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19 PROCEEDINGS

20 (In open court at 9 a.m.)

21 THE COURT: Please be seated.
22 Good morning. We're here in 96-CR-68, United States
23 vs. Timothy James McVeigh and Terry Lynn Nichols for a hearing
24 on several defense motions; and as usual, I'll ask for the

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2 THE COURT: Good morning, Mr. Hartzler.

3 MR. HARTZLER: Joseph Hartzler along with Larry
4 Mackey, Sean Connelly, Vicki Behenna, Scott Mendeloff, and Beth
5 Wilkinson.

6 THE COURT: And for Mr. McVeigh?

7 MR. JONES: Your Honor, Stephen Jones for McVeigh. To
9 present in person.

10 THE COURT: Good morning.
11 For Mr. Nichols?
12 MR. WOODS: Good morning, your Honor. Ron Woods for
13 Mr. Nichols. To my left is Reid Neureiter and Adam
14 Thurschwell. We have the defendant Terry Nichols present.
15 Lead counsel, Mike Tigar, had a prior commitment to teach in
16 France this week.
17 THE COURT: Yes. And, Mr. Nichols, as I understand
18 it, you've agreed that we can continue without him for purposes
19 of these hearings.
20 THE DEFENDANT NICHOLS: Yes, your Honor.
21 THE COURT: All right. Thank you.
22 Now, there are -- a lot of paper has been filed in
23 connection with these matters; and my suggestion with respect
24 to our sequence of hearing these matters is that we start out
25 with the Rule 16, what's been described as "the narrowed Rule

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1 16 motion"; and I think that's going to take some time item by
2 item. I reviewed the Government's response as well as the
3 motion; and unless something has happened since the last papers
4 filed, I assume we're going to discuss those item by item.
5 Then there is a discovery motion filed on behalf of
6 Mr. Nichols that raises four matters that we'll consider next.
7 Then there is a request, again called "the narrowed
8 request for expert witness discovery."
9 Then there is a hearing on a motion to compel
10 production of exculpatory evidence, Brady material, part of
11 which may have to be taken in chambers.
12 I have directed that notice be given that we would at
13 9:00 tomorrow morning hear the Government's proposed criteria

14 for admission to closed circuit televised proceedings and this
15 related collateral matter, 96-X-134, petition for admission of
16 media to closed circuit television proceedings. We'll do --
17 wherever we are in this sequence, we'll interrupt it to do that
18 so that the lawyers for the media will have an opportunity to
19 appear on the 96-X-134.

20 Then at some point, I also need to meet with counsel
21 for the Government and for Mr. McVeigh with respect to the
22 technical aspects of closed circuit television -- televised
23 proceedings and matters that relate to the first trial.

24 So that's what I suggest. Now, I don't know whether
25 you've met and made your own suggestions, but if there is no

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1 disagreement, that's how I'd propose to proceed.

2 MR. JONES: I don't have a disagreement with it. That
3 would be fine.

4 I would like to ask -- I wasn't quite sure where you
5 were going to hear the matters with respect to our motion on
6 national security.

7 THE COURT: Well, I consider that to be under the
8 general heading of the exculpatory evidence, and that's the
9 portion of it that I think requires an in-chambers meeting with
10 counsel.

11 So given that, I'm ready to start on the narrowed Rule
12 16.

13 Ms. Wilkinson?

14 MS. WILKINSON: Your Honor, the Government has one
15 request.

16 THE COURT: Okay.

17 MS. WILKINSON: When we came to court this morning,

18 Mr. Jones brought in a variety of charts and gave us copies of
19 those charts. We would object to those being introduced during
20 this discovery hearing and ask that the Court review copies of
21 those charts prior to Mr. Jones being permitted to use them
22 during this hearing, either during the Rule 16, the
23 exculpatory, or any other portion of the hearing.
24 THE COURT: Well, are there small ones that I can look
25 at before we --

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1 MR. JONES: Well, there is a court's copy, yes, sir.
2 THE COURT: Yeah. Well, I suggest we take those up at
3 the time that Mr. Jones thinks they're relevant.
4 MR. JONES: A few of them, your Honor, relate in
5 general to the Rule 16 matter, some preliminary remarks I have
6 with respect to discovery.
7 I can, if the Court will give me just a second here --
8 Your Honor, I believe the ones that I'm handing to the
9 Court now would come up during the discussion of Rule 16 and
10 the presentation with respect to the methodology.
11 THE COURT: Well, D is something I've already seen,
12 isn't it? Or is this something different from Mr. Lloyd?
13 MR. JONES: It's been filed, your Honor. It's dated
14 November 10.
15 THE COURT: I've already seen it.
16 MR. JONES: It's to be used or intended to be used
17 during the oral argument to highlight certain -- I'm sorry.
18 Mr. Wyatt says the November 10 letter hasn't been filed yet.
19 It's attached to --
20 THE COURT: Well, why do these have to be blowups?
21 MR. JONES: For ease of discussion, your Honor.

22 THE COURT: I can read them right here.
23 MR. JONES: Sure. Ease of discussion of the Court and
24 to the Government and to Mr. Tigar and ourselves.
25 THE COURT: Well, we'll deal with them as they come up

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1 one at a time, but I don't see the need for the blowups.

2 I do have a question, actually, before we start.

3 Ms. Wilkinson, you, I think -- the glossary that you
4 submitted which is very helpful except with respect to one item
5 and that is 1C "(potential exhibit)." This is a "large 1A." I
6 think I understand what 1A is, but is a large 1A a larger
7 category? What does the adjective describe?

8 MS. WILKINSON: In this case, your Honor, there isn't
9 much of a difference between what's listed on the 1A and the 1C
10 list other than the volume. 1A has many more items. 1A and
11 1C's are the FBI designators for evidence or information or
12 documents collected that don't normally need a chain of
13 custody, so they're paper documents.

14 In this case, the 1C's, I believe there is 685 -- I
15 can't remember -- and Mr. McVeigh's counsel has seen all of
16 those.

17 THE COURT: So "large" means a greater number of the
18 same type of thing?

19 MS. WILKINSON: Correct.

20 THE COURT: Which may or may not become exhibits,
21 then. Is that correct?

22 MS. WILKINSON: That's right, your Honor. Those that
23 we believe will be exhibits at that time, we have already
24 provided copies to counsel months ago, but they've also
25 reviewed all of the 1C's the Government has.

1 THE COURT: Okay. So 1A are the things that are
2 likely to be exhibits and that are also not 1B in the sense
3 that they're not big --

4 MS. WILKINSON: 1B stands normally for "bulky." 1C is
5 other things we've collected. Polygraph information in the
6 1A's: Obviously, that information, evidence is not admissible;
7 but we keep track of it through the 1A system, other things
8 like that.

9 THE COURT: I see. Thank you. That helps.

10 All right. Mr. Jones?

11 MR. JONES: Thank you, your Honor.

12 May it please the Court, before going directly into
13 the Rule 16, I would like to make just a few very preliminary
14 remarks about the scope of the discovery issue and the -- what
15 has transpired since the last time we were in court with
16 respect to hearing it and then some information that we have
17 put together which will also be included in the status report
18 we will file with the Court, but I take just a moment now in
19 the full representation of my client to put it on the record
20 with respect to the types of problems that the counsel on all
21 three sides have faced in this case.

22 At the last time, I mentioned to the Court on the
23 public record -- and I do so again today -- two points that I
24 think can never be overstated. There is no question but that
25 this is a massive, unprecedented case. Certainly, there have

1 been large criminal investigations in the history of the United
2 States commanding the full resources of the FBI and other

3 agencies.

4 But this case perhaps is unique in itself because it
5 combines not only a large number of deaths -- 168 -- the
6 substantial destruction of several blocks in a downtown major
7 metropolitan city, an unprecedented number of injuries, a truly
8 significant amount of just physical debris, not to mention
9 perhaps 100,000, if not more, individual items of -- if not
10 evidence, at least tangible objects that had to be reviewed by
11 someone. That information had to be collated, assembled first
12 by the prosecution and given to the defense.

13 And the Government has repeatedly said to the Court
14 that while it's ready for trial, it is also continuing the
15 investigation. So who knows when the investigation may end and
16 at what stage?

17 So we recognize that when it may be that it seems that
18 we are being unduly harsh or critical to the Government in some
19 of these problems, I have to first recognize, as I do candidly,
20 that this is an unusual case with unusual problems in
21 collecting and assembling and making the information available
22 to us.

23 The second thing that I want to say again is that
24 Linda Vernon of the FBI, who has sort of been in charge of the
25 physical assembling and distribution of this evidence, has been

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1 very helpful, very professional in all of the things that she
2 has done in this case. And, frankly, although there are
4 Ms. Wilkinson and the others on the Government side, there has
5 been in some areas extraordinary cooperation and response to
6 letters and inquiries that we have had. And Mr. Mackey
7 continues to work on the phone problems -- or record of phone
8 call problems.

9 So when I speak, as I hope to do later today, about

11 it with full recognition of what I just said.

12 I think also that it sometimes is forgotten that in

13 addition to the case of United States vs. Timothy McVeigh in

14 which the parties are the Government, ourselves, and Mr. Tigar

15 on behalf of Mr. Nichols, we have counted up 61 other

16 proceedings that have interfered -- if I may use that term in a

17 neutral setting -- with the preparation and investigation of

19 cases, 7 appeals, 5 interventions by the victims, and I believe

20 it's 56 separate -- I'm sorry -- 36 separate media motions, for

21 a grand total of 61 separate proceedings that I count. And

22 then it's possible that I may have overlooked some, because I

23 know Mr. Tigar's office was involved in 1 or 2.

24 Those 61 proceedings have involved an inordinate

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2 principal function here, which is to get this case ready for

3 trial.

4 I also made it clear, I think, in our pleadings and

5 what I have said before that the defense in this case is "not

6 guilty"; that we will seek to challenge the Government's

7 evidence and the allegations of the grand jury; that we

9 4 and 5, there are multiple Ryder trucks, and that our client

10 is not guilty.

11 And with one or two exceptions, each and every thing

12 in the Government's case will be challenged.

13 I have also indicated to the Court that I see the case

14 from the standpoint of the trial and the discovery issues as

15 breaking down essentially into five large areas, which for the

16 sake of organization and clarity to follow are what I think are

17 the five major thrusts of the indictment and the case that we

18 will be called upon to defend against. Those include the
19 eyewitness identifications alleged at Junction City and the
20 writing -- renting of the Ryder truck in which the Government
21 alleges that our client was Robert Kling. The forensic
22 evidence from the lab would be the second one. The third would
23 be the proffered testimony of Michael and Laurie Fortier which
24 presumably will come at the trial. The fourth will be the
25 issue of the arrest of Mr. McVeigh by Trooper Hanger, what I've

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1 called the proximity issue. And the fifth will be the issue
2 raised by Government's pleadings of Mr. McVeigh's motives
3 insofar as it relates to Waco and perhaps other incidents.

4 So when we look at the discovery issues and we prepare
5 for trial, we look generally to those five areas.

6 The Government has produced to us 25,000 witness
7 statements and still counting. The index alone to those
8 statements is 580 pages by the most recent count. We are told
9 that the 1A list consists of 15,000 items. The index to that,
10 which covers only 6,000 items -- those being the 6,000 the
11 Government thinks that we are entitled to know the existence
12 of -- I believe covers 680 pages.

13 There is a 1B index which exceeds 440 pages and covers
14 over 5,000 items. There are 350 audio cassette tapes, 500
15 video cassette tapes, and approximately 160,000 sheets of paper
16 on top of the 25,000 witness statements.

17 In organizing the material, I think the Court is
18 probably less interested in what our dispute is than what our
19 proposed resolution of it is. And the Court has suggested that
20 we go through each of these items individually, and I propose
21 to do that; but there are certain items that cut across each of
22 these five areas and each of the four motions or five motions;

23 and rather than address each of them in turn, I would just
24 briefly, if I may, address them now and simply say that they
25 follow throughout these matters.

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1 Part of the problem has been with the delayed
2 production of the 302's. There is an exhibit which I believe
3 is Exhibit F, which is one of the documents that I handed to
4 the Court and another exhibit -- it's Exhibit F.

5 If I might ask Mr. Wyatt, is this the complete
6 exhibit, or only the ones that are on the blowup?

7 (Discussion off the record between Mr. Jones and Mr. Wyatt)

8 MR. JONES: The Government has been giving us 302's;
9 and part of the problem that we have had, quite seriously, your
10 Honor, is significant delayed production from the date of
11 transcription to the date it's given to us. So we simply took
12 the most recent three or four productions and took what we
13 considered to be the significant 302's, leaving aside those
14 that aren't significant; and we made a chart of seven columns,
15 the first column being the 302 number, the second being a very
16 cryptic description of what the item is and who it may relate
17 to. The third is the investigation date, which is the date
18 shown on the 302 that the incident described in the 302
19 occurred.

20 For example, at the very first -- let's take the
21 second one. That particular witness was interviewed on July 1,
22 1995, in 302 No. 16217. The dictation date is the date from
23 the 302 that it shows that the FBI agent -- and usually, it's
24 an FBI agent -- dictated the result of the interview. The
25 transcription date is the date it was transcribed by the FBI

1 typist and the production date is the date we got it.

2 And the final column is the number of days from the
3 transcription to the production, not the number of days from
4 the interview and not the number of days from the
5 transcription -- I'm sorry -- from the dictation but the actual
6 number of days from the date it was transcribed and presumably
7 in hard copy to the date we got it.

8 And as this chart shows, the average time is almost
9 500 days.

10 Now, the Government's answer to that is, well, we give
11 it to the defense when we, the prosecution, gets it. And then
12 that may be so; but the FBI is part of the prosecution and it's
13 a little difficult for me to understand how these obvious
14 important 302's involving, as the Court can see -- some of
15 these are extremely critical witnesses to the defense. Some of
16 them involve material very helpful to the defense. Others are
17 perhaps incriminating of the defense case; and we have
18 production delays not of 50 days, not of 6 months or even a
19 year, but over a year.

20 That is something that we ask the Court to address;
21 and the specific remedy that we ask for as it applies to
22 whether it's Brady or Rule 16 or methodology is for the Court
23 to set a date -- and I don't care when that date is; but let's
24 just take as an example December 1 -- that all 302's which are
25 the subject of an investigation before November 15 have to be

1 given to the defense on December 1; all 302's from November 1
2 to December 1 have to be given to us by December 15; all from
3 December 15 to January 1 have to be given to us by January 15,

4 and so on, down to, including those last few days before trial,
5 because these delays are unconscionable and they are delaying
6 the case going to trial, because it is difficult for us to go
7 out and interview witnesses, to plan exhibits, to plan
8 cross-examination and trial when we are still getting a year
9 and a half later 302's from say, Trooper Hanger, who arrested
10 Mr. McVeigh, or James Rosencrans or Marife's father or any of
11 these people.

12 That, we believe, has to be addressed, and that is one
13 of the most serious problems. It's not a question of whether
14 we get them, which is a different issue. It's a question of
15 when we get them.

16 The second issue has to do with the description of
17 what we get.

18 We submitted to the Court a sealed appendix. And I'll
19 ask Mr. Wyatt if he would find it so I can at least visually
20 show it to the Court and the Court will know which one I'm
21 referring to, which had a large number of colored tabs. And
22 behind Tabs, I believe, B, C, D and X, are graphic examples:
23 Docket entry 1966, which looks like this.

24 If the Court will look at -- we have copies here just
25 of the pages that I'm going to refer to. Exhibit D and Exhibit

1 X, we have described. And I know the Court has read this
2 before, but there is so much material the Court may not have
3 understood fully its significance to us of how an item is
4 described on the master Q and K list, which is the list of
5 questioned documents -- I shouldn't say documents -- questioned
6 items and known items, which the FBI laboratory or some other
7 laboratory works -- how those same items are described on the

8 1A, 1B list, and then the notes.

9 It's a mishmash. It's simply not possible for us to
10 take the documents the Government gives us and consistently on
11 material items match up and follow those items from the lab --
12 or rather from where they came from to the lab to the material
13 we receive. And we have taken again representative samples,
14 not the worst samples, not the best samples, but just
15 representative samples across the board.

16 The relief we ask is this: that the Court enter an
17 order requiring the Government and in cooperation with the
18 defense -- we'll be glad to sit down with them -- to make a
19 list that accurately and fully describes as to the originating
20 source whether it comes from Trooper Hanger or Charlie Brown or
21 the Daylight Motel in Enid, Oklahoma, and not the name of the
22 FBI agent that has it. That doesn't mean anything to us. If
23 you say, "Special Agent John Smith," that means absolutely
24 nothing. Where did Mr. Smith get it from?

25 That's just one example. The inconsistency in the way

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1 items are described as they go through the laboratory.

2 Now, that's not something that we can solve ourselves,
3 unless the Government lays everything out on a table -- and
4 it's going to take a very large table and a large room -- and
5 we will make our list. And we'll go through it one by one and
6 make the list.

7 But I suspect that in a week's time, if the Court
8 orders it, that the Government and the defense working
9 together, because after all, this is material in their
10 possession which they got and we didn't get it. We don't have
11 it in our possession. Some of it we have copies of. But when
12 you're talking about 50- or 60,000 items -- and that's a

13 conservative number -- and you don't have a master list to
14 follow, it is impossible.

15 So the relief that we ask of the Court is to order the
16 parties, with the Government taking the lead, to prepare a 1A
17 list of those items that they think we're entitled to receive
18 or view.

19 Now, I want to advise the Court that on the 1A items,
20 the Government says, Well, a lot of those items are things that
21 you're not entitled to see. And I think that's true, certainly
22 at this point. I mean a substantial number of them are FBI
23 agent field notes where they handwrite the note. And I'm not
24 arguing that now.

25 But what I am arguing is there are some items in the

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1 1A, and in this case, the Government has admitted to us --
2 admit perhaps is a poor choice of words -- they have advised us
3 that the traditional distinction that the FBI makes between
4 items that are 1A and 1B is largely lost in this case,
5 considering how the items came in, the quickness with which
6 they came in, and the mere size of them.

7 But if we just start with those 6,000 items that the
8 Government thinks that we are entitled to view under 1A, we
9 want a list of them, what they are precisely. And just let me
10 take the most recent, dramatic example of how misleading this
11 is and the fact that I believe that the Government has such a
12 list but we don't.

13 Here is a letter dated November 12 -- we're not using
14 these exhibits so much as just aids to the Court, your Honor.
15 This letter is in response to a letter that I wrote on
16 October 8, and so five weeks later I get the response. And I

17 don't really have a complaint about the five weeks. I can
18 understand there might be a problem. This letter was written
19 because of an article that appeared in a newspaper which
20 purported to report the discovery of a very important piece of
21 evidence, a piece of evidence that as far as I could tell was
22 in no way mentioned in the 302's.

23 So I wrote the Government and I made reference to and
24 Ms. Wilkinson accurately summarized this in my letter: I asked
25 her for the identification of the item that was recovered in

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1 downtown Oklahoma City. She responds they did recover it; and
2 then she says -- and I think I can read this part with a minor
3 exception: "The description for the item is contained on your
4 1B inventory list as 1B78, Item 16-26, described as 'numerous
5 fragments.'"

6 Well, considering what this item is, your Honor -- and
7 I think the Court can see what it is and understand its
8 significance -- and I can tell you that its significance is
9 very great -- there is no way in God's world that I would know
10 that that item is to be found in numerous fragments as 16-26 on
11 1B78.

12 Now, they obviously knew what that item was; so why
13 they didn't just simply say Item 16-26 is blank to blank and I
14 would have known instantly what it was.

15 But then she goes on to say, "The item is also listed
16 on your master Q inventory list as Q2323 described as
17 miscellaneous debris."

18 It isn't miscellaneous debris. Miscellaneous debris
19 is something that is miscellaneous debris. This is a specific
20 item that relates to a specific vehicle that is specifically
21 important in this case.

22 There are hundreds of examples like that. We cannot
23 prepare for trial under that state of the discovery. Had this
24 article not appeared in the newspaper, I would have never known
25 about it; that it had been recovered, much less where it was

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1 recovered from. And as I say, that's just one example.

2 If I might have just a moment to refer to my notes,
3 your Honor.

4 THE COURT: Yes.

5 MR. JONES: Our position, then, is that, first, there
6 is an unreasonable and unconscionable delay in the production
7 of 302's, in which the Court must intervene and set some
8 deadline for in order to get this case ready for trial. We
9 have the duty to investigate the facts. Hopefully, we'd like
10 to investigate them only once.

11 Secondly, there are numerous errors in the 1B and the
12 Q and A which are inaccurate and misleading and that must be
13 addressed.

14 Another thing that the Government does -- and this one
15 may not be done deliberately in the sense of misleading -- the
16 Government each month has furnished us lists; and as they
17 discover errors in the previous lists, they have made changes
18 in the lists. But the changes that they make are not
19 noticeable to us; so when we get a new index each month, if an
20 item on page 40 has been changed, we don't have any way of
21 knowing that.

22 So there has to be some mechanism beginning at some
23 point. I mean we can't go back and put the toothpaste back in
24 the tube on that portion that's been squeezed out. When the
25 Government finds an error or -- and it's not always an error;

1 sometimes it's simply an omission or an admission and in some
2 cases a deletion -- that needs to be addressed and indicated in
3 such a way that we fully understand and are made aware of it.

4 The new indexes that are presented to us, as we
5 understand it, is only to add additional items.

6 Last night, the Government delivered to us after 4:00
7 a substantial amount of new material, material that we have
8 asked for since last October; and based upon the letter that
9 accompanied it, it would appear that many of these items again
10 go back to April, May, and June of 1995 --

11 MS. WILKINSON: Mr. Jones, can you tell me what letter
12 are you referring to?

13 MR. JONES: Sure. I'm sorry. It's the one dated
14 November 12.

15 Last time when I spoke with the Court on this issue, I
16 brought in the eight boxes we had received then and represented
17 to the Court that the pattern of Government production in these
18 matters is that on the eve of the day of decision when the
19 Court will hear our argument to suddenly change the landscape
20 by a massive compliance with something that's been asked for
21 for a year, which then confuses the issue because the
22 Government can then say, Well, we've given it to them. Well,
23 of course they have, a year and a half after the incident and
24 in some cases a year after it's been requested.

25 I think the Court needs to address that issue.

1 That contains the summary of the items that I
2 represent to the Court go through and cut through all of these

3 various motions. And as the Court knows, because we previously
4 submitted Mr. McVeigh's reply to response of the United States
5 Government to McVeigh's discovery motions beginning on 10,
6 we -- under the heading "The Government Cannot Bury Evidence,"
7 we cited to the Court the case law from those cases which have
8 discussed the case in massive paper cases, what is the
9 Government's duty and obligation to organize it in a fashion
10 that it can be used and understood. And I simply refer the
11 Court to the Ollison case and the Turkish case and the other
12 cases cited there.

13 With respect to the narrowed 16 motion, if I may with
14 the Court's permission, I wonder if I could ask leave of the
15 Court to have Mr. Wyatt join me at the podium, because he is
16 the person on the defense team most -- or charged with the
17 responsibility to organize, collect, and analyze the evidence;
18 and I want to be sure that as I make representations to the
19 Court; that I'm not in error.

20 I'll be speaking, but he'll be --

21 THE COURT: Yeah, we'll do that. But before we do it,
22 I think the Government should have an opportunity to respond to
23 your general observations; and I have this to ask of you,
24 Mr. Jones, and that is you began this statement with your
25 intention to challenge everything and of course provide a

1 vigorous defense in the case; but I would anticipate and expect
2 that with the kind of discovery involved here and recognizing
3 the reciprocity that is also due to the Government by you under
4 Rule 16 that there will be a time when we -- if it takes me,
5 I'll be there -- should have some type of conference with
6 regard to what -- and of course, Mr. McVeigh -- what is -- what

7 are the possibilities of stipulations with respect to at least
8 foundation and some of these admissibility, authentication
9 issues, and so forth, to provide some trial efficiency.

10 MR. JONES: I will -- do you wish for me to respond?

11 THE COURT: Yes. I mean, I have been assuming that
12 you're going to be prepared to do that at some time before
13 trial.

14 MR. JONES: Well, I will address that issue frankly
15 and candid, as I know the Court will want me to do.

16 I would like to do that; but I'm increasingly
17 skeptical that it's in the best interest of Mr. McVeigh to do
18 it, and I will tell the Court why. I think it's possible it's
19 not too late to change the history of discovery problems in
20 this case; but unless I am satisfied, your Honor -- and I think
21 it's the duty of the Government to present to us in a form that
22 we can use it, study it, analyze it, verify it, and check it
23 ourselves -- I don't see how in good faith I can stipulate to
24 something.

25 THE COURT: Well, I wouldn't be asking you to

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1 stipulate to anything that you're not absolutely confident can
2 be proved at trial through the ordinary method, certainly. I'm
3 not asking you to cut any corners with respect to it.

4 MR. JONES: That's fine. And I have advised both
5 Mr. Hartzler and Mr. Mackey when we have discussed this matter
6 both in correspondence and face to face when we have met, and I
7 told them quite frankly -- and I don't think they will dispute
8 it -- that I said there will come a time when you will want me
9 to stipulate -- and I said this early -- and I tell you
10 gentlemen, looking you in the eye, that if you hold back, you
11 confuse, you withhold, you give us stuff that we cannot use,

12 I'm not going to sign the stipulation. And I repeated that as
13 recently as two months ago in a letter.
14 I would like to stipulate. Otherwise, it's a trial
15 without ending, so to speak, which is certainly not my desire.
16 But I've been burned twice before on stipulations with the
17 Government, and I don't think it's appropriate -- not in this
18 case -- to discuss those publicly; and so I'm once burned,
19 twice shy.
20 I know that one of the matters we're working on are
21 these telephone records that the Government has indicated
22 they'd like a stipulation. But as of today, a year and a half
23 later, we don't have a complete set, even of the summary, so we
24 can then check the summary against the raw data.
25 Now, Mr. Mackey has diligently been working on that,

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1 and I recognize the mammoth task that's involved; but here's
2 what troubles me -- I mean, the Court has invited me to speak:
3 I get a little tired of reading in the newspaper that the
4 Government is ready to go to trial. The Government isn't ready
5 to go to trial. That's a myth. If they're ready to go to
6 trial, where are the rest of these exhibits, where are the rest
7 of the 302's, where are the rest of the lab reports? They're
8 not ready. If they're ready and they've got them, why don't we
9 have them. And if they don't have them, then they're not
10 ready. And they're sure not ready to ask me for stipulations,
11 because I haven't even seen the raw data of what they're asking
12 me to stipulate. The first meeting we had on the phone records
13 was yesterday or Monday.
14 So this kind of posturing that we're ready for
15 trial -- this case isn't ready for trial; and certainly,

16 they're not ready. If they are, then they've just been sitting
17 on the material that the Court expects them to have given us
18 months ago.

19 And I'm not saying that critically. I understand the
20 need to make public statements, given the nature of this case.
21 And I do compliment Mr. Mackey on it. But I -- and the Court
22 may overrule me and the Court may tell me I'm wrong and the
23 Court may tell me to shut up and sit down; and I will do
24 everything that the Court tells me to; but before I stipulate,
25 I want accurate indexes, I want this 302 delayed production

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1 ended, I want to know where the raw data is, and I want to see
2 that material and have time to study it, not a weekend. I
3 don't want to get a letter on Thursday and say we expect you to
4 stipulate in seven days.

5 THE COURT: Well, let me make it clear. What I have
6 in mind is that there be a stipulations conference at some
7 point when we're ready for it and with Mr. McVeigh present, of
8 course, who can participate in it.

9 But I didn't mean to suggest anything beyond that,
10 certainly not that stipulation become some sort of bargaining
11 element. I'm just talking about it as a procedural efficiency
12 in the presentation of evidence.

13 Well, Ms. Wilkinson, do you or someone on behalf of
14 the Government wish to respond to these general comments from
15 Mr. Jones?

16 MS. WILKINSON: Yes, your Honor.

17 THE COURT: All right.

18 MS. WILKINSON: Your Honor, we appreciate Mr. Jones'
19 acknowledgement at the beginning of his presentation about the
20 volume of material produced in this case; but as I was

21 listening to his list of problems or disputes, I could not help
22 but think that no good deed goes unpunished.

23 When Mr. Jones tells you that he has just received,
24 last night information that the Government had since the case
25 began, what he fails to tell you is that that information is

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1 polygraph information and post-April 19 surveillance
2 information, information that clearly under the law the defense
3 is not entitled to but nevertheless, we've listed on the 1A
4 inventory and we have provided to Mr. Jones. And as he shows
5 you in his own pleading in Exhibit B, there is a letter to me
6 from one of his co-counsels that states we have been providing
7 them regular lists of the 1A inventory and advising them in
8 writing each month that if they wanted any of these items, all
9 they had to do was request those items and we would make
10 copies. So they have had notice of this information; and it
11 was only, I believe, in September or August that they wrote and
12 specifically said that they saw it listed on the 1A inventory
13 and the information was provided.

14 As to -- so as to Mr. Jones' request that we furnish
15 an index of these items, we have been doing that and we have
16 been doing that since January.

17 As to his complaint that the index is not complete, I
18 understand his frustration with that; but what I can tell you
19 is the index that we are providing -- the indices that we are
20 providing to him are the only indices that we possess. Those
21 indices were made, as you might imagine, when agents went out
22 right after the bombing and seized evidence. They collected a
23 lot of evidence at the scene and they described it, as
24 Mr. Jones described for you, as miscellaneous fragments or

25 metal fragments; and that is why we set up the procedure. And

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1 Rule 16 provides a procedure for the defense themselves to
2 review all of that evidence.

3 I understand that he's frustrated that a bag of
4 different metal fragments was not identified by each piece.

5 THE COURT: Well, but with respect to the item in
6 question as revealed in this letter, surely somebody on your
7 side noted that and noted that it in and of itself had perhaps
8 significance.

9 MS. WILKINSON: We did, your Honor; and that was
10 months later. After reviewing photographs of the scene, we
11 noticed that metal piece. We went back and looked through all
12 those fragments just like the defense does when they come to
13 look through the evidence and found it.

14 But Mr. Jones is incorrect when he said he was not
15 notified of that, because on August 2 the Government provided
16 expert witness summaries. And in those expert witness
17 summaries we had an expert named Charles Hurd, who talks about
18 that piece of evidence and talks about how that evidence fits
19 the vehicle that we're discussing.

20 So since August, Mr. Jones has had no notice about
21 that particular item.

22 But I use that to point out that when you talk about
23 these indices, I believe it's impractical to suggest that the
24 Government go back and review all these items and provide
25 enhanced descriptions. That, I believe, is the purpose of Rule

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1 16, to allow the defense to do their own review of the physical

2 evidence; and if Mr. Jones and his team would like to come and
3 look at evidence one more time, we'd be happy to provide a room
4 for them to inspect the evidence once again.

5 THE COURT: You know, it seems to me we have to
6 divide: Rule 16 covers basically two things. One is the
7 Government's evidence. And of course, that is important for
8 you to have ready to go and for the defense to know, as is
9 consistent with the criteria in Rule 16, what it is.

10 Then there is that part of Rule 16 that requires
11 matters which may be material to the defense, a different
12 category. And I am concerned in reviewing your responses to
13 the narrowed Rule 16 when it will be that all of the 302's a
14 given time have been collected and produced. So it's been
15 ongoing month by month, but we've got to set some dates and
16 some time limits.

17 MS. WILKINSON: May I address that, your Honor?

18 THE COURT: Please.

19 MS. WILKINSON: As of October 31, which is the last
20 time we made production, we produced 16,442 302's and 8,833
21 inserts. That is 98 percent of the 302's that the Government
22 has to date. So we are prepared to provide those remaining
23 302's that are in our possession by December 15 or whatever
24 date the Court and the defense and the Government agree to; but
25 we must remember that the Government's investigation is

1 ongoing, and that is due to several factors.

2 THE COURT: That's a different issue, though. And I
3 think Mr. Jones addressed it; that is, that there be a time set
4 for the production of that which has been accomplished to a
5 given date, so that December 15 for what's been done by

6 November 15 or whatever. Then, of course, as new activity
7 results in new reportage, that can be done as it comes in; but
8 I think it is imperative that, you know, when you've got
9 2 percent roughly out there now, that relates, I take it, to
10 something before today.

11 MS. WILKINSON: Well, it depends, your Honor. There
12 is a wide variety of categories of 302's that we turn over.
13 Many of them, for example, are the review of the prison tapes
14 of Mr. Nichols. So that is going to be ongoing.

15 Some of them are leads that are sent out to other
16 offices. And as I have explained, since those do come back
17 within the month that the lead is sent out, the investigation
18 is conducted and the 302 is generated and then sent back into
19 our system. But I believe that the Government can abide by, I
20 think, what the Court is requesting, is that we provide all of
21 the historical 302's by December 15, and that is anything that
22 we started before November 1, the interview was conducted
23 before November 1, we can provide those by December 15. That
24 is not a problem.

25 However, anything else that's ongoing, we just want to

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1 advise the Court we're going to continue to follow up. For
2 example, Mr. Jones has provided reciprocal discovery to us to a
3 certain limited extent; and when we read his interviews of
4 certain witnesses, that sometimes generates additional
5 investigation on our part.

6 THE COURT: Yes. I understand that. But you know,
7 what we have to do is to say, all right, this is the evidence
8 that the Government is relying on to prove these charges at
9 trial and get on with it.

10 MS. WILKINSON: We're prepared to do that, your Honor.

11 I would point out that I believe we'll be ready to do that by
12 December 15, other than the newly generated 302's or
13 investigation, if that would satisfy the Court as to the
14 production of those reports.

15 THE COURT: Okay.

16 MS. WILKINSON: I believe that addresses Mr. Jones'
17 delay in production, which was his first item that he raised.

18 The second was the description. I would like to use
19 another example, your Honor. There was an inquiry by the
20 defense for an item that the media mentioned, a piece of paper
21 that was recovered in Mr. Nichols' trash. We had found that
22 piece of paper. It had been identified generally as documents
23 coming from Mr. Nichols' trash on the 1B list. Mr. Jones wrote
24 to us and asked about that. We identified it. We have
25 characterized it as something more than a piece of paper from

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1 the trash; however, I'm not sure that the defense would agree
2 with that characterization.

3 So in terms of going back and further identifying the
4 evidence that we have collected, the problem with having us
5 come up with these descriptions is the defense does not always
6 agree with our description, or we don't, as they say, have a
7 complete enough description of those items. It seems to me if
8 we go back and try and re-create a new list and add a
9 description, there are going to be further disputes with the
10 defense over whether we properly characterized a certain item
11 of evidence.

12 As to identifying where that evidence came, again,
13 they have all the information that we have. When it says it
14 came from Agent Smith at the bombing crime scene, that's all

15 the documentation that we have about where it came from. Now,
16 we can interview Agent Smith and find out where he found it.
17 That's usually contained on the 302 that he writes up about
18 seizing that piece of evidence. I think we pointed this out
19 last time, that when you have a piece of evidence that's listed
20 on the 1B list, let's say the rear axle that was found, the
21 agent who seized that, there is also a 302 that says where that
22 item of evidence was seized and it's identified through the 1B
23 number.

24 So that information is already within the defense's
25 custody. We've already turned over those type of documents.

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1 If, your Honor, there are specific questions about
2 certain items of evidence that the defense has, obviously we
3 have always been available and we will continue to be available
4 to answer questions and to research certain items; but to order
5 us to go back and create new lists which we don't have -- I
6 believe Mr. Jones suggested that we do have the list, and we
7 don't -- would be incredibly burdensome for us for those items
8 that we don't intend to introduce at trial. And as you know,
9 we have turned over everything in this investigation. A very
10 small percentage of that will actually be introduced at trial.

11 So it seems to me a better avenue would be to talk
12 about exchanging an exhibit list, because that -- those are the
13 items the defense really cares about in terms of preparing for
14 trial. And instead of us creating an entire list redescribing
15 everything for them, perhaps we could discuss exchanging draft
16 exhibit lists with the clear understanding that this is subject
17 to change, we're going to be constantly updating it; and then
18 the defense would at least have an idea of what items we intend
19 to introduce.

20 THE COURT: Well, I -- that's exactly the approach
21 that I think is appropriate; that we be looking at a time when
22 exhibit lists will be prepared; and the exhibit lists will have
23 descriptions of the items that are numbered in the list, so
24 that gets us down, as I said, to, you know, what is going to be
25 relied on at trial. That doesn't mean that these other things

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1 might not be significant in some fashion, but they're
2 secondary, I think, to the time schedule that we must address
3 here.

4 MS. WILKINSON: Perhaps to assist the defense further,
5 your Honor, and for our own purposes on the exhibit list, we
6 could put our potential Government's exhibit number, the 1B
7 number and the lab number, which is the Q number or the K
8 number, and that way the defense will know that item, have it
9 identified three different ways.

10 THE COURT: Cross-referenced.

11 MS. WILKINSON: Yes, sir. They can go back to their,
12 you know, work product that they've generated and be able to
13 reference each item.

14 Your Honor, if we do that, we would like to do that
15 with defense. We would also ask that we complete our
16 reciprocal discovery obligations or the defense complete their
17 reciprocal discovery obligations by turning over to us all of
18 their witness statements including tapes and transcripts.

19 Mr. Jones has advised us that he would not turn over
20 those tapes and transcripts to us because we have not turned
21 over the grand jury statements in this case; but we're willing
22 to do that if we could have full disclosure by the defense of
23 all of their witness statements and tape-recordings and

24 transcripts.

25 THE COURT: Well, sometimes it's not possible to do

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1 these things simultaneously because there is in the trial
2 process a sort of punch/counterpunch, so that, you know, you
3 can't hold in any trial, civil or criminal, the defense part of
4 the case to having an exclusive list until they know what the
5 prosecution's list is.

6 So there has to be, I think, a two-step involvement;
7 and we will be addressing that before we leave in the next
8 several days.

9 MS. WILKINSON: Just so the Court --

10 THE COURT: But I think we'll be doing that in
11 chambers.

12 MS. WILKINSON: Yes, sir.

13 Just so the Court is aware, we have received, as I
14 said, those limited statements.

15 We have not severed any tangible items or documents,

16 and I don't know if the defense has any to share with us; but
17 obviously we would request those when it's appropriate.

18 Your Honor, I think it would be best for us to move on
19 to the specific --

20 THE COURT: Well, I have just this one additional
21 matter, and that is mentioned by Mr. Jones; that it would be
22 appreciated when you see an error or omission or some change in

23 the previous list that it be specifically noted and
24 communicated.

25 MS. WILKINSON: We can do that, your Honor. Again, I

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1 guess that's what brings me back to the "no good deed goes
2 unpunished." We were trying to complete these descriptions
3 when we realized they were incomplete. And when we send an
4 updated copy -- I believe we say in our letter that this is an
5 updated copy, but we will try and highlight specifically the
6 descriptions that have been changed to aid the defense.

7 THE COURT: Well, the goodness of a deed is
8 qualitative judgment made depending upon one's perspective, I
9 suppose.

10 MS. WILKINSON: Your Honor, just for the record, I
11 would like to make clear what the Government has done in terms
12 of disclosing information, because I think that will affect
13 your rulings on the Rule 16 materials.

14 As I said, as of today, we've turned over 25,000
15 witness statements. We have disclosed all the laboratory
16 reports that have been generated to date. That is 477
17 laboratory reports. We have provided all the telephone records
18 and set up a private viewing room for the defense to continue
19 viewing all of the telephone records. We have turned over or
20 provided an inventory for 8,335 1As, which is 99 percent of the
21 1As.

22 We've turned over or had the defense view and made
23 copies of 3893 1B items, which is 99 percent of what the
24 Government has to date. They have seen 695 1Cs, which is all
25 of the 1Cs we have to date. They've received 440 videos or

1 approximately 95 percent of those; and over 30,000 photographs
2 in this case, your Honor, have been provided or made available
3 to the defense.

4 We've turned over all the defendants' statements.

5 We've turned over the summaries, the indices, the CD-ROM disks
6 and other information to assist the defense in their
7 preparation for this case.

8 So with that in mind, your Honor, I suggest we turn to
9 the specific disputes as to Rule 16.

10 THE COURT: All right. Well, we're going to do that;
11 and I'm going to be addressing these issues not in terms of
12 good lawyer/bad lawyer. I'm -- we're going to be addressing
13 them in terms of the application of the provisions of the Rule
14 to the items and whether they are discoverable or no.

15 Mr. Jones, we may take a break before we start on the
16 individual items.

17 MR. JONES: Before we do that --

18 THE COURT: Go ahead.

19 MR. JONES: I was going to say, may I take two minutes
20 to respond to what she said?

21 THE COURT: You may.

22 MR. JONES: I invite the Government to give the Court
23 a copy of this lab, quote, "report," close quote, on this item,
24 because I believe we're talking about -- because I believe --

25 MR. WYATT: Expert summary.

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1 MR. JONES: It's on the expert summary. I believe if
2 the Court will review it, you won't tell from the expert
3 summary what it is and what we're talking about. It references
4 that item, but it doesn't say what that item relates to where
5 it goes.

6 Now, I sort of suspicioned when I saw it that that's
7 what it was. But it's not clear from reading it. So to say,
8 Well, we knew about it because we got an expert summary, if
9 it's not described accurately, I don't know about it at all.

10 In this item right here, this docket number that I
11 gave the Court earlier, there is an example. Every so often in
12 a description something gives us a clue. And Exhibit G is a
13 list of 1B items. And in the very middle of the page, 1B,
14 1225, says "scout handbook for" subject. And that gave me the
15 hint that probably all of this items -- all of these items came
16 from this individual. But the source is identified as FBI
17 Agent Charlie Brown.

19 how the Government can represent to the Court that, Well, gosh,
20 we don't know where it came from other than Charlie Brown. How
21 are they going to put it on the stand and introduce it as an
22 exhibit if they don't know what the original source of it is?

23 Now, they say, well, there is a 302, and there is a
24 302 from Charlie Brown that says that he got Items 921 through

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2 Well, that's true. But that assumes that we've got
3 Charlie Brown's 302. If Charlie Brown's one of the delayed
4 302's, we have no way to match it up.
5 Now, if we can work out some system where there is a
6 cross-reference between the 302 and the 1B list and we have the
7 302, fine; but it's strains credulity to believe that the
9 these items from in the field.

10 With respect to the reciprocal discovery, we didn't
11 have an agreement that they would get transcripts. In fact, we
12 barely had an agreement. What we had was a unilateral
13 statement by Mr. Hartzler what he was going to do. And it
14 wasn't even a written agreement. And then problems arise.

15 But this is a place where I disagree with my brother,
17 weren't getting grand jury transcripts, not even exculpatory

18 ones, until later.

19 Well, a grand jury transcript is a transcript. And
20 that's fine with me; but you're not going to get my
21 transcripts, either. You'll get my equivalent of the 302 if we
22 go out and interview Trooper Hanger, which, of course, we
24 could, we'd do an investigative report on him. I'll give you
25 the investigative report, just as you give me your 302. When

1 you give me the transcript of what he told the grand jury, I'll
2 give you the transcript of the interview. That's reciprocity.
3 I learned later that the Government is not giving us
4 any of their interviews with witnesses that may testify in the
5 second stage yet. But I've been routinely giving them my
6 witness statements for people in the second stage until
7 Mr. Mackey told me that I wasn't getting his. I didn't

8 understand we weren't getting his.

9 So this reciprocal discovery agreement, as Oliver
10 Wendell Holmes said, "a good catch word can escape analysis for
11 50 years"; and that's certainly one of them.

12 But I would agree with Ms. Wilkinson: If the Court
13 sets a time and if Mr. Hartzler -- and this is the first time
14 I've heard it this morning -- if they're willing to give us the

15 grand jury transcripts and they get in return our transcripts,
16 great. I accept that. All we need to do is set the date, and
17 we can exchange them; and that will eliminate that problem.

18 With respect to the exhibit list, I understand the
19 Court's desire in that respect, but let me be frank and tell
20 the Court where the danger is for the defense. The Government
21 would very much like the Court, in my opinion -- the

22 prosecution -- to buy that argument. Here's the fallacy in it:
23 They've got the evidence. They've got the tangible objects. I
24 can't talk to Trooper Hanger, I can't talk to Lea McGown, I
25 can't to Vickie Beemer, I can't talk to Eldon Elliott. They've

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1 got guards out there. The Court won't let me take their
2 depositions in the civil suit, so my hands are tied.
3 The one place they're not tied is the Government has
4 got all this evidence. I can't make my exhibit list until I

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b e c a u s e 9 9 p e r c e n t o f
m y e x h i b i t s c o m e

6 from theirs.

7 THE COURT: That's why I said there is a two-step
8 process involved in this, as there is in every case.

9 MR. JONES: The Court understands it, and that's all I
10 wanted to say. And if you want to take a recess, we'll take up
11 Rule 16 --

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T H E C O U R T : A n d w h e n I
r e f e r r e d t o r e c i p r o c a l

13 discovery, I was not addressing the question of whether there
14 was some agreement. I'm talking about the reciprocity required
15 by the rule and the application of the rule.

16 And this matter of agreement -- and Mr. Woods, I don't
17 intend to block you out of this; but obviously since severance
18 has been ordered in this case and we're talking about preparing

1 9 M r .
M c V e i g h ' s t r i a l , y o u r
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20 as imperative. But we are going to address them, which are in
21 categories, as opposed to the item-by-item issues that we're

22 about to deal with.

23 MR. WOODS: I appreciate that, your Honor.

24 I would want to make clear to the Court that we intend
25 to be prepared the same day that Mr. McVeigh is prepared for

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1 trial. We want to be completely prepared as of that date,
2 because we don't know what can happen at that time. So we're

g o i n g t o b e d e l a y i n g
o u r p r e p a r a t i o n - -

4 THE COURT: No, I appreciate that.

5 MR. WOODS: So we will want grand testimony when it's
6 given to him. We will want items of evidence when it's given
7 to him.

8 THE COURT: Yeah. I'm not suggesting that the case be
9 put on the shelf.

M R . W O O D S : Y e s , s i r .

11 THE COURT: But at the same time, there are different
12 priorities here.

13 MR. WOODS: Yes, your Honor.

14 MR. JONES: Your Honor, may I just --

15 THE COURT: Yes.

16 MR. JONES: I apologize to the Court. I neglected to
17 suggest to the Court perhaps a way to resolve this index. I
18 asked the Court to ask the Government or order the Government
19 to make a new index. Ms. Wilkinson opposes that.

20 Let me suggest that what I think might be shorter and
21 simpler. Beth -- Ms. Wilkinson is right when she says that we
22 earlier reviewed this material and had the chance to look at
23 it. And that's true. But that review was many, many months
24 ago, when we had very little discovery from the Government.

25 We're going in and seeing material with our clients not there

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1 with us. Our experts weren't even hired. And so the relevance
2 or materiality of it in many, many cases, escaped us.

3 I mean, I went for months making facetious comments
4 about that they had given me everything from the sink to trash;
5 and sure enough, they had, and in the trash was a gold mine.
6 But I didn't know it was a gold mine there. I didn't
7 understand the significance of it.

8 How about this: Suppose we take all of these items
9 that are on the 1A list that they believe we're entitled to
10 see -- and let's be fair about it. I mean I don't ask to see
11 FBI field notes; but I think I am, for example, entitled to see
12 Andy Strassmeir's immigration file, which is in the 1A list.
13 And then let's take all the items in 1B and bring them in. And
14 if it takes a week, two weeks a month, so be it. Allow us to
15 photograph it, videotape it, but have a knowledgeable
16 prosecutor or a knowledgeable FBI agent there so that if we
17 pick up an item and we say, what is this item, they can tell us
18 that is the blank to the blank.

19 Now, surely there is somebody that's got that
20 knowledge. And then we'll make up our own index. And I
21 suspect that may be the quicker way to do it, although it will
22 take a little while. It's lawyer's time as opposed to typist's
23 time; but in the long run it may be quicker. And we'll bring
24 our experts in and go through it.

25 THE COURT: Well, you can discuss that.

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1 We'll take a 20 minute recess.

2 (Recess at 10:05 a.m.)

3 (Reconvened at 10:25 a.m.)

4 THE COURT: Please be seated.

5 Mr. Jones, you and Mr. Nigh together or --

6 MR. JONES: Mr. Wyatt, your Honor.

8 MR. JONES: If I understand the Court, we are now on

9 Mr. McVeigh's narrowed Rule 16 motion.

10 THE COURT: October 23 and the Government's response
11 of November 7.

12 MR. JONES: Yes, sir. And I'm going to work from the
13 Government's response since they were kind enough to set forth

15 THE COURT: Yes. Yes. That is very helpful. I
16 appreciate it.

17 MR. JONES: Now, a good deed that does not go
18 punished, your Honor.

19 THE COURT: This one is rewarded with recognition.

20 MR. JONES: Your Honor, with respect to A, statement

22 THE COURT: Okay.

23 MR. JONES: The Government has made certain
24 representations there in the paragraph which begins, "While the
25 defendant's oral statement," and I will accept those

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1 representations down to the last two sentences. Or the -- yes.
2 Which begins at the bottom of the page, The "prosecution does
3 not intend to introduce as evidence in chief at trial any video
4 or audio footage of Mr. McVeigh while he has been

6 My understanding -- and perhaps this is just a wording
7 difference, but I believe there is a written agreement between
8 ourselves and Mr. Ryan -- and I think maybe even Judge Russell
9 signed off on it -- that none of these videotapes that are part

10 of the surveillance at either El Reno or Englewood would be
11 used for any purpose other than the security there. And so

13 don't know whether I'm misunderstanding what I thought our
14 agreement was or whether they just simply say evidence in chief
15 because that's how they describe most everything, but I do
16 think I would agree as far as I know it's not relevant or
17 material to the case, but I'm struck by this narrowing language
18 "as evidence in chief at trial." And I ask the Court to

20 any of those films or audio of Mr. McVeigh for any purpose at
21 trial.

22 THE COURT: Well, I suppose what the Government is
23 saying is unless you open the door. That's what I usually see.
24 So -- is that right, Mr. Ryan or Ms. Wilkinson? I --
25 Ms. Wilkinson, should we be addressing you here?

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1 MR. HARTZLER: Please.

2 THE COURT: All right. Sure.

3 MS. WILKINSON: Your Honor, should I just speak from

4 this microphone?

5 THE COURT: Yes, I think it would be more convenient.

6 MS. WILKINSON: You're correct, your Honor.

7 THE COURT: All right.

8 MR. JONES: Thank you. Also on the subject of Mike
9 and Lori Fortier, while the Government says that the
10 co-conspirator statements are not discoverable, it has provided

11 the testimony of Michael and Lori Fortier and at least

12 represents all of the 302's -- although there is still some
13 dispute of the proffer of those, but from our review of the
14 302's and the grand jury testimony, it appears to suggest that
15 Michael and Lori Fortier are co-conspirators, although formally
16 in the court, the Government denies it. And at some point --
17 and I don't know necessarily today is the time to do it, but I

19 whether they were co-conspirators to determine whether their
20 testimony falls under co-conspirator hearsay.

21 THE COURT: Yes. Well, the way I read the response --
22 and I'll ask Ms. Wilkinson to confirm it -- is the Government
23 intends, as it says here, pretrial proffer, identifying those
24 who are going to be considered conspirators and whose

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2 THE COURT: Okay.

3 MR. JONES: All right.

4 THE COURT: Of course, we need to set that time.

5 MS. WILKINSON: Your Honor, to be --

6 THE COURT: I don't mean right at this instance, but
7 we need to set that time.

9 Government's position that all the witnesses that are going to
10 testify do not have to be co-conspirators themselves to testify
11 to co-conspirator statements under 801(d) --

12 THE COURT: But we've got to know who you're saying
13 are the co-conspirators, whose statements can come in and not
14 be hearsay.

15 MS. WILKINSON: We will provide that, your Honor.

~~16 THE COURT: ALL RIGHT.~~

17 MR. JONES: Section B, your Honor, on page 7.

18 THE COURT: All right.

19 MR. JONES: There the Government I believe has stated

20 that they would try to get the copies of the films from the
21 Noble County Sheriff's Office, the undeveloped rolls. Is it
22 appropriate to ask the Court to inquire on the status of that?

~~23 THE COURT: YES. CAN YOU RESPOND TO THAT~~

24 Ms. Wilkinson?

25 MS. WILKINSON: Yes, your Honor. But first, I believe

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1 that's under (c).

2 MR. JONES: I'm sorry. You're correct. It is under
3 (c). I'll come back to it.

4 THE COURT: These -- all right. Photographs taken at
5 the Noble County Jail.

6 MR. JONES: With the respect to the Government's

8 response, your Honor.

9 THE COURT: All right.

10 MR. JONES: With respect to (c) --

11 THE COURT: Now, there is, you know, an objection by
12 the co-defendant to the production of the tapes concerning him.
13 And that's, as I understand it, consistent with Judge Alley's

15 MR. JONES: Yes.

16 THE COURT: Which is -- and I don't intend to modify
17 that.

18 MR. JONES: I was going to say, I'm not asking for
19 those now. We have the 302's; and if there's something there
20 that we think is material, we'll address the Court with due

22 THE COURT: Right. And vice versa, they are not going
23 to go either way as Judge Alley directed.

24 MR. JONES: With respect to (c), your Honor, I believe
25 that brings us to the mug shots of the defendant at the Noble

1 County Jail and the 35-millimeter prints.

2 MS. WILKINSON: Your Honor, I believe we're trying to
3 obtain them. I can't tell you where we are in the process
4 right now, but we are trying to obtain them. We have already
5 provided copies of those photographs. I believe Mr. Jones is
6 just asking for the actual --

7 THE COURT: When you say "locate," you're talking
8 about the negatives being located?

9 MS. WILKINSON: Your Honor, I was just handed a note
10 that they are actually here in Denver and we're printing the
11 negatives. We do have them, and we'll turn them over to the
12 defense as soon as they are printed.

13 MR. JONES: They are at MotoPhoto, your Honor.

14 THE COURT: Okay.

15 MR. JONES: Your Honor, on page (d) -- I'm sorry, page
16 8(d), the principal problem that we have here is that the
17 Government does not admit, nor deny, whether these items have
18 been produced completely and they do not identify where they
19 are produced with a 1B number.

20 THE COURT: I'm -- I'm not tracking with you here.

21 MR. JONES: Well,

22 THE COURT: Item -- you're talking about (d) at page
23 8?

24 MR. JONES: Yes, sir.

25 THE COURT: Item 1A? Is that --

1 MR. JONES: Yes, sir, which starts with 1A, I believe,
2 or books and papers, and (a) as signed by the defendant, (b) as

o b t a i n e d f r o m t h e
d e f e n d a n t . (c) - -
i n o t h e r w o r d s ,
l (a)

4 through 1(w) with, of course, the exception of the ones
5 withdrawn, which I believe were (d), (j), (k), (l), (m), (o),
6 (q), (t), and (u). And our concern there is that the
7 Government does not admit or deny whether those were
8 produced -- were produced and they do not identify where they
9 are produced with a 1B number.

T H E C O U R T : W e l l ,
w e ' r e a d d r e s s i n g
t h r e e c a t e g o r i e s o f

11 documents and objects here. Right?

12 MR. JONES: No, sir. At this time, I'm only
13 addressing 1(a) through (w).

14 THE COURT: Oh. All right. Books, papers and the
15 like. The response is more -- yeah. Okay. I'm with you. But
16 there are three -- there are three types of such documents
17 under the rule as the Government responds. But as I understand
18 your response, Ms. Wilkinson, this is -- you produced
19 everything you had?

20 MS. WILKINSON: That's correct, your Honor, under all
21 three of these categories.

22 THE COURT: Under all three categories.

23 MR. JONES: Excuse me.

24 THE COURT: Now, your question was --

25 MR. JONES: That was one of them. The second question

1 was --

2 THE COURT: How they are identified by a 1B number.

3 MR. JONES: Well, are they in the 1B so we can find

4 them? I mean to produce them, hundreds of thousands of sheets

5 of paper, I think under -- our point was that under the Ollison
6 case, that they are required to tell us where these items are,
7 to give us the 1B numbers.

8 THE COURT: Well, are they all in 1B?

9 MS. WILKINSON: Most are in 1B, your Honor. Some are
10 1A, but they are identified. Or they are 302's. It depends on
11 how you read this. I don't know if you go to (r), any and all
12 documents or other tangible objects obtained from Elliott's
13 Body Shop in or around Junction City, Kansas, those are items
14 on the 1B list. The defense has reviewed them. We provided
15 copies. I guess he's asking us to list for him -- to go review
16 all the 1B and say which one relates to those topics, and we
17 would object to that.

18 MR. JONES: I think that's what we are asking because
19 of the confusion on the 1B and in reliance on the Ollison case
20 which we cited, we are -- as we read Ollison, they can't just
21 dump it on us and say, Over here in these 2500 boxes. They
22 should identify by 1B number where these items are. That's
23 what we're asking for.

24 THE COURT: In each category or what?

25 MR. JONES: Yes, sir.

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1 THE COURT: Well, your request is denied. You know,
2 you've got adequate resources to do that yourself.

3 MR. JONES: Your Honor, item -- items on page 12
4 beginning with 2, they are labeled at the top, Telephone
5 Records of Defendant, Modified Request. Here is what we
6 propose to the Government as a way to resolve this dispute and
7 to save their time and sort of shift the burden over to us.
8 What we ask was that the Government's phone record database,

9 which is a kind of a computerized brain of the phone numbers of
10 many different individuals, be furnished to us so that if we
11 had their database, then we would simply put it into our
12 computer equipment and it would print off all the phone records
13 that we need.

14 The Government's first response to that -- and we
15 dealt with Mr. Mackey in that respect -- was that we could
16 prepare our own database from the computer disks of the phone
17 summaries they provided for us. We've already done that, but
18 the problem is that our database is limited to the following
19 individuals: Tim McVeigh, Terry Nichols, Michael Fortier,
20 James Nichols, Kevin Nichols, Bill McVeigh, and various motels.
21 Now, in addition to those individuals, there are dozens of
22 other people and institutions or businesses whose phone records
23 the Government has, and they have a database for them.

24 For example, from the material that we have received,
25 it appears that the Government has, for example, the phone

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1 records of David Millar's phone number which are not produced
2 for us. But from the material that we saw, we could identify
3 that they had those records. So on their database, they
4 entered David Millar's phone records, but we don't have David
5 Millar's phone records so we can't enter it.

6 The second reason that was given to us was that, well,
7 there could be a lot of inaccuracies and we would have the same
8 problem that we had with the original records on the -- what I
9 call the spotlight credit card, also known as the Darrell
10 Bridges debit card and the Government did not want to be caught
11 in what we call an Oklahoma Wewoka switch, where they gave us
12 something and then we came back and said it was inaccurate.
13 Well, we view that as an issue.

14 We're prepared to accept any inaccuracies in that
15 database for the purpose of doing our own analysis of the phone
16 records. And if they are inaccurate, they are inaccurate to
17 both sides and what this is is really more an investigation
18 item than it is the preparation of a specific exhibit.

19 We need the database to study the patterns and themes
20 and geographical locations of the calls being made. For
21 example, there is a suggestion in some of the materials we
22 received that there is a strong pattern of calls between an
23 individual that lives in the state of Arkansas and an
24 individual who lives in the state of Oklahoma. So what if
25 there are one or two mistakes in that database? It's not going

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1 to prevent us from discovering the pattern.

2 Then we were told that the Government would create
3 phone summaries for anyone that we gave them the name for and
4 that we could add those to the database. That would be great
5 if it worked that way, but it doesn't work that way. We still
6 do not have as of this morning accurate phone summaries of all
7 people, Tim McVeigh and Terry Nichols, nor do we have the
8 actual phone records for Tim and Terry, not to mention everyone
9 else's, to prepare our own summary, even though we have been
10 asking for them for 11 months. When we brought this up to the
11 Government, their response was, well, okay, tell us the 1A and
12 1B numbers and we will copy them and produce them to you.

13 Well, we did that just as they asked us to do. We
14 wrote -- actually, Ms. McLaughlin wrote a two- or three-page
15 letter specifically listing each phone record by 1A or B number
16 in response to their suggestion of how to proceed. The
17 Government's response was -- and it's recorded in their

18 correspondence -- that we requested too many phone numbers and
19 90 percent of what you requested is irrelevant. Well, 75 to
20 80 percent of what we requested were the phone records of
21 Mr. McVeigh, Mr. Nichols, Mr. Fortier and other principal
22 persons identified in this case. 25 percent of the requested
23 items were phone records which the Government did not identify
24 on their index.

25 So after we wrote that letter, they said they would

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1 review all the phone records or have them available for us to
2 review on November 11. Well, on November 11, we appeared and
3 only the 1B numbers were produced that day. We still haven't
4 seen those that are in the 1A category, which is about a third
5 of the total.

6 On November 12, Ms. McLaughlin returned and waited an
7 hour and a half for the Government to open the doors of the
8 room where the records were located, and records were
9 eventually opened. But we still don't have all of those phone
10 records, and I think it's fair to say that in this case, phone
11 records are incredibly important to the Government and they are
12 certainly -- if somewhat less important to the defendant, they
13 are still crucial in preparing our answer to the Government's
14 arguments and to analyzing the phone records of individuals
15 that we think are relevant to this case.

16 All of that is my way of bringing it down to saying
17 that in -- that we simply ask them if you'll give us your
18 database, we'll put it in our computer and we won't have to
19 mess with all of this paper because you've got the database.
20 Otherwise, you have to give us all the raw records and then we
21 have to construct our own database from them.

22 THE COURT: Well, let me -- as I understand this

23 response, there are -- well, two categories, obviously.
24 There's the Darrell Bridges card, and we addressed that at an
25 earlier hearing on a different motion. And there were problems

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1 with respect to the FBI summary there and that was going to be
2 looked at.

3 Now, this answer says that the Government has
4 obtained -- it says to me the business records directly from
5 the phone company in a computerized database of some sort. And
6 then there are all of these other records, so the first thing
7 was I thought that an effort was going to be made to straighten
8 out the FBI summary.

9 MS. WILKINSON: That was made, your Honor. Perhaps
10 Mr. Mackey should address this since he's been handling all the
11 phone records.

12 MR. JONES: If I may, perhaps Ms. McLaughlin could
13 respond for us. I think she and Mr. Mackey are really the
14 people who have been working on this.

15 THE COURT: Okay.

16 MR. MACKEY: Thank you, your Honor. In keeping with
17 the theme set this morning; that is, looking ahead to getting
18 this case ready for trial, one big picture point needs to be
19 made. I would expect and I've advised each of counsel for
20 Mr. McVeigh, Mr. Nichols that at the time of the trial, the
21 Government will offer and rely in substantial part upon records
22 generated by the Darrell Bridges debit card.

23 In very secondary part, in fact in a part so small I
24 could put it in my briefcase, we'll rely upon more traditional
25 non-debit card phone records. And that's how this case is

1 going to shape up when it becomes -- when it comes to trial in
2 terms of the telephone evidence. So the focus, your Honor, I
3 think has to be on the Bridges records.

4 There has been no challenge to the accuracy of the FBI
5 summary of the Darrell Bridges account.

6 THE COURT: Well, there was certainly confusion here
7 in this courtroom when it was discussed and testified about.

8 MR. MACKEY: Because, Judge, the confusion was about
9 non-Bridges telephone records. The only records --

10 THE COURT: I don't know. I remember an exhibit and
11 that it was -- there were deficiencies in the exhibit brought
12 to our attention at the time of the cross-examination.

13 MR. MACKEY: Judge, the actual -- the history begins
14 before the Court was designated in this case when we had a
15 meeting, we talked with defense counsel about what about these
16 voluminous records, how can we expedite the production. The
17 question at the time was made well, if you generate summaries
18 of telephone records, give us those summaries. We know under
19 the law, the Government is not required to produce those or to
20 make them or to produce them if they are not going to be
21 Government exhibits. We did that with respect to a number of
22 designated individuals and produced those in January of 1996.
23 Those are persons other than Darrell Bridges. Those were the
24 only records that were challenged during the suppression
25 hearing in June, six months later, about their accuracy.

1 Nothing was challenged about the Darrell Bridges.

2 Now, since then, again, Judge, just to give a status
3 report, if you will, I have met as recently as August of this

4 year with representatives of both teams and with the FBI person
5 responsible for producing the Darrell Bridges summary. And in
6 a lengthy meeting, after the time that we had produced all of
7 the raw data, we discussed firsthand through the witness
8 exactly what methods the FBI used to produce that summary of
9 the Darrell Bridges account. I can represent to the Court I've
10 been told by the Nichols team, for example, that on certain
11 conditions, they expect they will be able to stipulate. We've
12 not advanced that far with the McVeigh team, but we're
13 continuing those discussions.

14 So once again, those two categories brings us back to
15 the point of discussion; there's been no challenge to the
16 accuracy of the Darrell Bridges summary.

17 MR. WOODS: May I just clear up one issue and I think
18 the Court is aware of it. Mr. Mackey may be overlooking that
19 dispute on the Darrell Bridges phone records that did not
20 distinguish between a connected call and ringing call.

21 THE COURT: Yes. This went to who was in the house --

22 MR. WOODS: Yes, your Honor. We've --

23 THE COURT: -- in Herington, Kansas?

24 MR. WOODS: We've been working on that.

25 MR. MACKEY: Yes, your Honor. That was not a Darrell

1 Bridges record. That was a record of activity at the Terry
2 Nichols residence.

3 MR. WOODS: But the Darrell Bridges records also have
4 that dispute in them and the Court is correct that was the
5 difference in the dispute over the Bridges card.

6 MR. MACKEY: That's the state of the record. Let me
7 fast forward to where we are right now, Judge. I have worked

8 with Ms. McLaughlin and we have decided the best method to get
9 full disclosure to the defense is make all of those records
10 available to the defense. And so a room has been set aside in
11 this building -- or in the Federal Building for a review of all
12 the telephone records so that they can make an isolated,
13 focused, defense-oriented review of any phone record they want
14 to look at.

15 THE COURT: When you say "the records," what are you
16 talking about?

17 MR. MACKEY: It's just like a phone record you would
18 get for your phone bill. It's whatever record we got from the
19 phone company. If we got that in hard copy, that's what we
20 have in the exhibit room. If we got that by way of
21 computerized disk, that's what we have in the exhibit room.

22 THE COURT: Now, has the Government created its own
23 database from those records for purposes of the summaries?

24 MR. MACKEY: We have -- yes, we have downloaded much
25 of that information; not all of that for -- for our work

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1 product analysis and can generate -- as we have produced to the
2 defense before -- individual summaries of individual persons.
3 We have committed in a letter as recently as last week that we
4 will produce summaries that, again, we're not likely to
5 offer -- in fact, almost surely will not offer in our case in
6 chief for eight individuals and our categories of persons that
7 the defense has requested.

8 THE COURT: So, you know, you've obtained, as I take
9 it, from the carrier companies the service companies, the -- a
10 great mass of telephone records or a lot of different numbers,
11 a lot of different people. And that's all available?

12 MR. MACKEY: Right.

13 THE COURT: Now, the format in which it is available
14 is, in part, on a computer and, in part, printouts?
15 MR. MACKEY: Well, yeah. The printout would simply be
16 a report requested from that computer database. It's the pool
17 of information that's been downloaded and we say Mr. Computer,
18 tell us what you know about the Terry Nichols home phone number
19 and it'll generate a printout that's peculiar to that
20 particular person or time period. And those are the kinds of
21 guiding principles, if you will, that we've tried to use in our
22 discussions. What's important to the defense, give us those
23 persons and we'll generate those specific summaries and
24 Ms. McLaughlin and I have agreed there's those eight
25 individuals that are top priority and those are the ones that

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1 we are producing. And borrowing upon the experience in June,
2 Judge, I was -- the FBI are making the careful evaluations to
3 ensure that those summaries, once produced, are accurate.

4 THE COURT: All right. Well, Ms. McLaughlin, are you
5 going to respond to this?

6 MS. McLAUGHLIN: Yes, your Honor. First of all, let
7 me respond in the order that Mr. Mackey addressed the items.
8 We haven't made any challenges to the Bridges phone records as
9 of this point and the simple reason is because we -- the
10 background records that they used to create the Bridges summary
11 are massive. We've had an expert working on the background
12 documents for a couple of months just to produce our own
13 Bridges summary so we can then compare it to the Government's
14 to verify the accuracy of their summary. And Mr. Mackey will
15 agree I believe the Government has spent thousands of hours
16 just on the Bridges summary, preparing it.

17 Also, in reference to the room set aside to review

18 records --

19 THE COURT: What are you saying? You don't know

20 whether you're going to challenge it or not?

21 MS. McLAUGHLIN: That's correct, your Honor.

22 THE COURT: When are we going to know this? What does

23 it take? I'm -- you know, this material, I would assume, is

24 going to be submitted under Rule 1006 and we want to get in a

25 position to do that.

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1 MS. McLAUGHLIN: I understand that, your Honor.

2 And --

3 THE COURT: Well, what do you need that you don't

4 have?

5 MS. McLAUGHLIN: We're working on preparing our own

6 Bridges summary at this point.

7 THE COURT: What do you need that you don't have

8 available?

9 MS. McLAUGHLIN: Time. That's all. In reference to

10 the Bridges summary.

11 THE COURT: All right.

12 MS. McLAUGHLIN: And then in reference to the other

13 summaries and the database, we need the databases Mr. Jones

14 stated to illustrate to the defense the different themes and

15 patterns.

16 THE COURT: What database are you talking about?

17 MS. McLAUGHLIN: The one prepared by the Government

18 where they received all the raw phone records, the physical

19 records from all the different phone companies and then they

20 took those phone records and they look just like the phone

21 records you receive each month and they took these and typed in

22 the phone numbers, the times they were called, the dates and
23 the duration, and they input those records into a database. We
24 can do the same thing after we make copies of the records
25 while -- when the records are in this common area, common room,

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1 we can make copies of them and then we can send them to an
2 expert or a clerk to data entry all the phone records. That's
3 going to take many, many hours and it's -- I don't think we
4 should waste our time and resources when they have it in a
5 database.

6 They responded that it's their work product, but I
7 suggest that the simple data entry of the phone numbers and
8 times and numerals isn't work product. It's how they use the
9 database, how they obtain records and reports from the
10 database. As Mr. Mackey stated, you have this database and
11 then you tell it to -- you tell the computer to pull up
12 everything it knows about one particular phone call, it gathers
13 records from five or six different phone companies and produces
14 one report. That's work product. The database isn't. And
15 that's what we want is the database so that we can prepare our
16 own reports.

17 THE COURT: Well, I didn't understand that the
18 Government had loaded everything into a database. Maybe I'm
19 misinformed. Mr. Mackey, straighten this out for me. I'm
20 becoming a little irritated.

21 MR. MACKEY: I understand. Judge, not every telephone
22 record received by the FBI has been downloaded into the
23 computer database. It is partial.

24 THE COURT: All right. Now, what's your objection to
25 their using that database? None? Done.

1 MS. McLAUGHLIN: Thank you, your Honor.

2 MR. MACKEY: I'm trying to formulate the objection,
3 Judge, and part of it has to do with the experience in June
4 and, again, Mr. Jones addressed that. We produced a summary
5 and then there were challenges made to it as to a wide range of
6 evidence. I mean, if we get the caveat, your Honor, that they
7 are not going to point to an inversion of numbers or an absence
8 of a particular entry in that database as a reason why,
9 suddenly, the rest of the Government's evidence is
10 inadmissible, then we're prepared to turn it over.

11 THE COURT: How can you extort some kind of a promise
12 like that? There's either -- if there are defects in there, we
13 ought to know about them.

14 MR. MACKEY: But they are not the records, Judge.
15 That's the whole point.

16 THE COURT: You provide the database. That's an
17 order.

18 MR. MACKEY: Yes, sir.

19 MS. McLAUGHLIN: Thank you, your Honor.

20 MR. JONES: Your Honor, I was looking at paragraph 3
21 and I believe that the Government's response --

22 THE COURT: Page 14?

23 MR. JONES: Yes, sir.

24 THE COURT: All right.

25 MR. JONES: That's been resolved by the Government's

1 response.

2 THE COURT: Okay.

3 MR. JONES: 4(a), (b), (c), has been withdrawn by the
4 defendant.

5 5(a) -- well, 5(b), (c), and (d) has been resolved
6 because the Government says they will provide it. And I'll
7 repeat again that's 5(b), (c), and (d). And let me just look
8 at (a) for a moment. I think that's been resolved, also. Yes.
9 That's been resolved. The Government challenges our standing
10 to get the mail cover and much as it pains me, they may be
11 right. We'll withdraw it.

12 THE COURT: All right.

13 MR. JONES: That brings us to item (e), which we
14 requested reports, communications between the Government and
15 certain Federal Express, UPS, DHL and/or the United States
16 Postal Service. The Government objects to that. If I can find
17 their objection here. It's the bottom of page 15 and 16. I'll
18 withdraw that.

19 THE COURT: All right.

20 MR. JONES: (f) has already been previously been
21 withdrawn. Now, I'm on item 16 on page -- I'm sorry -- item 6
22 on page 16 of the Government's response.

23 THE COURT: Yes.

24 MR. JONES: The Government says that they are not
25 aware of any documents responsive to this request and in their

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1 possession that have not already been made available. I'll
2 accept their response, your Honor.

3 THE COURT: All right.

4 MR. JONES: That brings me to number 7 at the bottom
5 of 16. Your Honor, one of the things we asked for here, there
6 was a report in the press -- and I don't want to get into

7 privileged information, but let me just say that part of this
8 request is based upon information given to us by the client,
9 that Mr. McVeigh during the questioning in the Noble County
10 Jail by the FBI was shown some photographs and we asked to see
11 the photographs that were shown to him.

12 The last two days -- or about two days ago, Mr. Mackey
13 and Mr. Connelly advised us that they had interviewed the
14 agents and I suppose that's kind of a supplement to their
15 response here -- and while the agents didn't deny that
16 photographs were shown, as I understand it, it's impossible to
17 tell which photographs were shown if, in fact, any. That being
18 the case, I think we'll just have to rest on the Government's
19 response.

20 MS. WILKINSON: Your Honor --

21 THE COURT: Yes. Ms. Wilkinson.

22 MS. WILKINSON: I don't believe that is correct. I
23 believe the agents said they did not recall showing any
24 photographs to Mr. McVeigh.

25 MR. JONES: All right. I didn't mean to misstate it.

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1 The point I was making, they did follow through on it.

2 THE COURT: Have you provided the best description of
3 the photographs that's available to you?

4 MR. JONES: Yes, sir.

5 THE COURT: All right.

6 MR. JONES: So I'll accept their response.

7 THE COURT: All right.

8 MR. JONES: That brings me to item 8, which is
9 searches and seizures. That's been resolved by the
10 Government's response.

11 That brings me to item 9 on page 18. Item (a), the

12 Government says that none other than what has been produced.

13 (b) and (c) were withdrawn.

14 Item (d) is important to us, your Honor. We have seen
15 this item -- it's crucial to the defense case and I think
16 crucial to the Government case. I won't identify it further
17 except to say that it's a video image of the defendant at a
18 particular location at a particular time, but I'll hasten to
19 say because there's been so much speculation about it that it's
20 not a video image of anything in Oklahoma, but in another
21 location and I won't identify it further unless the Court
22 wishes me to.

23 What we simply seek here is access to the original
24 videotape and the type of equipment that was used to record the
25 tape.

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1 Now, the type of equipment is private property in the
2 installation -- which is a restaurant -- where it was recorded.
3 The image of it is -- is not the best quality, but fairly good.
4 There's another part of it where the image is a little blurred.
5 The Court authorized, pursuant to an 848, that we retain a
6 certain expert to assist us in those matters and we sent that
7 expert copies. The expert says that the copies are -- he can't
8 tell how many generations they are. That he needs physically
9 to inspect the original and the equipment. I don't know
10 whether the Government has the equipment. It may be at the
11 private location. If it is, it's beyond the Government's
12 control and we'll just have to work it out with them. And I'm
13 sure that can be worked out, but we would like to examine --
14 have our expert come to wherever it is and examine the original
15 and put it on some equipment that he has so that he can answer

16 our questions about it. And Mr. Wyatt would like to supplement
17 that.

18 MR. WYATT: Your Honor, if it please, the reason that
19 we need the original tapes is because -- and the identification
20 of the type of equipment is that the type of equipment he'll
21 have to use and provide for his own review will be dependent
22 upon the type of equipment used at the scene where the
23 videotape was done because there are different types of
24 commercial grade equipment. These generally take still
25 photographs as opposed to a true videotape. There will be a

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1 series of still photographs and one tape may last 120 hours.
2 The review of it then has to be done in a slow motion -- or not
3 even slow motion but freeze frame, one-by-one review, simply
4 because you cannot watch it in sequence. It goes too fast even
5 with the slow motion.

6 Additionally, the -- the Government -- excuse me --
7 the defense would accept, I believe, your Honor, digitized
8 copies and I'm sure that the Government's experts know what
9 those are, but that is a type of copy that is a virtual -- it's
10 almost identical and is not a generation made from a video
11 cassette recorder and we would advise the Court we would accept
12 a digitized copy if they have those, as well.

13 MR. JONES: I don't want to mislead the Court, though,
14 or let the Court think that's the only issue. As Ms. Wilkinson
15 said earlier and I think I said, there's been 450 to 500 hours
16 of videotapes that have been provided. Most of these
17 videotapes, your Honor, are either from locations in Kansas or
18 the Junction City and perhaps Herington area and the Oklahoma
19 City area and then videotapes at various installations such as
20 an ATM or turnpike or the service station along Interstate 35

21 and perhaps other locations. That's been a major problem for
22 us because as we previously advised the Court, you can't even
23 watch it in real time. I mean, if you were to watch it in real
24 time, it would be 500 hours of some attorney's time and then
25 somewhere, there has to be some priority or decision made on

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1 what you will do and what you won't do.

2 On the other hand, because the Government and the
3 defense see the facts in this case so diametrically different,
4 we felt that it was our duty to review them. But the problem
5 is that some of them are very blurred, the copies we have. The
6 lighting is bad and unless you see the original, in many cases,
7 you can't really tell what's there. That's not the
8 Government's fault. I mean, I can understand why they are not
9 giving us the original and retain the copies. So we then said
10 well, the Government has got 302's because they had somebody
11 sit down and review all these tapes, so let's read their 302's
12 and see if they found anything relevant and perhaps if they
13 didn't, we'll put it aside. Of course, what they think may be
14 relevant and what we think may be relevant from the defense
15 standpoint are two different things. I mean, clearly, if they
16 say something is relevant from the prosecution standpoint, we
17 want to look at it, but that which is mitigation or
18 exculpatory, they may not even see as relevant, vice versa.

19 So what we did was we prioritized the tapes we wanted
20 to see. And we can give that list to them and some of them are
21 identified here. Let our expert come here and view the
22 original of the tape and if he needs to look at it on his
23 equipment, then let the FBI bring it to him and in New York,
24 and stay there with it so that they maintain the custody on it.

25 Whatever is necessary to maintain the custody and integrity of

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1 it, we don't have a problem with. But it's not either one of
2 our fault. Just poor copies.

3 THE COURT: Well, how many are you talking about? I'm
4 confused. I thought you were talking about a particular one.

5 MR. JONES: Well, that's the most important.

6 THE COURT: Let's deal with that first.

7 MR. JONES: All right. That's the most important one.

8 THE COURT: Now, Ms. Wilkinson, do you know what he's
9 talking about?

10 MS. WILKINSON: I believe I do, your Honor. I believe
11 it's a videotape from a McDonald's of Mr. McVeigh.

12 THE COURT: And do you have that?

13 MS. WILKINSON: We have the videotape. We provided
14 that to the defense long ago.

15 THE COURT: In a copy.

16 MS. WILKINSON: Because I understand we're trying to
17 go through what the Government has produced. I'm unaware the
18 defense has made the request to us to have the expert review --

19 THE COURT: In whatever is the most original form.

20 MS. WILKINSON: Right. I will try and make
21 arrangements for that.

22 THE COURT: All right.

23 MS. WILKINSON: However, I do not have the equipment
24 McDonald's used to record it. And Mr. Jones is free to go to
25 McDonald's and check out the equipment. This is not a request,

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1 your Honor, that we ever received before.

2 THE COURT: Well, let's don't worry about that.

3 You're going to accommodate this request now?

4 MS. WILKINSON: Of course.

5 THE COURT: Okay.

6 MR. JONES: Could we -- that's fine and we'll
7 approach --

8 THE COURT: And then if you identify others, I'm sure
9 you'll get the same accommodation.

10 MR. JONES: We have a list of about 20. If we could
11 just do those and if we need to do those, we'll worry about
12 those when we complete the 20.

13 THE COURT: All right. And then of course, any use of
14 it beyond that in terms of using it on other equipment and so
15 forth would have to be monitored and agreed to so that we don't
16 have a problem with respect to its element of admissibility if,
17 for some reason, it becomes an exhibit.

18 MR. JONES: On item (e), your Honor, the Court has
19 told us that the garage tape of the Alfred Murrah Building did
20 not work that morning and, therefore, there's no visual images
21 on it and we've made the inquiry and perhaps we could -- were
22 there any other cameras in the building that recorded anything
23 that morning or previous days?

24 THE COURT: Other than the garage? Is that --

25 MR. JONES: Yes.

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1 THE COURT: -- what you're saying?

2 MR. JONES: Or if the garage camera worked on a
3 previous day. The materiality, in the 302's that have been
4 provided to us, there are a number of people who claim to have
5 seen Mr. McVeigh or people that resembled Mr. McVeigh in this

6 building at various times. And we dispute that. And we want
7 to see the tapes, so if there's a tape that picks it up, we can
8 look at it and prove that it's not him.

9 THE COURT: Well, I understood your response to be
10 that there aren't any, but is that right?

11 MR. JONES: Is -- I'm sorry.

12 MS. WILKINSON: That's my understanding, your Honor.
13 We turned over all videotapes. There's no videotapes of
14 Mr. McVeigh on April 19, 1995.

15 THE COURT: Well, are there --

16 MS. WILKINSON: In the garage or in the area of the
17 Murrah Building.

18 THE COURT: Apart from whether it's of Mr. McVeigh,
19 are there videotapes of the day?

20 MS. WILKINSON: Yes, your Honor. We've disclosed to
21 Mr. Jones a videotape of the Ryder truck that fits the
22 description of the Ryder truck rented at Elliott's. That's
23 from the Regency Towers, which is down the block.

24 THE COURT: I think his request was within the Murrah
25 Building. Is that what your request was?

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1 MR. JONES: Yes. Because there's a half a dozen law
2 enforcement agencies --

3 THE COURT: I understand that. I don't need all that.
4 All I want the Government to respond to is whether you have any
5 videotapes from any cameras within the Murrah Building on April
6 19.

7 MR. JONES: There's another way to clear this up. If
8 the Government is not going to offer any testimony at the trial
9 that Mr. McVeigh was in the Murrah Building on any occasion
10 before April 19, then I don't need them. But if witnesses are

11 going to get on the stand and say well, I saw Mr. Mc --
12 THE COURT: That's a different thing. I'm not going
13 to ask them to stipulate factually to those things. The
14 question is are there such types --
15 MS. WILKINSON: I don't believe there are, your Honor.
16 THE COURT: You'll double check.
17 MS. WILKINSON: I will double check.
18 THE COURT: All right.
19 MS. WILKINSON: And we have turned over all the
20 videotapes we have so I just need to go back. All the
21 videotapes we've checked.
22 THE COURT: Yes. But I -- okay. But I think this
23 specific request is were there operating cameras within the
24 Murrah Building on the day in question for which you have
25 videotapes. Anywhere in the building. All right.

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1 MR. JONES: Actually, your Honor, I think we requested
2 prior to the day in question. There are reports from
3 witnesses --
4 THE COURT: Well, what days?
5 MR. JONES: It's page -- top of page 19.
6 THE COURT: What days.
7 MR. JONES: August 1, '94, through April 23, '95.
8 THE COURT: Well, that's a lot of material.
9 MR. JONES: I don't know that there are any
10 videotapes, but they gave -- we got those dates from 302's they
11 gave us of people that claim to have seen him in the building.
12 And it's also the dates of the conspiracy alleged in the
13 indictment.
14 THE COURT: Well, the question is you're asking for

15 any videotapes within the Murrah Building in any cameras there
16 for that period of time?

17 MR. JONES: From -- if there are any tapes, and there
18 may not be any. August 1, '94, to April 23, '95.

19 THE COURT: So you'll find out where cameras were and
20 whether there are such tapes.

21 MS. WILKINSON: If there are records to that effect,
22 we will try and track them down and see what we can learn.

23 THE COURT: All right.

24 MR. JONES: All right, your Honor. (f) has been
25 resolved as indicated there. (g) is a key issue. And again,

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1 this is a -- an issue with respect to saving time. The
2 Government has furnished to us tapes of court-ordered
3 electronic surveillance and wire taps and bugs. We --

4 THE COURT: I'm sorry. What number are you on?

5 MR. JONES: I'm sorry. It's page 19, number -- number
6 what -- 8(g). I'll read it.

7 THE COURT: I have it.

8 MR. JONES: You have it?

9 THE COURT: Yes.

10 MR. JONES: Thank you. We would like -- the
11 Government surely has transcripts of the conversations of
12 the -- is this something filed under seal? No. Of Michael and
13 Lori Fortier, Jennifer McVeigh, William McVeigh and Mickey
14 Frasier. And we ask for the Government to furnish us their
15 transcripts simply to save the expense of our having
16 transcripts prepared.

17 THE COURT: Well, your response? I'm not clear what
18 your response.

19 MS. WILKINSON: Your Honor, I believe we informed the

20 defense counsel months ago we had draft transcripts of Michael
21 Fortier's electronic surveillance and we would provide those to
22 them upon receipt of written confirmation that they would not
23 use those draft transcripts as cross-examination material at
24 trial, which I think is regular procedure when you provide
25 draft transcripts, and we have not received that representation

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1 from Mr. Jones.

2 MR. JONES: Well, I apologize that they haven't. I'd
3 be glad to give it right now. If we cross-examine on them on
4 anything, we'll have our own transcripts, but I was looking for
5 something that would screen out the irrelevant so we could
6 focus on the relevant.

7 THE COURT: All right. You'll provide them then?
8 Right, Ms. Wilkinson?

9 MS. WILKINSON: Yes.

10 THE COURT: Mr. Nichols, the same as --

11 MR. WOODS: You received it over a month ago. Is that
12 the reason we didn't get it, because Jones didn't comply?

13 THE COURT: You're going to give it to both -- counsel
14 for both defendants?

15 MS. WILKINSON: Right. As long as -- yes. As
16 Mr. Woods says, they have certified, so that's not a problem.

17 MR. JONES: May I inquire of the Court, or counsel
18 through the Court for the Government, are the only transcripts
19 draft transcripts or whatever form they are in that you have
20 are just of Mr. Fortier?

21 MS. WILKINSON: I'm not sure if we have draft
22 transcripts of the others. I believe we do of Jennifer
23 McVeigh.

24 MR. JONES: Can the same agreement cover whatever
25 draft --

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1 MS. WILKINSON: Of course, any draft transcripts will
2 be covered by your request.

3 THE COURT: You know, I don't think you need the
4 agreement because when it's only a draft transcript, then the
5 accuracy hasn't been established. Obviously, the tapes are the
6 evidence of what the statement was. Best evidence. And I
7 don't allow lawyers to cross-examine on some unagreed or
8 unauthenticated transcript of the tape. You don't need
9 agreements for things like that. I'm here. Will be here. I
10 hope. Proceed.

11 MR. JONES: Thank you, your Honor. Your Honor, I'll
12 let Mr. Wyatt address the next issue, if I may.

13 MR. WYATT: Your Honor on pages 20 and 21, there are
14 requests for information concerning the inert explosive device
15 which was a training device. I'm not saying it was an
16 explosive at all. I believe Ms. Wilkinson has --

17 MS. WILKINSON: Are you bypassing number 9? Or is
18 that -- have we answered all those, all the rest of them?

19 THE COURT: I think we're on 10 now.

20 MS. WILKINSON: I just wanted to make sure they have
21 addressed all of them.

22 MR. WYATT: I believe we've addressed number 9.

23 MS. WILKINSON: Excuse me.

24 MR. WYATT: Your Honor, on number 10, what we are
25 requesting is information that regards the discovery or

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1 location of any ammunition or any type of explosive device,
2 training or otherwise. We recognize the Government's statement
3 that this training device was inert and was not armed, but the
4 question is from our expert's standpoint, was that device ever
5 an armed device? We don't know, but if it was, there's a good
6 possibility based on trace residue analysis that that
7 particular item could have left contamination. The same goes
8 for any ammunition because black powder, which is contained in
9 most ammunition, has nitroglycerine in it. There are findings
10 of nitroglycerine here.

11 THE COURT: You don't have to go through all that.
12 What you're asking is whether these inert devices were ever
13 active or capable of being activated.

14 MR. WYATT: Correct, your Honor.

15 THE COURT: Actually, you're talking about spent;
16 right? Those things that have already been spent, whether it
17 was the explosive charge in them --

18 MR. WYATT: Well, they said that it was an inert
19 training device.

20 THE COURT: I got you.

21 MR. WYATT: I don't know --

22 THE COURT: Do you understand what's being asked,
23 Ms. Wilkinson?

24 MS. WILKINSON: I believe. I guess it's different
25 from what was asked in the papers. They are asking whether the

1 device at any point --

2 THE COURT: Yeah. Like a shell casing or something
3 like that.

4 MS. WILKINSON: Well, in terms of ammunition versus

5 inert device, I think those are two separate things.
6 Ammunition recovered, anything that we took possession of is on
7 the 1B list and they have seen.

8 Other things, if agents themselves were in the
9 building, had the ammunition, and left with that ammunition,
10 obviously, we don't have custody or control of that. We don't
11 intend to introduce any findings about nitroglycerin at the
12 scene for that very reason, so it's irrelevant as to the
13 Government's case in chief. In terms of the inert training
14 device, I couldn't tell you whether that device at any prior
15 time could have --

16 THE COURT: Check it out. I know sometimes they have
17 displays of something like, you know, a pipe bomb or something
18 that was used somewhere and how they have got -- it's been
19 disarmed or something like that. So I think it's just a
20 follow-up to what you mean by inert. Okay. You'll provide
21 that.

22 MR. JONES: Your Honor, with respect to number 11,
23 that probably would -- some of the same things as in the motion
24 relating to mass intelligence data and may we simply defer that
25 to the --

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1 THE COURT: Yes.

2 MR. JONES: -- hearing on that?

3 I believe 12 has been resolved by their response
4 except at the top of page 24, their response, your Honor, and
5 perhaps this is just a semantic difference. The sentence is,
6 We are not aware of any documents responsive to this request.
7 Typically, throughout the response, what the Government says is
8 we are not aware of any documents or tangible objects
9 responsive to this request. Maybe that's what was intended

10 here, but I was struck by the fact that tangible objects wasn't
11 mentioned.

12 THE COURT: I noticed that as well and had written
13 here "any tangible items" with a question mark. So --

14 MS. WILKINSON: I believe that was just a mistake on
15 our part, your Honor, and we're not aware of any tangible items
16 or documents.

17 THE COURT: Thank you.

18 MR. JONES: I believe 13 is resolved by the
19 Government's response.

20 THE COURT: Okay.

21 MR. JONES: Number 14, on response -- the Government's
22 response to 14(a) is that they have been provided. (b) is it's
23 withdrawn.

24 THE COURT: Yes. There's a mistake there in the
25 typing. That's shown as 13 and it ought to be 14 on page 27, I

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1 assume.

2 MR. HARTZLER: Right.

3 THE COURT: All right.

4 MR. JONES: Yes, sir. The list of the photographs
5 that the Government intends to use at trial, we asked source.
6 They have agreed to provide that. That's satisfactory.

7 I'm sorry. They will not provide the source. I
8 didn't read it carefully enough. The photographs that they
9 intend to use at trial, we asked to be given the source of who
10 took the picture. Was it the sheriff's office, FBI, ATF,
11 whomever. And it's my understanding they don't want to give us
12 the source.

13 THE COURT: Is that right?

14 MS. WILKINSON: I don't think -- that will be right
15 when we come to trial, your Honor.

16 THE COURT: You're going to give the source of
17 anything you're going to use as an exhibit, I trust.

18 MS. WILKINSON: Correct. It may not be -- photographs
19 differ, obviously, from other types of documentary evidence
20 that come in. You don't have to have a photographer come in
21 to -- to lay the foundation for the photograph depending on
22 who's going to do it. For example, at a crime scene
23 photograph --

24 THE COURT: It depends on how the photograph is being
25 used. If it's only being used to identify a scene, this would

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1 be testified to by the witness who says that's an accurate
2 portrayal of it at a given time, you're all right. But
3 otherwise, you may be required to authenticate it.

4 MS. WILKINSON: Most of the photographs, your Honor,
5 that we are going to use at trial and the ones we've collected
6 come in from the photographer with the -- the list of
7 photographs with a roll number and the name of the
8 photographer, the photographs we got from the local police
9 officer --

10 THE COURT: Let's do it this way. If you want a --
11 make a specific request for the source of any particular
12 photograph that's of interest to the defense.

13 MR. JONES: All right, sir.

14 THE COURT: And then it'll be crystallized as to
15 whether there's a problem.

16 MR. JONES: That's fine. Item (d), your Honor, I
17 recognize the Government may not know that yet, but we have to
18 somewhere in the record here in the discharge of our

19 responsibilities make a demand as to what's going to be shown
20 at trial, and I'm sure they don't know that today, but
21 nevertheless, we had to get it on record.

22 THE COURT: Well, that's what I'm talking about, that
23 there has to be an exhibit list at some point here.

24 MR. JONES: So the question there is when will it be
25 provided, but we don't have to address that issue today and --

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1 unless -- except there is a question here with respect to
2 experts.

3 MR. WYATT: There is a question with respect to
4 experts, and we can address that when we go over the
5 methodologies motion, your Honor, but I did want to reserve
6 that right now because there is a key issue.

7 THE COURT: Well, we're staying with this particular
8 motion right now. Narrow motion under Rule 16.

9 MR. JONES: We'll defer the discussion then because
10 the same item is in the methodology.

11 THE COURT: All right.

12 MR. JONES: (e) is withdrawn. The Government
13 represents that (f) has been provided. They objected to (g).
14 And we -- we'll resolve that. It's -- I'm satisfied. The
15 Government has objected and we'll withdraw it. (h) is
16 withdrawn. (i), I would like to reserve until we have the
17 hearing on the other matters in camera.

18 THE COURT: Okay.

19 MR. JONES: The same thing with (j). And (k), I
20 believe, has been resolved. On 1 -- I'm sorry -- (l), the
21 Government says that -- yeah. It said none withheld which are
22 material to the defendant and they deny the existence of

23 satellite photographs. That keeps reoccurring and I take their
24 representation that there are no satellite photographs, but
25 some of the 302's indicate there were. And I'm not sure --

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1 maybe it's our mistake, we're not making it clear -- I
2 interpreted the Government's response -- well, strike that.
3 I'll say what I was asking for. I was asking for one
4 of two things. Either pictures they have took from a satellite
5 of these some 20 sites or pictures taken prior to 9:02 a.m.
6 April 19 of those same sites.

7 THE COURT: By satellite?

8 MR. JONES: Yes, sir. That's --

9 THE COURT: The Government satellite?

10 MR. JONES: Well, there are some private satellites,
11 but satellites available to the -- yeah. Referenced in
12 1A-7814.

13 MS. WILKINSON: I'm sorry.

14 MR. JONES: That's a NASA satellite, 1A-7814. I have
15 had cases and there are some where the Government has gone to
16 NASA or to other private concerns to determine if on a given
17 day a satellite was passing by that might have taken a picture.
18 In this particular case, the 302's suggest that there were 20
19 sites that somebody asked about in Kansas and Oklahoma as to
20 whether a satellite flew over and took a picture.

21 THE COURT: At that time.

22 MR. JONES: At that time or at any time in there that
23 was relevant. And that's what I was asking for. Maybe they
24 didn't understand the request.

25 THE COURT: All right. Well, you understand the

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1 request now.

2 MS. WILKINSON: We do, and we're unaware of any
3 satellite photographs. We have checked.

4 THE COURT: All right. Thank you.

5 MR. JONES: Mr. Wyatt tells that 1A-7814 is described
6 as NASA satellites, but we can resolve that at the break and
7 see what it is. That's where we got it from.

8 (m) through (q) was withdrawn -- or are withdrawn.

9 The Government objects to (r), which was a list of gun
10 shows purportedly attended by Mr. McVeigh and Mr. Nichols from
11 January 1991 through 1995. We believe that they have such a
12 list; and again, we were simply trying to save time and not
13 construct our own list. There are hundreds of people that they
14 have interviewed concerning whether they were or were not
15 present. That's what makes us think they have it. Just a time
16 saving. But they may be right, it's -- strictly speaking,
17 we're not entitled to it.

18 THE COURT: Well, do you have such a list?

19 MS. WILKINSON: I'm not aware of such a list, your
20 Honor, but we may have a partial list where we tried to keep
21 track of the defendants' whereabouts. We would have to go back
22 and create this list.

23 THE COURT: No. I -- I think you're being asked for
24 what you have that fits in this general description.

25 MS. WILKINSON: I'm not aware of a master list of all

1 the gun shows attended by the defendants.

2 THE COURT: Well, you have a partial list?

3 MS. WILKINSON: Yes.

4 THE COURT: Will you provide that?

5 MS. WILKINSON: Sure.

6 THE COURT: Okay.

7 MR. JONES: (s) is withdrawn.

8 (t), they said access would be provided, and that's
9 resolved.

10 (u), we identified a -- a particular Government
11 document which we don't believe is generally available to the
12 public -- let me look here precisely at (u). (u), we
13 understand that it's entitled Arson and Explosive Incident
14 Reports, published by the BATF 1995. And they said in their
15 response prosecution does not have this. Let me just be sure
16 that that's correct. I wondered surely the Government has it.
17 And I -- that was --

18 THE COURT: Was this some kind of a publication?

19 MR. JONES: I think it's a publication, but I don't
20 think it's a public publication. I don't think you can buy it
21 from the Government Printing Office, but it purports to analyze
22 arson explosive incidents for the previous years or year in
23 this case.

24 THE COURT: Well, Ms. Wilkinson, you don't have it.
25 Do you know whether BATF or anybody has it?

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1 MS. WILKINSON: I don't know, your Honor. I wonder if
2 Mr. Jones is getting this from a media report or somewhere. I
3 mean, I would assume, knowing law enforcement, that they
4 publish general reports analyzing criminal incidents.

5 THE COURT: And make them go out to other law
6 enforcement agencies.

7 MS. WILKINSON: I don't see how it's relevant under
8 Rule 16.

9 MR. JONES: We learned of its existence through other
10 experts who say they routinely publish this and do send it out.
11 We're investigating certain incidents which occurred --

12 THE COURT: I ask -- ask the agency if they have it;
13 and if they have it, we can make it available. I don't see
14 any -- if it goes out to law enforcement people --

15 MS. WILKINSON: Your Honor, I've just been informed
16 that it's available to the public.

17 THE COURT: Okay. Where is it available?

18 MS. WILKINSON: I would assume if you write to the
19 ATF --

20 MR. JONES: Well, it's a public document. We'll take
21 responsibility for it.

22 THE COURT: All right.

23 MR. JONES: We understood it was not, but we'll pursue
24 it.

25 I believe we were on (v). The Government objects to

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1 this. What we asked for was access to samples of debris from
2 the Murrah Building which were buried in and around Oklahoma
3 City. That's an important request. The Government buried at a
4 site in Oklahoma County, I believe it is -- but Mr. Ryan can
5 correct me -- the debris from the Murrah Building.

6 THE COURT: You mean like just to dispose of it?

7 MR. JONES: I believe that's what they did. They
8 saved 7,000 pounds.

9 THE COURT: Uh-huh.

10 MR. JONES: The Court may remember that we asked
11 permission to view the site and -- but substantial -- as a
12 matter of fact, I think all matters of evidentiary value had

13 been removed from the Murrah Building. It was necessary to
14 delay the implosion, and the crater was covered up the day we
15 inspected the building or attempted to inspect it. We don't
16 want to go over and dig up the debris. That's ridiculous. But
17 there may be some items there that we'd at least like to spot
18 check and to be sure that there's nothing there that's of
19 evidentiary value in a scientific and forensic examination, and
20 that's all we were asking for.

21 THE COURT: Well, it's not clear to me what you're
22 asking. I -- you're talking about things that have been
23 covered over?

24 MR. JONES: Yes, sir. They were buried.

25 THE COURT: Well, how -- I don't understand the

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1 request. Is it --

2 MR. JONES: Well, we asked them --

3 THE COURT: They didn't tag everything before they
4 buried it.

5 MR. JONES: No. And, your Honor, we asked them not to
6 do it until we could get our experts there and --

7 THE COURT: All right. But it's been done.

8 MR. JONES: It's been done. And there may be some
9 core samples or material that we would like to just spot check.
10 I don't know the condition of the site other than through the
11 photographs, but we would at least like to have access to it.
12 Whether we do any digging or not, we can discuss later.

13 THE COURT: Well, I don't see how the Government can
14 respond to this unless it has some kind of inventory of what
15 was hauled off and buried or covered over, whichever.

16 MR. JONES: I don't know whether they have an
17 inventory or not, your Honor.

18 THE COURT: What process was used there? Can counsel
19 advise us?

20 MS. WILKINSON: Yes, your Honor. The day of the
21 bombing, the FBI and the local agents began collecting all the
22 evidence.

23 THE COURT: Sure.

24 MS. WILKINSON: Approximately May 5, the building --
25 after all the evidence was recovered, the deceased were removed

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1 from the building, and the agents were satisfied that the
2 complete evidence recovery had been done, the building was
3 imploded because of safety concerns. Three additional deceased
4 were removed after that point. Any additional evidence that we
5 could not get to because of the safety concerns were recovered
6 and then the building -- the debris, as Mr. Jones calls it,
7 which I believe is really just the actual portions of the
8 concrete, and the building were buried. I can't --

9 THE COURT: Some hauled away and some buried at the
10 site? Is that --

11 MS. WILKINSON: I don't believe any was buried at the
12 site.

13 THE COURT: It was hauled away and disposed of.

14 MS. WILKINSON: So to disturb -- I'm not aware of any
15 inventory, and I don't know how you would inventory it even if
16 you wanted to. I can't imagine --

17 THE COURT: Well, I think the answer is that it's not
18 feasible to do what you're suggesting.

19 MR. JONES: It may not be. And as I say, we didn't
20 have access to it, and that's why we raised it.

21 THE COURT: All right.

22 MR. JONES: We'll move on then. Your Honor, Mr. Wyatt
23 will address (x) and (z). (y) has been withdrawn.

24 MR. WYATT: Your Honor, with respect to the request in
25 paragraph (x), a number of the FBI 302's actually identify a

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1 document or an attachment to the 302 -- that's at the bottom of
2 page 26, your Honor -- they identify an attachment or a
3 document which was seized or obtained from a witness. We are
4 not asking for any 1A items which would include the field notes
5 or things of that nature. We only want the items which will
6 help us understand what the context of the 302 is. When they
7 say the following item is attached and we don't have that item,
8 you cannot read it in context, and that is what we're asking
9 for in paragraph (x).

10 MS. WILKINSON: Your Honor, we've already agreed to
11 provide it. It's been on the 1A inventory.

12 THE COURT: All right.

13 MR. WYATT: With respect to paragraph (z), your Honor,
14 there has been an objection or -- a dispute between the parties
15 as to the source of the evidence, and that is something
16 Mr. Jones and Ms. Wilkinson both addressed to the Court this
17 morning. However, there is a possible way to resolve this
18 quickly and that is that with each piece of evidence, it is my
19 understanding from previous cases, not this one, there is a
20 form -- an FBI Form FD-340B, which is a chain of custody form,
21 which would show, 1, where the item came from and who has
22 handled it in the interim.

23 Now, the Government has an objection apparently to who
24 has handled it in the interim as being some type of work
25 product, and we would dispute that to the extent it applies to

1 our expert analysis because the handling of those items can
2 impact the examination when you're talking about trace
3 explosive residues.

4 THE COURT: Are you talking about things that are
5 going to be offered in evidence --

6 MR. WYATT: Yes, your Honor.

7 THE COURT: -- and not everything else? With respect
8 to things that are going to be offered in evidence, this
9 information would be necessary.

10 MR. WYATT: With respect to those items offered in
11 evidence and certain items that we may designate that our
12 experts may need, your Honor.

13 THE COURT: Well, you should designate them. What
14 this is asking for, as I read it and as I think the Government
15 responded to it, you're asking for that kind of information
16 with respect to everything that's on the list.

17 MR. JONES: Your Honor, Mr. Wyatt is correct that we
18 certainly want those, but I myself drafted that one, and that's
19 what I intended. And the reason I intended -- your Honor is
20 correct -- for everything was the Government had some concerns
21 and we've discussed it this morning about this index showing
22 the source. Well, from my own experience in these cases, I
23 know that the FBI has this form which will show the source.
24 And then it's routinely on the outside of the brown envelope
25 that has the document in it, it'll say source, Jim Manspeaker,

1 received such and such, transmitted by.

2 And so I thought, well, rather than go through this

3 index and worry about this source, if we can just get a xerox
4 copy of these -- I believe their color is green -- green
5 sheets, then we would know the source of an item and whether it
6 came from Steve Colborn or Roger Moore or Tim McVeigh or
7 anybody else. And the reason we wanted all of them was because
8 when we got all of them, then we would be able to know which
9 ones we needed to study specifically, either for a motion to
10 suppress or to be examined by our experts.

11 So it was simply a way to save the Government's time
12 not to go back and redo the source listing because the source
13 listing is on this form. So we just get a xerox copy of the
14 form, we would have it.

15 MS. WILKINSON: Your Honor, I believe the document
16 that Mr. Jones is referring to is the document where we write
17 down who looks at the evidence after we take custody of it for
18 future chain of custody purposes if there is any dispute.

19 THE COURT: Right.

20 MS. WILKINSON: On that list, the source is the same
21 source that Mr. Jones received on the 1B list. We don't change
22 that document. That's how we get that information onto the 1B
23 inventory that we provide to the defense so it's not going to
24 give them any new information other than once we received it,
25 did Mr. Hartzler come in and take a look at it, did an expert

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1 come and take a look at it.

2 THE COURT: I see. That's why you're claiming work
3 product.

4 MS. WILKINSON: Correct.

5 MR. JONES: If that's not what it is, then that's not
6 what I remember. There surely is a document that the FBI
7 writes down where they got the item from that's inside that

8 envelope.

9 THE COURT: From what she just said, you got that in
10 your list.

11 MS. WILKINSON: And in a 302. That's when the agent,
12 Agent Smith, says I picked up the rear axle, you know, in front
13 of the Regency Towers. That's where that information is.

14 MR. JONES: It hasn't been my experience, but I'll
15 accept her representation.

16 THE COURT: What's on the list, you know. You know,
17 they are saying it's on the list. It either is or isn't. So
18 I'm going to assume it is. And then, if there's a need for
19 further information particularized as to a given item that is
20 going to be used at trial, that's a different issue.

21 MR. WYATT: Your Honor, with respect to items which
22 they have stated relate or are contaminated with or have
23 findings of certain chemicals, could we also submit those to
24 the Government whether they are intended to be offered --

25 THE COURT: Well, you can ask for specific things that

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1 are material to the defense in the language of the rule because
2 they are going to tie up to some examination that you're
3 intending.

4 MR. JONES: The Government has responded to (aa) and
5 say they have given it all to us, and we'll accept their
6 response at this time.

7 Same on 15, your Honor.

8 Same on 16.

9 And that brings me down to 17. Mr. Wyatt will address
10 17, your Honor.

11 MR. WYATT: Your Honor, the indictment specifically

12 identifies certain stolen property which they intend on proving
13 up as overt acts, and we simply want to know what those items
14 are. The Government may be correct that this is more in the
15 line of a bill of particulars, but we believe that we're
16 entitled to that information for purposes of our defense.

17 THE COURT: You're talking about what was stolen for
18 particular overt acts or other paragraphs of the indictment?

19 MR. WYATT: I believe it just relates to the overt
20 acts, your Honor.

21 THE COURT: I don't see why that isn't discoverable.

22 MS. WILKINSON: I believe, your Honor -- your Honor,
23 it depends on whether we're going to introduce all of that at
24 trial.

25 THE COURT: No. Not -- I don't agree with that.

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1 You're saying that certain things were stolen from the certain
2 place at a certain time. What things? I mean, they are
3 entitled to check that out to see if their information is the
4 same.

5 MS. WILKINSON: We can do that, your Honor. We also
6 have the records available. I believe they are talking about
7 the robbery of Roger Moore, and there are --

8 THE COURT: Well, that might not be all. There's
9 several of these alleged.

10 MS. WILKINSON: We also have police reports that
11 document that.

12 THE COURT: Right. Well, so --

13 MS. WILKINSON: Which they have.

14 THE COURT: Respond to that.

15 MS. WILKINSON: Your Honor, Mr. Hartzler is reminding
16 me to go further with the point I was just making, which is

17 that we've already provided the police reports that document
18 the property that was stolen.

19 THE COURT: What I want you to do is to tell the
20 defense what you say was stolen on those days, what the
21 indictment refers to. All right?

22 MS. WILKINSON: Yes, sir.

23 MR. JONES: Item 18, your Honor, the -- as I read the
24 Government's papers, apparently, the allegation is that
25 Mr. McVeigh's motive for this offense was his views of the

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1 Government conduct at Waco. And so we asked --

2 THE COURT: What are we on? 18(a)?

3 MR. JONES: Yes, sir. 18(a) and (b). So we asked for
4 all of that and material that the Government had concerning
5 Mr. McVeigh's presence at Waco, which is, I don't think,
6 disputed at various dates. And the Government has given us
7 material, and they do say that we are not aware of any
8 documents responsive to this request and in the possession of
9 the Government that have not been made available. And we do
10 have some, but I was again struck by the omission of the word
11 "tangible items," which of course might imbue video film or
12 photograph or something else. And I just wondered if the
13 omission of the words "or tangible items" from the last
14 sentence at the bottom of page 31 was by design or inadvertent.

15 THE COURT: Well, I don't see "tangible items" in the
16 request.

17 MR. JONES: That's my point. It's not in there. But
18 a photograph would be a tangible item.

19 THE COURT: But your request is for reports,
20 documents, notes, photographs.

21 MR. JONES: Or films.
22 THE COURT: Or films. Okay.
23 MR. JONES: And I think of that as a tangible object
24 as opposed to a document. Maybe it's just my own glossary.
25 THE COURT: You've given a list of the things. The

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1 Government's response, as I interpret it from the language that
2 I'm reading, is that they are not aware of anything else --
3 MR. JONES: Okay.
4 THE COURT: -- that has not been already provided.
5 That's your answer.
6 MS. WILKINSON: Yes. To be clear, your Honor, we have
7 disclosed a videotape of Mr. McVeigh at Waco.
8 THE COURT: Okay.
9 MS. WILKINSON: And a newspaper article where he was
10 interviewed, so there is some information responsive --
11 THE COURT: Yes, and you don't have anything that you
12 haven't already given, is what you said.
13 MS. WILKINSON: Right.
14 THE COURT: Okay.
15 MR. JONES: Number 19, your Honor: We received of
16 course, this material yesterday. And I had a question, though,
17 about it, if I might just address it to the Government.
18 Ms. Wilkinson, in reviewing the letter that accompanied it, I
19 didn't see that included were the results, a report of the
20 results. Is there no written report of the results, or is that
21 somewhere else, or is it just not listed on --
22 THE COURT: Are you asking an interpretation?
23 MR. JONES: Yes.
24 THE COURT: Okay.
25 MS. WILKINSON: It's my understanding, your Honor,

1 that everything we received as to this type of evidence that's
2 in our files, we disclosed; so if we had a report, it's
3 disclosed. If we didn't have it, obviously, we can't disclose
4 it.

5 MR. JONES: My question is, the FBI's very cautious
6 and conservative with those reports. And she said what we
7 received. I want to be sure the FBI, if they had a report,
8 gave it to her. I'm sure she gave me everything she got. The
9 question is did she get everything.

10 THE COURT: Well, I -- I'm operating on the assumption
11 that you've asked the pertinent -- the relevant agency for the
12 information.

13 MR. JONES: It just seems strange to me there's no
14 report on these multiple polygraph examinations. That they
15 took it, and after looking at it, they decided A, B, C, was
16 deceptive or not deceptive.

17 MR. WOODS: Your Honor, may I address that? I looked
18 at those items last night. We received 57 polygraphs. Only 11
19 of them had the questions attached. The rest were just the
20 polygraph charts, which are worthless without the questions.
21 And none of them have the report or the result. Talked with
22 Ms. Wilkinson, and she said well, That's all the FBI gave us.
23 The FBI has the list of questions, and they have the report and
24 the result. They just haven't given them to the prosecutors,
25 which merely copied them and forwarded them to us. And that's

1 been common throughout this, I would point out.

2 MS. WILKINSON: Your Honor, why don't I over the break
3 research this and get back to the Court?

4 THE COURT: Good. Thank you.

5 MR. JONES: Mr. Wyatt would like to address 20, your
6 Honor.

7 MR. WYATT: Your Honor, I believe that we can withdraw
8 all of the requests except as to paragraph (d), based on the
9 Government's responses; but paragraph (d) is a unique animal.
10 The Government says they don't intend on using any results from
11 the Dipole Might project; and I assume that's based on the
12 Court's order at the previous hearing that certain recent tests
13 could not be used. However, the Government expressly reserved
14 the right to use certain evidence from pre-1995 or 1996
15 tests --

16 THE COURT: Right.

17 MR. WYATT: -- as I understood it. And we would like
18 to have access to that information, and that is the purpose of
19 that request, your Honor.

20 MS. WILKINSON: Your Honor, I believe Mr. Wyatt is
21 confused. Dipole Might is a study conducted by the ATF. It
22 has nothing to do with the Socorro testing, which was the
23 subject of the suppression hearing.

24 THE COURT: Which was the British --

25 MS. WILKINSON: Correct. That was the British.

1 Dipole Might has been conducted by the ATF for several years.

2 And we do not intend to rely --

3 THE COURT: Separate and totally independent.

4 MS. WILKINSON: Totally independent from the Socorro
5 British testing.

6 MR. WYATT: Your Honor, I accept her word on that; but

7 the references in that hearing were to Dipole Might, as I
8 understood it; and I believe that they were part of the same
9 test. They were just done in conjunction as it related to
10 these samples with other governments. That's my understanding
11 of the entire project. And I may be totally mistaken, your
12 Honor.

13 MS. WILKINSON: He is totally mistaken, your Honor.

14 THE COURT: What can I say? All right. We'll accept
15 your representation.

16 MR. JONES: With respect to what Mr. Wyatt's looking
17 at on E, I assume that we have all documents relating to the
18 matters requested from the U.S. Geological Survey in Menlo
19 Park, California. Is that -- if I may ask through the Court,
20 is that what was intended by your response?

21 MS. WILKINSON: Yes, we've turned over everything
22 we've received from Mr. Holt, who is the expert, although we
23 have been informed by him that he is publishing an article
24 showing that the seismic data showed there was one explosion.
25 And when we receive a copy of that document, even though it's

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1 public, we'll provide it to the defense.

2 MR. JONES: Their seismic data shows there were two
3 explosions, and that's what we are interested in. My question
4 is -- this is my concern -- is whether we are getting
5 everything these agencies have. I'll -- and I just again state
6 that that is our overriding concern: that the Government relies
7 on what somebody gives them their expert without knowing
8 whether that's everything that's there. We then relied that we
9 got everything, only to find out later there was something
10 else. Ms. Wilkinson says they have got everything. I don't

11 have any choice but to accept it.

12 THE COURT: That's right. Neither do I. And I made
13 it clear -- and I'm sure it's well understood -- that, you
14 know, all of these Government agencies and so forth speak
15 through Counsel, who are representing the United States in this
16 case.

17 MS. WILKINSON: Your Honor, could I just clarify one
18 thing as to the seismic data? I believe Mr. Jones referred to
19 him as our expert. We have informed the defense, we do not
20 intend to present Mr. Holt or anyone about seismic data. We do
21 not believe it's in question. Obviously, the defense can raise
22 that as an issue at trial if they want to. This is not a
23 person who is going to be an expert on behalf of the
24 Government.

25 THE COURT: Is this somebody that works for the

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1 Government and they are going to publish something?

2 MS. WILKINSON: Because there's been what I would call
3 uninformed speculation about the seismic data and what it
4 shows, he and his colleagues are publishing an article
5 interpreting the data Mr. Jones is referring to to say that it
6 shows --

7 THE COURT: When?

8 MS. WILKINSON: -- there was one explosion.
9 He informed us several months ago he submitted it for
10 publication; and the first time, they would not accept it
11 because they didn't think it was an issue in dispute. And he
12 resubmitted it, and he said it was accepted for publication;
13 but we -- I have not been informed as to when it will be
14 published.

15 THE COURT: Well, I think you better find out what's

16 in it first to make sure that it's not in violation of the
17 order with respect to extra-judicial statements concerning this
18 case.

19 MR. JONES: We -- we do have a concern about that.
20 And this is perhaps just the place to -- to raise it. And I
21 don't want to delay discussion on this, but the Government
22 filed its response on Monday or Friday. And they made two
23 statements. That's a response filed in court. One of them
24 says as the Government has no prior knowledge of bombing
25 warning.

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1 Well, they surely know that's in dispute. I mean,
2 we've asked to interview three Government employees two months
3 ago, and we haven't even received a response. That goes to
4 that very issue at the Department of Justice, where a phone
5 call was received before the bomb went off according to a 302.
6 I don't know whether it's accurate. That's what the 302 says.
7 Secondly -- I just that as a press release for the
8 prosecution's theory.

9 Secondly, there is a dramatic story about an elevator
10 falling eight floors. It didn't fall eight floors. We have
11 the report. And -- and to put something into the press record
12 which is then carried in dramatic fashion to the newspapers
13 about this ATF agent to paint this story when the report we
14 have disputes it -- and if there is a report that disputes
15 that, we don't have it. And now we find that -- these
16 statements that well, it's not seriously in dispute. There's
17 one explosion. It is. There's respectable scientific opinion
18 at the University of Oklahoma exactly to the contrary. The
19 seismic reading is like a polygraph. It depends on the

20 examiner. They are entitled to their position; but to argue
21 that well, it's not seriously in dispute, of course it's
22 seriously in dispute.

23 THE COURT: Well, I'm only at this point cautioning
24 that publication, if it's in the form of some opinion with
25 respect to it and that opinion is relevant to the issues in

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1 this case, I would not expect to see such a publication by any
2 Government official or employee.

3 MR. JONES: Your Honor, No. 21, we first requested the
4 names, current addresses, and current telephone numbers of the
5 known survivors of each deceased victims, which I assume is in
6 the 22 list -- 2200 list. The Government has advised us that
7 approximately 45 of those people may be called to testify if
8 and when the stage -- we go to the second stage.

9 Mr. Nichols' lawyers raised a motion, which we will
10 join in concerning, these meetings that were held in Oklahoma
11 City on Sunday and Monday night. And those people are
12 witnesses. Some of them are fact witnesses, certainly on the
13 second stage.

14 And I just don't believe that it is right that the
15 Government have the exclusive list of the phone numbers and
16 addresses of victims, many of whom make public statements to
17 the television camera who seek to join these proceedings in
18 amicus curiae, who seek to intervene and who then go out and
19 talk to the press about what happens in Government meetings.
20 Some of these people, we would like to interview. We don't
21 have a way to reach them, and I don't think we're required to
22 write the Government and say -- because we sure don't have any
23 luck with Government employees, and I don't think we're going
24 to have any less luck here. But we don't know who these people

25 are, and they are very key.

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1 They have invoked jurisdiction of the Court to aid
2 them. And we're certainly going to treat them with respect and
3 dignity. And I suspect that our first approach to them would
4 simply be to write them and ask them if we could talk with
5 them. We are not going to show up on their doorstep. And we
6 need that. It's material to the preparation of the second
7 stage and might conceivably be material to the preparation of
8 the first stage.

9 THE COURT: Well, we've got several things mixed
10 together here; but, certainly, with respect to witnesses,
11 you're going to have to provide the information as to all
12 witnesses expected to be called. When it comes to all of the
13 others, I'm -- and this matter of meetings and so forth, we'll
14 address later, since it's the subject of a motion.

15 MR. JONES: It is, your Honor.

16 THE COURT: Although I'm not sure whether Mr. Tigar
17 wants to argue that.

18 MR. WOODS: We're prepared to argue it today, your
19 Honor, if the Court wants to hear it.

20 THE COURT: All right. Well, at least during this
21 session, whichever day.

22 MR. WOODS: Yes, your Honor.

23 THE COURT: All right.

24 MR. JONES: Well, your Honor, if I could just, as your
25 Honor said, that's what you're here for. And I ask the Court

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1 to sustain A1, 2, 3, 4, 5; that is, specifically that we be
2 given the names, addresses and telephone numbers of the known
3 survivors of the deceased victims to the extent the Government
4 has them; that we be given the names, addresses and telephone
5 numbers of all persons within the group of persons referred to
6 in the death penalty notice which is on file suffering, quote,
7 "serious physical and emotional injury," close quote, and so
8 forth, down through it. I submit that that material -- I can't
9 imagine anything more material to the preparation of the second
10 stage and certainly, may be preparation for the first stage.

11 THE COURT: Well, you've got it -- all this in a
12 database -- right -- under the Victims Assistance Unit, or
13 whatever it's called?

14 MS. WILKINSON: Yes, we do. Your Honor, we have
15 agreed in our response that we would provide once we get the
16 authorization from the victims and make the final determination
17 the names of the victim witnesses as the Court has --

18 THE COURT: What's wrong with access to the database?

19 MS. WILKINSON: Because there's an incredible amount
20 of personal information --

21 THE COURT: Well, yeah.

22 MS. WILKINSON: -- on the victims, your Honor; and I
23 don't --

24 THE COURT: What about the names and address?

25 MS. WILKINSON: I think they would feel very strongly

1 about that information being turned over to them. I would
2 believe it's protected by the Privacy Act, unless there's some
3 reason why it would be material.

4 THE COURT: You'll brief that, then. I don't see
5 this -- you know -- only the Government gets access to those

6 people? I don't understand that, particularly since some of
7 them have been so vocal.

8 MR. JONES: May I -- do I understand that the Court --
9 the Government will brief --

10 THE COURT: Privacy Act objection to that is the
11 specific objection.

12 MR. JONES: All right. And I presume we'll respond.

13 THE COURT: Right.

14 MR. JONES: Then may I then delay further discussion
15 of 21 to the brief?

16 THE COURT: Yes.

17 MS. WILKINSON: Your Honor, we have permission to
18 brief any legal basis for withholding that information, not
19 just the Privacy Act?

20 THE COURT: Yes.

21 MS. WILKINSON: Thank you.

22 MR. JONES: All right, your Honor. That -- it's
23 12:00. Do you want to --

24 THE COURT: Well, I have it as two minutes -- two and
25 a half minutes to twelve. If you'd like to break early, I

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1 guess we could.

2 MR. JONES: No, your Honor --

3 THE COURT: Well, if it saves time, that's all right.
4 You have been on your feet a while. We'll recess until 1:30.

5 (Recess at 11:55 p.m.)

6 * * * * *

7 REPORTERS' CERTIFICATE

8 We certify that the foregoing is a correct transcript
9 from the record of proceedings in the above-entitled matter.

10 Dated at Denver, Colorado, this 13th day of November,

11 1996.

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Paul Zuckerman

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Bonnie Carpenter

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