify Timothy McVeigh as being a guest in that motel on the dates April 14th through 18th?

A.  Yes.

….

Q.  Do [the FBI field agents] tell you, any of them, what they might have taken or anything they found that they wanted tested?

A.  I know that the registration card in Tim McVeigh's name was at that location.  They obtained that and that has also been forwarded.

….

Q.  Has the witness there at the Ryder Truck rental there in Kansas specifically the Elliott's Body Shop in Junction City, Kansas -- did they see Mr. Timothy McVeigh or someone that resembled the composite?

A.  Yes.

Q.  The first male, did they see the composite or did they assist in its preparation?

A.  Both.

Q.  What was that particular persons involvement with Mr. – or with the person in the composite in the rental of the truck?

A.  When the person that rented the truck was in the Elliott's Body Shop on the 17th, this person was also in the body shop and in a position to observe that individual that was renting

the truck.

Q.  So this is not an employee of the body shop, but it's another patron or someone who was in there visiting?

A.  This is another employee of the shop.

Q.  Okay, and was in a position to look at the man that rented the truck?

A.  Yes.

Q.  And was this male involved in the rental of the truck, involved in the specific conversations with a person who rented the truck?

A.  No.

Q.  Did this person overhear conversations to your knowledge with the person that rented the truck?

A.  Yes, I believe so.

Q.  Was the truck rented by a male or a female?

A.  By a male.

….

[Discussion of numerous witnesses to the truck rental is here omitted]

….

    (AFTER THE RECESS, THE FOLLOWING PROCEEDINGS WERE HELD IN

OPEN COURT:)

         THE COURT:  Let the record show that counsel are present and the Defendant is present.  We are on cross-examination.  You may proceed.

 Q.   It says, Agent Hersley, in the Affidavit prepared by Agent  Gibbons in connection with this case that on April 20th, the  rental agent was recontacted and assisted in the creation of  composite drawings.  It says "the rental agent."  Does that mean all of the agents, all of the rental agents, all three of the people you told us about?

 A.   My understanding is the individual that was in a position to watch the individual that was renting the truck on that day assisted primarily in compiling the composite.  And the other individuals, the other two employees, also assisted to some extent.

 Q.   It says in the paragraph of the Affidavit by Agent Gibbons that a fair and accurate depiction of the individuals who rented the truck; is that correct?

 A.   There were two composites drawn, one of each individual that was in there that day.

 Q.   The other composite, did he do the renting of the truck?

 A.   No.

 Q.   So the person -- you have been advised that the person who is identified in Government's Exhibit 2 is the person who gave the identification and rented the truck?

 A.   Yes.

 Q.   What is your understanding of what the other individual did during the time that the individual in Government's Exhibit 2 was renting the truck?

 A.   I believe he is the one that brought the individual pictured in composite one to the rental location and was there while the individual pictured in composite one was getting the paperwork completed and actually renting the truck.

 Q.   Have you been made aware of what he was doing at the time that he rented the truck?

 A.   I believe he was just standing in the office there.

 Q.   Was he standing close and assisting in the rental?  Did he give money, did he do anything active that you have been advised during that time?

 A.   I don't believe so, no.

 Q.   Now, you have testified here in court earlier about some calls made from Room 25.  Is Room 25 the one that was rented by the person that has been identified in composite one?

 A.   Room 25 was rented by Mr. McVeigh.

 Q.   It was rented by a Mr. Tim McVeigh, correct?

 A.   Yes.

 Q.   At the Dreamland Motel?

 A.   That's correct.

 Q.   You said that certain calls were made from that room?

 ….

 A.   Yes.

 Q.   Okay.  Can you tell me where those were made to, sir?

 A.   Yes, they were made to Terry Nichols.

 Q.   Where was Terry Nichols at the time the calls were made?  Where were the calls made to, someplace in Michigan?

         MR. GARLAND:  Your Honor --

         MR. COYLE:  I'm sorry, I interrupted you.

         MR. GARLAND:  I'm sorry.  Well, we are both sorry.

         The location to which the calls were made is again  unrelated to probable cause.  The discovery of this would interfere with the rest of the investigation.

         THE COURT:  As to the location, the objection is  sustained.

 Q.   (By Mr. Coyle)  Terry Nichols, anyone else, sir?

 A.   Those are the ones that I recall.

 Q.   Were the calls to Terry Nichols?

 A.   To Terry Nichols' residence in Herington.

 Q.   Any other calls that you recall that were made from Room  25 at the Dreamland Motel from the dates of April 14th through 18th?

….

 [Lengthy testimony as to several eye-witnesses that saw Timothy McVeigh, at the Dreamland motel and near the Murrah building, and/or who identified him from a photo spread, is here omitted].

  ….

 A.   No.

 Q.   You told me something about the pistol that Mr. McVeigh was alleged to have had on his person at the time that he was placed under arrest by a trooper of the Oklahoma Highway Patrol.  You said something about a certain kind of a bullet.  What kind of bullet was that?

 A.   It is referred to in the law enforcement circles as a cop-killer bullet.

 Q.   Well, he didn't kill the cop that walked up to the car, did he?

 A.   No.

 Q.   In fact, isn't it your information, Agent Hersley, that he told the cop that walked up to the car, instead of killing him with a cop-killer bullet, he said, "I have a gun?"

 A.   That was after the officer had already observed it.

 ….

 Q.   (By Mr. Coyle)  In fact, [as] part of your testimony about this cop-killer bullet business, is there any evidence that Mr. McVeigh killed a cop on that day?  Is there any evidence of that?

 A.   Yes.

 Q.   That he is a cop killer?

 A.   Yes.

 Q.   What is that?

 A.   The evidence points toward the fact that he blew up several Federal law enforcement officers in the Federal Building that morning.

 Q.   With this Glock .45?

 A.   No, with a massive bomb.

 Q.   With these cop-killer bullets, is what I'm asking.  With the cop-killer bullets?

 A.   What is your question?

 Q.   With the cop-killer bullets?  Any evidence that he had shot anybody with the cop-killer bullets?

 A.   No.

 Q.   Is there any evidence that Mr. McVeigh -- that this young man had ever been arrested at anytime in his life prior to the time he was arrested by the Highway Patrol in Oklahoma?

 A.   No.

 Q.   Have you heard of any statements that have been made by the accused in this case to any agents in law enforcement?

 A.   No, I don't believe so.

 Q.   So he hasn't made any statements to anyone in law enforcement in connection with any of the events in this case?

 A.   He provided some descriptive background to law enforcement at the time he was arrested, but no further information, I don't believe.

 Q.   Tell me about the descriptive background that you tell us that he provided.

 ….

 A.   Just information regarding his name and date of birth and physical description.

 Q.   He gave them his name?

 A.   He also, I believe, made some statements to the officer that stopped him in regard to the Glock .45.

 Q.   What did he say about the Glock .45?

 A.   I believe he recited the serial number of it to the officer.

 Q.   Now, the vehicle that we have heard described as the yellow Mercury, are you familiar with that vehicle?

 A.   Yes.

 Q.   You know which one we are talking about, the one that Mr. McVeigh was allegedly in?

 A.   He was arrested in that vehicle.

 ….

  Q.   (By Mr. Coyle)  Agent Hersley, tell us about any evidence in the possession of the FBI that Timothy McVeigh actually detonated the bomb that exploded in front of the Murrah Building, that he detonated the bomb?

 A.   The results of the test that came back from the FBI laboratory that Mr. McVeigh's shirt had residue of PTEN on it indicates that Mr. McVeigh was likely in the vicinity of the Ryder Truck at the time the time fuse, or similar type object to ignite the blast, was activated.

 Q.   Tell me what PETN (sic), what did you say that was?

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

 Q.   Where was it found on his shirt?

 A.   I'm not sure of the exact area of his shirt.

 Q.   I think you -- didn't you say that word before?  I mean, it was a series.  I couldn't write that fast.  The chemical name for this PTND (sic)?

 A.   It is penta erythrite tetral nitrate.

 Q.   When you say it is commonly found in detonating cord?

 A.   Yes.

 Q.   Have you determined other uses for it?

 A.   No, I have not.

 Q.   Have you asked?

 A.   Aside from that it is very commonly found in detonating cord, I have not asked that, no.

         MR. COYLE:  May I have a moment with my colleagues?

         THE COURT:  Yes.

    (Whereupon, an off-the-record discussion was had between Defense counsel and the Defendant.  Thereafter:)

Q.  Can you tell us, Agent Hersley, if the FBI or anyone else in law enforcement is aware of any statements of other persons that implicate the accused Timothy McVeigh on the bombing of the federal building?

         MR. GARLAND:  Objection, Your Honor, only after indictment, they would be entitled to that Kind of information. Under the James Act, they would not be entitled to such information until the witnesses testified at trial.  This is purely and only discovery that is barred by the Federal Rules of Criminal Procedure.

         THE COURT:  Sustained.

BY MR. COYLE:

Q.  Who did you talk to about the PTND?

A.  Rick Hahn.

…

Q.  When did Rick Hahn tell you that?

A.  Within the last two to three days.  I also spoke with Jim Norman another agent in our office about that.

Q.  What is Jim Norman's specialty?

A.  Bombing matters.

Q.  He is another one of these bomb guys?

A.  He is a bombs explosives guy.

Q.  Was he making up the test on the shirt that was allegedly worn by Mr. McVeigh?

A.  Did Agent Norman do it.

Q.  Yes?

A.  No, that was done by our laboratory back in Washington.

         MR. COYLE:  I believe that's all.  Thank you, sir.

         THE COURT:  Anything further of this witness?

         MR. GARLAND:  No further questions.

         THE COURT:  Any other further evidence on behalf of the United States?

         MR. GARLAND:  No.

         THE COURT:  The United States rests?

         MR. GARLAND:  Yes, Your Honor.

         THE COURT:  Any others on behalf of the Defendant?

         MR. COYLE:  May I have a moment, Judge?

         THE COURT:  Yes.

         MR. COYLE:  Your Honor, the accused would call the trooper of the highway patrol identified as Charles Hanger.  We would ask, I believe he is here.  He has been [brought here by a ]subpoena duces tecum.

[Discussion of government’s opposition to calling Trooper Hanger, and the Court’s ruling that defendant’s request to call him to the stand was granted, is omitted].

….

                   CHARLES HANGER,

having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

          D I R E C T     E X A M I N A T I O N

         MR. COYLE:  If I may have just a moment, judge, I am getting organized.

BY MR. COYLE:

Q.  Good afternoon, sir?

A.  Good afternoon.

Q.  Would you tell the Court your name, please, sir?

A.  Charles J. Hanger.

Q.  How are you employed, sir?

A.  I am a state trooper with the Oklahoma Highway Patrol.

Q.  How long have you been with the Highway Patrol?

A.  Since September, 1976.

Q.  And is it correct, sir, that you were served with a subpoena duces tecum in a criminal case in this matter to bring with you certain items relative to the arrest of Timothy McVeigh?

A.  Yes, I was.

Q.  And did you bring those items?

A.  Yes, I did.

….

         THE COURT:  Describe them in the general.

A.  Probable cause affidavit, confiscated property report, copy of the summons that I issued, and some jail booking information.

         THE COURT:  Is that all?

A.  I believe that's all, sir.

Q.  Anything else?  Can I see that now.

         THE COURT:  No, it's discovery.

A.  Sir, I do have one more.

         THE COURT:  I am sorry.  Go ahead.

A.  Videotape….This is videotape of the car that I stopped, there is no audio on this.

         THE COURT:  Video that is in your vehicle?

A.  Mounted video.

        MR. COYLE:   May I inquire?

         THE COURT:  Yes, sir.

BY MR. COYLE:

Q.  Is this the dash mounted video that you say that you have with you today when you brought in response to the subpoena, did that record the arrest of the accused in this case, Mr.Timothy McVeigh?

A.  It did not.

Q.  Can you tell us why you brought it then?

A.  Listed on that sheet as evidence.

Q.  So you don't have a video of the Mercury in this case or Mr. McVeigh or any of your activities relative to the stop that you have told us you performed upon the 19th of April?

A.  You asked if I had a video of the actual arrest.

Q.  Of any of the part of your interaction with Mr. McVeigh on April 19th?

A.  It depicts the vehicle.  It shows me moving about the vehicle.   It does not show the arrest nor does it have any video of Mr. McVeigh.

Q.  All right, can you tell us on the date, sir of April 19, 1995 at about 10:30 a.m. if you came in contact with a person by the name of Timothy McVeigh?

A.  Yes, it was somewhat before that.

Q.  All right, can you tell us where you first encountered Mr. McVeigh?

A.  A little over a mile south of the state highway 15 at Billings exit on Interstate 35 northbound lane.

Q.  What was the reason for this particular vehicle to catch your attention?

A.  It was not displaying a tag.

Q.  And after you saw it, did you fall in behind it?  Where were you parked at the time you observed the vehicle?

A.  I was traveling north in the left lane.  He was in the right lane.

Q.  He was traveling in a north direction?

A.  Yes.

Q.  And you passed that vehicle?

A.  Yes.

Q.  What kind of vehicle was that, sir?

A.  It was a yellow 1977 Mercury Marquis with a primer spot on the left rear quarter panel.

Q.  Did you then pull that vehicle over?

A.  Yes, sir.

Q.  As you approached the vehicle, what was the driver of the vehicle doing?

A.  Sitting in it and the door open.

Q.  Did he get out of the vehicle?

A.  Yes.

Q.  And what did he do upon getting out of the vehicle?

A.  He approached me.

Q.  Do you see that man in the courtroom today?

A.  Yes.

Q.  Would you point him out to the judge, please?

A.  The young man with the white t-shirt, khaki pants, and blue tennis shoes with short dark hair.

Q.  That young man that you see seated there today, he approached you?

A.  Yes.

Q.  And did he say anything to you at that time?

A.  I believe I made the first statement.

Q.  What did you say to him?  What did you say to him?

A.  I said I stopped you because you don't have a tag.

Q.  What was his response?

A.  He said he had recently purchased the automobile and didn't have a tag.

Q.  What did you tell him at that point?

A.  I said could you produce me a bill of sale.

Q.  And tell us what he did?

A.  He said I don't have a bill of sale, the person I bought it from was still filling it out.

Q.  What did you ask him to do then?

A.  I said how long does it take to fill out a bill of sale.

Q.  And he replied to you?

A.  I don't have one with me.

Q.  What was the next think you said to him?

A.  I asked him for his driver's license.

Q.  Did he retrieve that for you?

A.  He did.

….

Q.  Let me hand you please, Trooper Hanger what's been identified, sir, these proceedings previously as Government Exhibit No. 3 and ask you is that the driver's license that you were handed that day?

A.  Yes, it appears to be the same.

Q.  What's the name on that, sir?

A.  Timothy James McVeigh.

Q.  And after you saw that driver's license, what did you then do after he handed you the driver's license?

A.  I looked at it.

Q.  Okay.

A.  By this time I had noticed a bulge in the left side of his jacket up under the left edge under his arm.  I looked at the license, looked at him, and I said would you slowly move your jacket back so I can look underneath it.

Q.  At that time he told you there was a gun underneath there?

A.  Close to the time as he was easing back, he said I have a gun.

Q.  Okay, he never made any sort of offensive moves toward you did he or any sort of aggressive moves toward you?

A.  No, sir.

Q.  At any time did he?

A.  No, sir.

Q.  Was he polite with you?

A.  Yes, sir.

Q.  Was he cooperative you in retrieval of license and removal of his jacket, every action this young man took during the course of that stop?

A.  Yes, sir.

Q.  Had you been made aware of the bombing in Oklahoma City at the time of your stop of this vehicle?

A.  Yes, I had.

Q.  Now, did he then remove the pistol?

A.  No, I grabbed a hold of the jacket and the pistol.

Q.  So you took it away from him and had you drawn your weapon at that time?

A.  Not at that immediate moment.

Q.  When did you draw your weapon?

A.  I grabbed the jacket and the pistol and instructed him to put his hands up and as we walked toward the back of the car, his car, I drew my pistol.

Q.  Did he cooperate in the what you told him to do walk to the back of the car?

A.  Yes, sir.

Q.  Did he at any time make any aggressive moves toward you during that period of time?

A.  No, sir.

Q.  And then what did you have him do?

A.  Had him put his hands on the trunk.

Q.  Did he cooperate with you?

A.  Yes, sir.

Q.  Did you then handcuff him?

A.  I removed the pistol first, then I removed a pouch that contained an extra clip which he told me he had from the same area where the pistol was on a belt.  Then he told me that he had a knife.  I removed it thr[ew] all these items on the shoulder of the road way then I handcuffed him.

Q.  During all that was he cooperative?

A.  Yes, sir.

Q.  He did that he didn't try to struggle or resist or anything else, did he?

A.  No, sir.

Q.  Did you transport -- did you place him in your car?

A.  Yes.

Q.  And then what did you do after he was placed in your car?

A.  I seatbelted him in and left him there while I was running some checks via my cellular phone.

Q.  Did you run those checks?

A.  Yes.

….

Q.  Okay did you have any conversation with this young man that you have identified that day?

A.  Yes.

Q.  What was your conversation after you put him in the car?

A.  We had talked about where he purchased the car.

….

Q.  Did -- he didn't tell you anything else during the whole time that you had him in custody?

A.  Right after I had handcuffed him and we were standing at the trunk of his car.

Q.  Yes, sir?

A.  I asked him why was he carrying a weapon.  He said he felt like he had the right to carry a weapon for his own protection.

Q.  Anything else he said to you at that point?

A.  No, sir.

Q.  ….until the time that you noticed the bulge out or about his arm, he was cordial and polite with you; was he not?

A.  Yes.

Q.  And he in fact had a number of opportunities to pull that weapon from its location at or about his shoulder; did he not when you were approaching his vehicle?

A.  Yes.

Q.  As a result of this stop, did you connect him with the bombing in any way at the time you stopped him?

A.  Not at all.

Q.  After you talked to him about where he had possibly purchased the car or where he had purchased the car at Junction City, did you have any other conversations with him?

A.  Yes, and I am not sure just when it took place, you know but we talked about where he was coming from.

Q.  Where did he tell you?

A.  He said from Arkansas, said he was in the process of moving there, had taken a load of belongings to there and was going back to get more of his belongings.

Q.  Anything else he told you?

….

A.  You are talking about statements that he volunteered to me?

Q.  Yes, sir, statements that he made.  You-all talked I guess all the way to the jail -- wait a minute.  How far were you from the jail?

A.  I am guessing 18 to 20 miles, maybe not quite that far.

Q.  Took you 15 to 20 minutes to get there, am I correct?

A.  Yes.

Q.  During that time you visit[ed] with him?

A.  Yes.

Q.  And he was still polite to you, wasn't he?

A.  Yes.

Q.  Did he appear scared or nervous at that point?

A.  No.

Q.  And tell us, please what else he said?

A.  While I was on the cellular phone talking to my dispatcher I was trying to determine where the car might be registered at.  Couldn't find anything in Kansas.  I had made a suggestion the car might be registered in Missouri because I had seen some type of safety sticker on the windshield.  And he heard me talking on the phone to my dispatcher.  He said that is an Arkansas safety sticker, so I told the dispatcher run the check in Arkansas and they did.

Q.  And did it come back?

A.  Came back to some individual in Arkansas with expired registration.

Q.  What else -- what other conversation?

A.  I didn't take any notes.  It was just friendly chit chat. I had read him his Miranda warning.  He said he understood.  I asked him if he would talk with me.  He said yes, depending on what you want to ask.  I said would you visit with me just like we were visiting earlier while we are standing outside.  He said yes.  Some of those statements I have already told you followed that.

Q.  Did you read him his Miranda Warning?

A.  Yes.

Q.  Did you read it from a card?

A.  Yes, I did.

….

Q.  Any other conversation that you recall all the way to the Noble County Jail?

A. I had told him how dangerous it was to carry a weapon like that, that a furtive move, wrong move could result in some officer mistakenly shooting him.

Q.  Anything else that he told you.  What did he say in response though that statement?

A.  I think he said something like that's possible.

Q.  Anything else he said?

A.  No, it was just chit chat.  I don't remember.  It was nothing that meant anything to me at the time.  It was just [he] might have said a few things on the way down there.  I didn't take any notes and I can't expressly tell you what that was….

[Witness was excused]

         THE COURT:  All the evidence in on behalf of the Defendant?

         MS. OTTO:  Yes, Your Honor.

         THE COURT:  Counsel care to make any statements regarding probable cause or the detention issue?

         MR. GARLAND:  I would like to be heard on detention. Do  you want to make a ruling on probable cause or do you want to do them both at the same time?

          THE COURT:  Same time.

MR. GARLAND:  Your Honor, we will rest on entry of the evidence with respect to the probable cause.

    With respect to the detention, Your Honor I would ask that he be detained pending the trial.  18 U.S.C. Section 3142E finds that the Court-- states that the Court must order detention if it finds no conditions would reasonably assure the appearance of any person as required and the safety of any other person in the community.

     First, Your Honor, we believe that the presumption that no condition can assure these -- both the appearance and safety--apply here.   The statute provides that if there is probable cause to believe that the Defendant has violated 18 U.S.C.

924C that presumption applies. You have heard evidence, Your Honor, more than sufficient to establish that during and relation to a crime of violence the Defendant used and carried a destructive device that is a bomb.  Therefore, the presumption applies and should be detained.  Even without the presumption, we would make the

following arguments, Your Honor:  With respect to appearance, this Defendant has no fixed residence or community ties.  He has lived in multiple states over the last small period of time.

    He gave a South Dakota address at the Ryder Truck rental. He had a Michigan license and a Michigan address at the time of his arrest investigation has shown he has resided in both New York and Arizona during this same time.  That goes to the

question of whether he has community ties.  It's one of the factors listed.  In addition, Your Honor, as everyone knows he faces the possibility of the death penalty in this case and enormous incentive to flee.  The government represents no condition would prevent a person in that situation from fleeing.

    Finally, Your Honor with respect to the safety of the community, the statute directs us to look at the nature of the offense and could not imagine a more heinous offense than this.

    The Defendant has shown a willingness to kill innocent children, law enforcement officers, and ordinary people going about their ordinary lives.  No series of the conditions could reasonably assure his appearance or the safety of other persons

in the community.  For that reason, he should be detained.

         MR. COYLE:  We will waive argument.

         THE COURT:  All evidence is in.  All arguments have been submitted by counsel.  This is before the Court on decision of issue of probable cause and the government for detention.  The Defendant is charged with the statute that is

set out in Section 844 Title 18 specifically paragraph F, principal elements of that statute are malicious damage by an explosive to a federal -- to federal property and if death results to any person then the penalties provisions are also included in that statute.

    The Court finds that all elements of that statute are satisfied by probable cause evidence that has been introduced in the case.  The Court also finds that an indelible train of evidence -- trail of evidence that starts in Junction City and ends up at the front door of the Murrah Building. The Defendant has been identified in person at both locations both Junction City and also in Oklahoma City by several witnesses, also vehicles that the specific Ryder Truck and also the Mercury were identified at both locations. I will not detail all of the evidence because I think the evidence is highly credible as introduced by the United States and that the Court believes and finds there is ample and sufficient probable cause to hold the Defendant for further proceedings in District Court….

    The detention issue I think is taken care of…the Court makes a finding [of] ample clear and convincing evidence based upon the nature of the offense and what I think is highly credible probable cause evidence to detain the Defendant pending further proceedings, and I believe that evidence is clear and convincing and I believe he should be detained for both risk of flight and serious danger to the community.  At this time I want to express my appreciation to defense counsel who have performed with great skill and professionalism at the Court's direction representing the Defendant in these proceedings.

    I would like to ask if the Defendant desires to proceed with appointed counsel or if the Court's [to] receive a financial affidavit which he should complete and I will ask counsel to confer with him about that so that it’s accurate and I would ask if he could do that at this time before we leave this proceeding.

         MS. OTTO:  Yes, Your Honor, we can assist him in that.  He would have to be unhandcuffed to assist us in the preparation of that. [Continues with defense request that the government conduct only live lineups, or tape photo spread interviews, to reduce ‘witness tainting’. Court requests written motions to that effect].

….

         THE COURT:  May I ask that this affidavit be completed….I understand he desires at this point to proceed with appointed Counsel, so I would like to have that affidavit on file.

         THE COURT:  Hearing is recessed and everyone can be excused.

    (THE PRELIMINARY HEARING WAS CONCLUDED AND THE COURT WAS IN

RECESS.)