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17 PROCEEDINGS

18 THE COURT: Be seated, please. We're convened in  
19 96-CR-68, United States vs. Timothy James McVeigh and Terry  
20 Lynn Nichols. Our primary matter here this morning is to  
21 consider the method by which the Court will comply with the  
22 requirement of Section 235 of Public Law 104-132 for a  
23 closed-circuit television transmission to the district from  
24 which this case was changed; that is, where the venue was  
25 changed.

3

1 So our appearances: Mr. Hartzler, good morning.

2 MR. HARTZLER: Good morning. With me is Mr. Mackey,  
3 Mr. Connelly, Mr. Ryan, Ms. Behenna, Mr. Mendeloff and  
4 Ms. Wilkinson.

5 THE COURT: And for Mr. McVeigh, Mr. Jones?

6 MR. JONES: Stephen Jones, your Honor. Mr. McVeigh is

7 present; and I wonder if it would be all right with the Court  
8 if I move over to the chair next to him.

9 THE COURT: Sure, you may be there.

10 And for Mr. Nichols, Mr. Tigar?

11 MR. TIGAR: Good morning, your Honor. Michael Tigar  
12 for Terry Lynn Nichols. With me is Ronald Woods and Jane  
13 Tigar. Mr. Nichols has waived his presence this morning.

14 THE COURT: Thank you.

15 Before we address this matter of Section 235 of Public  
16 Law 104-132, I want to announce that with respect to a request  
17 that was made by a letter from -- I'll get it here -- the  
18 "media group," as it was called, asking that the Court consider  
19 the transmission by -- it was a letter of December 9 from  
20 Mr. Roger O'Neil as chair of the consortium of news  
21 organizations asking that there be an audio transmission of the  
22 proceedings to the press room which we have had regularly over  
23 in the adjacent building, the office building, and agreeing  
24 that a number of conditions should be imposed on that to make  
25 certain that the signal, if that's what it's called, is

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1 contained and does not amount to an opportunity to broadcast  
2 the proceedings, I asked the parties their views on that; and  
3 initially, Mr. Jones, on behalf of Mr. McVeigh, on December 30,  
4 filed a response opposing it, as did counsel for Mr. Nichols.

5 Then in the course of a conference that we had on  
6 other matters at a pretrial planning conference on January 9,  
7 that opposition was withdrawn by Mr. Jones; and since we're  
8 dealing now with the separate trial of Mr. McVeigh, the  
9 opposition that was voiced on behalf of Mr. Nichols is not a  
10 matter of concern. That's a separate issue, a separate trial.

11 So we will have audio tape (sic) to the press room.  
12 Is Mr. O'Neil here?  
13 Yeah. Mr. O'Neil, I'll ask you to submit a more  
14 specific proposal with respect to the mechanics of that. One  
15 of the things that I recall you placed in your letter was that  
16 of course there are credentials. People can only get into that  
17 room through credentialing. You suggested there be a removal  
18 of the credentials of anyone who violates the conditions, and  
19 I'll go a step beyond that. It's any violator kills it for  
20 everybody; so we'll have a little peer pressure to ensure  
21 proper compliance with all of the conditions.  
22 And you also mentioned that there may be a radio group  
23 who works out of there, and we'd have to make sure that we  
24 don't get the audio into the -- whatever those people are  
25 doing.

5

1 So if you will -- and you can work with Mr. Manspeaker  
2 on this -- we'll establish a set of conditions for it; but  
3 we'll comply with your request.

5 THE COURT: Now, on the matter of the compliance with  
6 the congressional mandate here, there has been -- there have  
7 been papers filed on this; and there was also filed as a --  
8 what the clerk's office treated as a collateral matter, a  
9 motion by Oklahoma media group to have access to the  
10 transmission in Oklahoma City. And additionally in this case,  
12 closed circuit of all proceedings filed December 23 of last  
13 year by a number of persons represented by counsel. And I  
14 asked the parties to -- Ms. Howick is counsel. I asked the  
15 parties to respond to that as well, and they've done so.  
16 I do not consider that a pleading that is properly  
17 filed in the case because I do not believe the persons on whose

19 this case. But what was said there is something that I have in  
20 mind; and it amounts to two things: One is that the view of  
21 these persons is that we should begin transmitting immediately  
22 all proceedings and that it not be limited to the trial itself.  
23 The other is that wherever the transmission goes, it should be  
24 to the largest -- the place that could accommodate the most  
25 people.

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1 We have, I think, several matters to decide here. The  
2 first is the technology and where it goes, where it's received  
3 in Oklahoma. Then we have to establish a means for identifying  
4 those who are entitled to view it within the terms of the  
5 statute. And there -- I guess the third thing is the timing  
6 with respect to when it begins. It can't begin now. We don't  
7 have the technology in place; and of course, it's necessary for  
8 us to make arrangements for that.

9 So I think since the technology and the carrier and  
10 the contract all depend upon where it goes, that's where we  
11 should start.

12 Now, the initial indication here was that it would be  
13 to a courtroom in the courthouse in Oklahoma City, the Federal  
14 Courthouse that we've identified as the Tenth Circuit  
15 courtroom. And that has been the planning to this time,  
16 because that was the room designated by the judges in the  
17 Western District of Oklahoma, recognizing that to do this in  
18 that courthouse impacts on the regular business of the court  
19 and other trials and proceedings taking place there.

20 That is a room that has limited seating as it  
21 stands -- as it sits; and of course, we contemplated  
22 modifications to the room necessary to increase the seating

23 capacity and also to put in the technology for viewing.

24 But even so, we're talking maybe 140 people, I'm told.

25 I don't have a direct familiarity with this room.

7

1 Then in response to some of the suggestions made by  
2 the people represented by Ms. Howick, the Government suggested  
3 three courtrooms in the building: the ceremonial courtroom, the  
4 appellate courtroom, and a room on the fourth floor.

5 In looking into that, I have learned unofficially that  
6 the ceremonial courtroom is no longer usable; and in fact, the  
7 chief judge has had to move out of it down there because of the  
8 development of some structural infirmities; then that the  
9 fourth floor courtroom has the disadvantage of having some  
10 support pillars in the room that would materially affect the  
11 viewing, perhaps, of people in that room, which essentially  
12 gets us back to the Tenth Circuit room. Now, also, I think  
13 that it would technically be difficult for us to be working  
14 with more than one site.

15 The Government then suggested a room in a facility  
16 that the FAA has in the FAA aeronautical center. And I did  
17 receive then as a follow-up to that some information about  
18 that. I asked that it be provided to you, Mr. Jones. I trust  
19 that you have it.

20 MR. JONES: I do, your Honor.

21 THE COURT: Okay. So having reviewed what was  
22 submitted about that facility, it is of interest to me; and I  
23 think that's what we ought to talk about, is going there,  
24 because here's my understanding of it: that it is not used by  
25 anybody else now. Apparently the FAA is no longer using this

1 particular room; that it may accommodate 300 to 350 people;  
2 that it's in an area where there is some perimeter security and  
3 also easily accessible by roads; that it's near the airport in  
4 Oklahoma City; that there are also some cafeteria facilities  
5 available near this particular site, and that it does not  
6 appear to have any sort of negative effect in terms of the  
7 surrounding area, as might be the case if we were talking about  
8 a military base or something like that.

9       So I'd like to hear further from counsel for the  
10 Government about this site.

11       MS. BEHENNA: Your Honor, with the Court's permission,  
12 we have James Sparks, who is the manager of the entire facility  
13 there at FAA; and I thought it might be more efficient if he  
14 were to come forward and address the Court's questions directly  
15 about the facilities. I mean I can regurgitate what the  
16 Court -- what I've learned from Mr. Sparks and would be happy  
17 to do that.

18       THE COURT: I'd prefer you to do it. Yes. I don't  
19 want you to regurgitate, but I want you to tell me what he has  
20 to say.

21       MS. BEHENNA: Okay. I'll try not to.

22       Your Honor, I do have a map that Mr. Sparks provided  
23 that might assist in locating this facility on the aeronautical  
24 center.

25       If you can find, your Honor, on that map Location No.

1 17.

2       THE COURT: Give me a hint. Where is it?

3       MS. BEHENNA: Well, do you see the big square area

4 that has 18 in it at the very top of the page?

5 THE COURT: Okay. Yes.

6 MS. BEHENNA: Right next to that, to the left is 17.

7 It's an E-shaped building.

8 THE COURT: All right.

9 MS. BEHENNA: That is the facility we're talking

10 about.

11 THE COURT: There is a star there. What's that?

12 MS. BEHENNA: That's exactly where the auditorium is.

13 THE COURT: Okay.

14 MS. BEHENNA: It's actually a building that has some

15 other offices and things in it. The auditorium is located in

16 that E part of the shape of the building.

17 THE COURT: And MacArthur Boulevard goes right down

18 the middle here?

19 MS. BEHENNA: Goes right down the middle of it. And

20 it's not very clear on this map, and I apologize for that.

21 There is a gate facility right there on MacArthur

22 where you have to show some identification to get onto the

23 facility.

24 THE COURT: Okay.

25 MS. BEHENNA: As you can see, going up to the top of

1 the page is Southwest 59th Street, which is the section where

2 that would transect MacArthur Boulevard.

3 Immediately to the right of that you'll see a really

4 faded-looking building that has No. 20 on it.

5 THE COURT: Yes.

6 MS. BEHENNA: This is a large building. In addition,

7 there is a parking facility here that can accommodate lots of

8 parking for the victims who attend the closed-circuit TV. It  
9 is the suggestion of the FAA that the victims -- and there is  
10 actually an access road off Southwest 59th Street, and I know  
11 the map kind of cuts that off. I apologize for that. But  
12 there would be direct access to that parking facility. The  
13 victims -- they would open that up and allow only the victims  
14 to enter into that parking facility.

15 I understand that Ms. Anderson has talked to several  
16 groups, one in particular, that will provide shuttle service  
17 from the parking area immediately behind the facility, the  
18 Building No. 20, to 17, where the auditorium is.

19 I am told from Mr. Sparks that there is a cafeteria  
20 actually located in Building No. 17. That's marked on the map.

21 In addition, if you see, there is a dotted line across  
22 MacArthur. That is an underground tunnel that goes over to a  
23 cafeteria that's marked with a star directly across the street  
25 obviously, the victims to walk across there to get something to

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1 eat, or if it's raining or there are some problems with the  
2 weather, they won't have to get out in the weather.

3 I am told that the facility seats approximately 330  
4 people. There is provisions for handicap accessibility. It  
5 would take a few seats out of the auditorium. I think, as I  
6 recall, Mr. Sparks indicated that there are 336 seats,

8 out to provide handicapped facilities.

9 THE COURT: Is this theater-type seating with a rise  
10 and that sort of thing --

11 MS. BEHENNA: Yes, it is.

12 THE COURT: -- like a theater?

13 MS. BEHENNA: Yes, it is. As a matter of fact,

15 bring it up with me; but if it would be helpful, I can bring it

16 to the Court. But it is auditorium seating with two wings and  
17 a center row.

18 The facility has a projection TV that projects  
19 obviously on a large screen, so we wouldn't have to be  
20 concerned with monitors and placing monitors around the  
21 facility.

22 THE COURT: Well, but it may not be compatible with  
23 the technology we're talking about --

24 MS. BEHENNA: May or may not be.

25 THE COURT: -- which I think involved a rear

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1 projection.

2 MS. BEHENNA: Exactly. I don't know the answers to  
3 those questions.

4 THE COURT: Yeah.

5 MS. BEHENNA: But we can certainly get answers to  
6 those.

7 THE COURT: Now, is this -- how close is this to the  
8 runways of the airport?

9 MS. BEHENNA: It is very close. On the other side  
10 where you see "Mike Maroney Aeronautical Center," that is the  
11 eastern part of the Oklahoma City airport; so right there.

12 THE COURT: So there are overflights right there? I'm  
13 just thinking about noise.

14 MS. BEHENNA: Your Honor, I'm certain that they're in  
15 a flight pattern. I don't know the answer to that directly,  
16 although I understand this auditorium is very well  
17 sound-proofed; and the sole purpose is being able to conduct  
18 large meetings so that 300-some-odd people will be able to hear  
19 what's going on.

20 THE COURT: And it could be used for the purpose we  
21 intend indefinitely?

22 MS. BEHENNA: Yes.

23 THE COURT: But the rest of the facility, I take it,  
24 is operational?

25 MS. BEHENNA: Yes, it will be. There will be other

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1 FAA employees on the base -- on this area.

2 THE COURT: And is all of what I'm looking at -- all  
3 of this is under FAA jurisdiction?

4 MS. BEHENNA: Yes. And I did not point out the  
5 perimeter fences. There is a perimeter fence that goes south,  
6 or what would actually be east of MacArthur, to the bottom part  
7 of your map to the west. It would fence off right where it  
8 says "Mike Maroney Aeronautical Center" -- that is all fenced  
9 toward the outside of the perimeter. It's my understanding  
10 that this eastern part, which would be the bottom of your page  
11 on the map, is not fenced, but that's acreage. There are no  
12 facilities or businesses out that way.

13 You do know from the submission made by FAA that FAA  
14 suggests that the Court provide security for the facility for  
15 the admission of the victims.

16 THE COURT: Oh, yes.

17 MS. BEHENNA: And the parking area. And they would  
18 not provide security for the building or the auditorium. That  
19 would obviously be the court's jurisdiction to provide  
20 security.

21 THE COURT: Wait a minute. Are we talking about two  
22 different areas for security?

23 MS. BEHENNA: Well, the admission into the parking  
24 area -- that would not be --

25 THE COURT: Oh, I see.

14

1 MS. BEHENNA: -- maintained by FAA security as well as  
2 the building, the auditorium.

3 THE COURT: Is that an unused parking area now? I  
4 mean are the -- are they going to be mixed in with the people  
5 who are working out there?

6 MS. BEHENNA: I don't know the answer to that  
7 question. I assume since Mr. Sparks said it was available for  
8 our use that it is in fact available and will accommodate  
9 300-some-odd cars, but I can certainly address that question  
10 with Mr. Sparks.

11 THE COURT: Go ahead.  
12 Go ahead and consult with him, if he's here.  
13 You can come up, sir, and assist Counsel in responding  
14 to some of my questions.

15 MS. BEHENNA: Can he come past the bar, your Honor?

16 THE COURT: Sure.

17 MS. BEHENNA: Mr. Sparks informs me that they can  
18 partition it off and just separate one area in particular for  
19 the victims.

20 THE COURT: Well, is this a kind of training area? I  
21 notice student parking and that sort of thing. Are you  
22 training FAA people out here?

23 MS. BEHENNA: Yes, your Honor.

24 THE COURT: But it's operational, too. I mean it has  
25 something to do with controlling traffic and --

15

1 MR. SPARKS: Yes. Airways/facilities technician and  
2 air traffic controllers, light standard specialists: All of  
3 those are trained in Oklahoma City.

4 THE COURT: I mean, but does it also operate as a  
5 regional control center?

6 MR. SPARKS: No, sir. Strictly off line.

7 THE COURT: All right. Off line. I guess that means  
8 you're not responsible for keeping the traffic going.

9 MR. SPARKS: Correct.

10 MS. BEHENNA: Your Honor, I spoke with Mr. Sparks last  
11 night about whether this facility -- in particular, this  
12 auditorium -- was wired with fiber optics. He believes that it  
13 is. Whether or not there is going to be some compatibility  
14 problems or whether or not it will have to go to a switching  
15 station at FAA, I don't have the answers to those; so those are  
16 some other things we'll need to investigate.

17 THE COURT: We would need to have some technicians and  
18 consultants take a look at that and see what has to be done.  
19 And of course, what is of primary concern here is that we don't  
20 lose control of the signal as it goes into this facility. I  
21 mean we're going to be very careful about between here and  
22 Oklahoma City, and we have concerns about encryption and all  
23 that sort of thing. We don't want to lose it at that end.

24 MS. BEHENNA: Exactly. One of the things that I did  
25 not have an opportunity to ask Hank Kolesnik with Vyvx is

1 whether they have a point of presence close to MacArthur. I  
2 don't know the answer, either; and that might make a difference  
3 about the transmission and who can intercept the signal, so I  
4 can find that out as well.

5 THE COURT: All right. I have a better understanding

6 now as the result of your presentation.

7 I'll call on Mr. Jones.

8 MR. JONES: Your Honor, before Ms. Behenna takes her  
9 seat, may I inquire of her a question?

10 THE COURT: Sure. Yes.

11 Ms. Behenna, we have a question from Mr. Jones.

12 MR. JONES: How far is this campus from the Federal  
13 Transfer Center?

14 MS. BEHENNA: It is right there on --

15 MR. SPARKS: 23rd and Lamont.

16 THE COURT: One fourth -- the Federal Transfer Center  
17 being the U.S. Marshals' service facility.

18 MR. JONES: Yes, where the prisoners are held for a  
19 short period of time.

20 THE COURT: Yes. I know that building, not that I've  
21 been transported through it; but I'm aware of it from going in  
22 and out of the airport down there.

23 MR. JONES: Your Honor, I assume that the Court may  
24 enter some type of formal order on this matter which may be  
25 published and cited in future cases. And the statute that

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1 we're dealing with is a new one passed in response to the --  
2 some of the issues in this case; and although it is not likely  
3 to come up again on a frequent basis, it may come up on an  
4 infrequent basis.

5 For that reason, that also influences our position on  
6 this matter. I would like first to say that I believe again,  
7 as has so often been the case in this proceeding, the United  
8 States Government and specifically the prosecution team and the  
9 office of the United States Attorney for the Western Judicial

10 District of Oklahoma has represented the rights of the victims  
11 and survivors and the next of kin in an exemplary manner and  
12 within the full meaning that Congress intended when the  
13 legislation was passed; and I again commend them and compliment  
14 them on their obvious care and solicitation of the legitimate  
15 concerns of the survivors and the next of kin. And I think  
16 it's demonstrated by the proceeding this morning.

17 We have no objection to this signal being received at  
18 the FAA training center in Oklahoma City; and if the court does  
19 write an order, we would ask that the -- if the Court would  
20 please -- that the order reflect that we have no objection.

21 THE COURT: All right.

22 MR. JONES: For that matter, I have no objection if it  
23 should turn out that Tinker Air Force Base would be a more  
24 suitable location either for security reasons or because of the  
25 size of the facility.

18

1 The reason that I do not oppose the proposal of the  
2 Government in this respect is that it seems to me that it takes  
3 into consideration all of the legitimate factors that we are  
4 concerned about; that is, the security of the signal, the  
5 adequacy of space, the convenience of the space, and the  
6 ability to provide security both within the facility and in the  
7 perimeter. Those are the legitimate concerns.

8 Now, I think that Mr. Tigar on behalf of Mr. Nichols  
9 has raised another legitimate concern; and that is, precisely  
11 transmitted back to the original place of trial. That could  
12 mean, as Mr. Tigar argues, the United States Courthouse in  
13 Oklahoma City, rather than some facility outside the  
14 courthouse; and I think that's a legitimate point.

15 However, I'm anxious to avoid a ruling on that

16 specific issue as to whether he is correct; and that is also a  
18 morning with the hope that should this ever be necessary in the  
19 future in some other case that it will be able to be worked  
20 out.  
21 But there is also an additional consideration: As so  
22 often, when one branch of the Government is trying to tell the  
23 other branch how to conduct its business, the Congress is not  
25 and the Court has already pointed out the problems this morning

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1 with the ceremonial courtroom. If we were to send this back to  
2 the courthouse in Oklahoma City, not only would that be  
3 tremendously disruptive on all the other parties, litigants,  
4 judges, and staff in that building, but I think that there  
5 would be other negative consequences that would flow from that;  
6 and it just begs to avoid, and I see no reason why we cannot  
7 avoid it.

8 So in summary fashion, my announcement to the point --  
9 and I apologize for taking the time, but I thought it was  
10 appropriate to put on the record some of our thinking -- we  
11 have no objection to the plan. I'm perfectly willing to go  
12 along with any reasonable proposal of the Government as to how  
13 the seats will be allocated. I do continue my objection with  
14 respect to members of the media or others being present inside  
15 the room itself where the signal is being received.

16 Other than that, I think that the Government has  
17 discharged its responsibilities in this matter admirably.

18 THE COURT: While you're here, then, we need, of  
19 course, to -- well, first of all, I will show that this is by  
20 agreement and not make a definitive interpretation of location  
21 under the statute. That preserves Mr. Nichols' objections; and

22 they can be addressed, then, when it comes time to deal with  
23 his trial.

24 Then with respect to the identification and definition  
25 of who is entitled to see this under the language of the

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1 statute, you know, the Government has, as you know, proposed an  
2 approach to that which seems to me to be sound; that is, to  
3 begin with the Government's database, the U.S. Attorney's  
4 Office's database down there, and then develop a form of  
5 application. Whether the one that's been submitted here is the  
6 one we actually use, we'll consider, and then allocate seats.  
7 And we still don't have probably enough seats for everybody who  
8 may want to be there on any certain day and develop a system  
9 that avoids their having to line up "first come, first served"  
10 by doing some sort of allocation. But I think those details  
11 can be worked out by agreement.

12 If not, you know, I can, I think, make orders there  
13 that also would not be definitive as far as Mr. Nichols is  
14 concerned so that we can accommodate the interests and  
15 establish some priority ranking, I think, as to who gets first  
16 opportunity.

17 But we do have to have some people go down there and  
18 take a look at that. Your suggestion of Tinker is something  
19 that we can also consider, then, although I understand from the  
20 Government's submission that the Air Force is not too pleased  
21 with the idea of coming into their facility.

22 MR. JONES: Yes.

23 THE COURT: It's operational.

24 MR. JONES: And I don't mean to detract from the FAA  
25 center. It seems to me that is the first preference.

1 THE COURT: We'll try to make it work. That's what  
2 we'll do.

3 Mr. Tigar?

4 MR. TIGAR: I would like to address the Court briefly  
5 about this. I think we may be coming to a resolution.

6 I have one question about the map of the aeronautical  
7 center. I note that Building 42 is the primate building and --

8 THE COURT: I guess maybe that's who is really in  
9 charge.

10 MR. TIGAR: Well, we don't want to replay the Scopes  
11 trial, your Honor.

12 THE COURT: Well, can somebody inform us about what  
13 primates are in the primate building?

14 MR. SPARKS: There are none now. 20 years ago.

15 MR. TIGAR: If your Honor please, our concerns other  
16 than the concerns we raised about the constitutionality  
17 standing and so on are that the projection of this signal be  
18 done in a way that is consistent with the solemnity of a  
19 judicial proceeding. We know of an unfortunate precedent: The  
20 riots after the trial for the Cuban revolution held in a  
21 baseball stadium did not convince anybody that the judgments  
22 there made were entitled to respect either in their home  
23 country or elsewhere.

24 Anybody who doubts that a judicial judgment rendered  
25 in a certain kind of a room or a place is entitled to some

1 special respect need only look around where we are. This  
2 courtroom in its basic elements is familiar to every American;

3 that is to say, they know there is a jury box, there is a table  
4 where the lawyers sit, there is an elevated place where a judge  
5 sits, there is a place where the witnesses will be so that the  
6 jurors can listen to them.

7 A judgment rendered in such a place is, under our  
8 system, entitled to respect. And of course, in a case of this  
9 kind, with so many people watching and so many anxious for what  
10 has come to be called "closure," it is particularly important  
11 that we have whatever solemnity is going to vest that judgment  
12 with that sense of confidence.

13 With that in mind, we had originally said that we  
14 thought that nothing would do except a transmission to the  
15 courthouse. I've listened to what the other lawyers have said;  
16 and Mr. Woods has reminded me from his experience as a United  
17 States Attorney that often this court will go out into the  
18 community and make of an auditorium a courtroom for the  
19 swearing in of immigrants who are becoming citizens of the  
20 United States.

21 For that reason, it does seem to us that if that  
22 Federal Aviation facility could be in some measure made to  
23 resemble a court facility -- that is to say, with the special  
24 master that your Honor had proposed presiding over it, with  
25 court officers seeing as to who was coming in and out, with the

1 beginning and ending of sessions announced in the manner that  
2 court sessions are begun and ended, that that would solve this  
3 image or solemnity problem.

5 solely based on our own best idea of how to do it. We're  
6 attempting to solve a problem under a statute written by the  
7 Congress; and that confines the authority, it seems to me, of  
8 the Court and ought to confine the argument of all of us.

9 The term "location" may be susceptible of some  
10 elasticity in its meaning; but the clear intent of the statute  
  
12 those people when venue was changed, irrespective of the number  
13 of people who wanted to attend. Number is no part of the  
14 statutory scheme.

15 Under those circumstances, the evident purpose of the  
16 statute would be to have a signal sent to the courthouse. This  
17 departure would be one to which we would consent; and I address  
  
19 both trials, there is obviously going to be some saving with  
20 respect to it.

21 With regard to this question of who attends, it seems  
22 to us that the process could be greatly simplified if the Court  
23 would appoint a special master. The Court has inherent power  
24 to appoint a special master in criminal as well as civil cases,  
25 particularly with the consent of the parties. We would have no

1 objection to appointing Ms. Anderson as special master for this  
2 purpose, who could render a report to the Court. The parties  
3 would be given leave to comment on the report to the extent  
4 they wished, and then the Court would make a decision.

5 I know Ms. Anderson is attorney for a party, and it's  
  
7 she has been a witness in the case before. She has not entered  
8 an appearance for the United States of America as an attorney  
9 litigating the case. She is in charge of the database; and  
10 under those circumstances, that seems the best way to have a  
11 report made to the Court on the basis of which all of us could  
12 comment and the Court could make a decision.

14 Is this appointment of Ms. Anderson as special master  
15 something that's been considered by Government counsel?

16 MS. BEHENNA: No, your Honor; but I'm not certain that  
17 it is a bad idea. I'd like to have Ms. Anderson --

18 THE COURT: I wonder if it's consistent with the  
19 Department of Justice having her on the payroll, if she serves  
20 in a capacity other than as a lawyer for the Government.

21 MS. BEHENNA: Right. And that is something that -- I  
22 mean I would like some time to think about it.

23 Your Honor, I do think with regard to the admission  
24 process, we can begin who gets admitted or that process of

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2 intent to attend the closed-circuit TV that was attached to our  
3 pleading on November 18 -- that has not been sent out to the  
4 victims on the database; and I think that's a very good place  
5 to begin. The victim-witness unit is prepared to go ahead and  
6 send out that notice upon the Court's authorization with a  
7 letter or some sort of order saying that you need to fill out  
9 closed-circuit TV if you were interested.

10 THE COURT: And that has, where there is a  
11 relationship to deceased persons -- is to show what that  
12 relationship is; right?

13 MS. BEHENNA: Right. Specifically, under emotional  
14 injury, the category on this notice of intent, is a family  
15 member of deceased or injured victim.

16 THE COURT: What's already in the database that shows  
17 that sort of thing? Anything?

18 MS. BEHENNA: They are identified if they are the  
19 family member of a deceased victim.

20 THE COURT: Yeah, but I mean is the particular  
21 relationship shown already?

22 MS. BEHENNA: Your Honor, I don't know the specific  
23 answer. I can consult with Ms. Anderson.

24 THE COURT: Well, it seems to me we could --

25 MS. BEHENNA: She's nodding that it is, your Honor.

1 THE COURT: We could authorize that to be done and  
2 then, dependent on what we get back, make some rulings with  
3 respect to whether some of the persons who indicated intention  
4 to attend are indeed eligible.

5 MS. BEHENNA: Exactly. And I just, if we can begin  
6 this process --

7 THE COURT: -- rather than just trying to do it in the  
8 end.

9 MS. BEHENNA: Exactly.

10 THE COURT: But of course, I don't know that we can  
11 necessarily limit the opportunity to apply to the persons  
12 already known. I don't know the answer to that. It may be  
13 that you'd have to do some sort of posting or other public  
14 notification so that if other persons who didn't choose to sign  
15 up, as it were, with the United States Attorney's office could  
16 still claim an opportunity.

17 MS. BEHENNA: Right. And that's what we discussed in  
18 our papers earlier: There would be an application process for  
19 those not on the database. And with the Court's permission or  
20 order, we'll be happy to put a notice in the newspaper of  
21 general circulation in Oklahoma, since there is basically one,  
22 to notice those victims in the area that they can apply to the  
23 Court if they so desire, if they're not -- if they have not  
24 been identified as a victim on our database.

25 THE COURT: I think -- I don't remember. I don't have

1 your notice right in front of me at the moment, although it's

2 available to me here; but do you have people in there who are  
3 not residents of Oklahoma?

4 MS. BEHENNA: In our database? Yes.

5 THE COURT: Yes.

6 MS. BEHENNA: Yes.

7 THE COURT: Well, I think whatever goes out, it ought  
8 to explain, though, right in the beginning that -- something  
9 about the statute, because one of the qualifiers for the

11 affected by the alleged crime but also is unable to attend in  
12 this case in Denver; and if, for example, some of them are in  
13 Denver, it's difficult to see how it would apply to them.

14 MR. TIGAR: Your Honor, may I be heard with respect to  
15 an aspect of this?

16 We would have concern about the United States of  
18 whatever premises are going to be used for the broadcast of  
19 this signal. The reason I suggest designating someone a  
20 special master is that I don't want it to look like you've got  
21 to get in with the U.S. Attorney's office in order to get into  
22 the room.

23 And I think the best analogy is to a class action  
25 counsel for the defendants and counsel for the Government and

1 the Court have agreed that all -- you know, that certain people  
2 should send in their application to somebody, because that's --  
3 I think the appearance -- the appearance of neutrality is very  
4 important, your Honor.

5 THE COURT: The form can be modified to indicate that  
6 it's coming from the Court but that the mailing addresses from  
7 the database can be used.

8 MR. TIGAR: Yes.

9 THE COURT: And also to use as a check against the

10 accuracy of the information coming back. I would assume that  
11 there could be some matching applied. But I think your analogy  
12 to a class action is apt, because, you know, frequently in  
13 those cases, I, at any rate, have used shareholder lists and  
14 that sort of thing. When you don't have a transfer agent, we  
15 go directly to the corporation's files.

16 MR. TIGAR: Yes, your Honor; but my point is the other  
17 one, too: When the lawyers get to fussing about the notice,  
18 it's that they don't want to have it look like it's coming from  
19 one side or another.

20 THE COURT: No, it can come from the Court; and by  
21 direction of the Congress, I am the gatekeeper here. I have to  
22 control that, and anybody who acts on the premises with respect  
23 to that must act under my authority and control.

24 And with respect to the decorum and so forth, I intend  
25 to have adequate monitoring there, including the reverse signal

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1 coming back here to Colorado so that I know what's happening in  
2 that room down there. That isn't to say that I'm going to  
3 watch it every minute. I've got something to watch here; but I  
4 will be advised of what's happening down there through my own  
5 monitors. And of course, the images projected on the screen  
6 down there will include mine.

7 Mr. Jones, have you some comment with respect to these  
8 earlier suggestions about development of a notice and with a  
9 modification that it become a court notice? And then I don't  
10 know if you have any comment about this notion of a special  
11 master, using an assistant U.S. Attorney.

12 MR. JONES: I agree with Mr. Tigar with respect to the  
13 notice. I have no problem with the Court appointing

14 Ms. Anderson as special master. In addition to everything else  
15 that has been said, she was also general counsel of the  
16 Oklahoma Bar Association for several years; so we have no  
17 objection to her appointment.

18 THE COURT: Well, we should find out, of course, if  
19 that's consistent with Department of Justice policy. I don't  
20 know.

21 MR. HARTZLER: I don't know if it's consistent with  
22 policy, your Honor. I don't know if it's necessary. We're  
23 talking about what the label would be. She obviously could  
24 serve the court as a representative of the United States. And  
25 what I'm hearing is all the parties rely on her and trust her

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1 integrity. And that's really all we're talking about. I would  
2 think that she has a responsibility as an Assistant United  
3 States Attorney. She'll fulfill that responsibility in this  
4 case, and we won't --

5 THE COURT: We don't want to blur -- I mean, she has  
6 certain responsibilities under the Victim and Witness  
7 Protection Act, and that's her primary mission. And I don't  
8 want to blur the two and suggest by anything that I approve  
9 that I'm recognizing her in that role as being the gatekeeper  
10 or having any authority under this statute. The only authority  
11 under this statute is the Court.

12 MR. HARTZLER: Right. Right. I'm just suggesting --

13 THE COURT: We'll work it out, I think.

14 MR. HARTZLER: Okay.

15 THE COURT: I don't think we have to hammer out the  
16 details right now. If it takes some kind of appointment to  
17 make that clear, I need to know. I don't want her to get  
18 knocked off the payroll and be put on my payroll. That's the

19 thing.

20 Now, there is the motion that I referred to.

21 Actually, it's not a motion; it was submitted or at least  
22 treated by the clerk's office as a collateral filing, and that  
23 is this Oklahoma media motion.

24 I didn't expressly call that up and invite appearance  
25 on behalf of the petitioners there, because there isn't really

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1 anything to be argued. It's clear to me -- and it's not a  
2 matter that I think is worthy of argument -- that the  
3 petitioners there, the Oklahoma media group, have no standing  
4 under the statute and no right to be present and view these --  
5 the transmission; so I'm denying that petition on the grounds  
6 that it doesn't comply with the specific requirements that  
7 Congress put in this statute.

8 Now, I -- I think, then, subject to getting these  
9 details put together and, of course, it's also subject to our  
10 people going down there and checking that we can do it, we've  
11 done what we need to do, haven't we, here in court?

12 MS. BEHENNA: Your Honor, there is the issue about  
13 timing and when that broadcast can begin.

14 THE COURT: Well, you know, we can't do it today.  
15 It's a matter of when we start; but to my mind, trial  
16 proceedings are not pretrial proceedings; and this is -- these  
17 motions are pretrial proceedings and not trial proceedings.

18 Now, jury selection can be considered trial  
19 proceeding, I suppose.

20 MS. BEHENNA: And that was the Government's concern,  
21 your Honor, is that the voir dire process is considered a  
22 public proceeding. And if the technology is in place,

23 hopefully by March 31, when we begin that process that that  
24 begin the broadcast of the closed circuit TV.

25 THE COURT: Well, they won't be able to see the

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1 jurors, the members of the panel, because I'm not going to  
2 expose them to even the spectators.

3 MS. BEHENNA: But the process would be able to be  
4 broadcast?

5 THE COURT: I don't -- do you have any objection to  
6 that, Mr. Jones?

7 MR. JONES: I don't have any objection, your Honor.

8 THE COURT: Yes, it will, if we're in place; so  
9 they'll see everything except -- and hear the responses but not  
10 see the panel members.

11 Mr. Tigar?

12 MR. TIGAR: Your Honor, that brings to mind yet  
13 another reason why making this place where the signal is  
14 broadcast look very like a courtroom under the control of a  
15 judicial officer is very important. During voir dire, the  
16 names of some of these folks that are summoned as prospective  
17 jurors may get out onto the public record.

18 THE COURT: I don't expect them to.

19 MR. TIGAR: I understand that.

20 THE COURT: Counsel will have these names, but I don't  
21 expect the public to have them.

22 MR. TIGAR: It would be important to us that the video  
23 spectators be under the same admonishments that other  
24 spectators are subject to, your Honor.

25 THE COURT: I expect to do that; and as will be seen

1 when the time comes, there will be some shielding of those  
2 persons in the courtroom, the panel members, for voir dire. I  
3 don't expect them to be subject to sketch artists or have their  
4 names published.

5 All right. I want to continue some of our pretrial

7 we'll do that, I suggest, at 10.

8 Mr. Hartzler?

9 MR. HARTZLER: Your Honor, you have scheduled a  
10 hearing for next Wednesday, and I had a previous scheduling  
11 conflict, so I ask that I be excused. Ms. Wilkinson will be  
12 here, as well as other members of the team. Mr. Orenstein will

14 THE COURT: What we're hearing is the Prong 1, I  
15 believe it's called, of Daubert, the legal issue about what  
16 scientific knowledge means, I think. And whoever from the  
17 Government's side is going to show up to do that will be  
18 welcome. And we'll excuse you, Mr. Hartzler.

19 MR. HARTZLER: Thank you.

20 MR. JONES: Your Honor, may Mr. McVeigh be present at  
21 the scheduling conference, in case I need him?

22 THE COURT: Yes, I intend to have him present.

23 MR. JONES: Thank you, your Honor.

24 THE COURT: All right. I'll meet with counsel and  
25 Mr. McVeigh at 10:15.

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1 (Recess at 9:50 a.m.)

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3 REPORTER'S CERTIFICATE

4 I certify that the foregoing is a correct transcript from  
5 the record of proceedings in the above-entitled matter. Dated

6 at Denver, Colorado, this 29th day of January, 1997.

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Paul A. Zuckerman

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