

**Thursday, May 29, 1997 (morning)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY JAMES McVEIGH,

Defendant.

REPORTER'S TRANSCRIPT

(Trial to Jury - Volume 121)

Proceedings before the HONORABLE RICHARD P. MATSCH,  
Judge, United States District Court for the District of  
Colorado, commencing at 9:00 a.m., on the 29th day of May,  
1997, in Courtroom C-204, United States Courthouse, Denver,  
Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription  
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PROCEEDINGS

(In open court at 9:00 a.m.)

THE COURT: Be seated, please.

Good morning. Are we ready for the jury?

MR. JONES: Yes, your Honor.

MR. HARTZLER: Yes, your Honor.

THE COURT: All right.

(Jury in at 9:01 a.m.)

THE COURT: Ladies and gentlemen, good morning.

We are ready to proceed with the closing arguments of counsel in this case. Because the Government has the burden of proof in the case, you will hear first from counsel for the Government. And counsel for the defendant will have an opportunity to argue, then counsel for the Government have an opportunity for a rebuttal argument. Following the arguments, I will instruct you on the law.

We will take our usual recess except we'll limit the noon recess to an hour today. We want to give a full and fair opportunity to both sides to present their arguments in the case, and we'll also ask counsel to help us with timing the recesses so that we don't interrupt at a time that may be inconvenient for the lawyer making the argument.

Also under the procedure here, the lawyers for both sides have an opportunity to change off; that is, not one counsel's responsible for the entire argument. They can split it up. So we're ready to proceed.

Mr. Mackey, you're going to present the Government's case.

MR. MACKEY: I am, your Honor.

May it please the Court.

THE COURT: Yes.

CLOSING ARGUMENT

MR. MACKEY: Mr. Jones, Counsel, Mr. Hartzler, my colleagues, ladies and gentlemen of the jury, good morning.

The events that were set in motion two years ago are drawing to a close. On April 19, 1995, a crime of ghastly proportions was committed. On that day a truck packed with explosives parked in downtown Oklahoma City filled with explosives. Only a wall of windows separated the unsuspecting children and women and men inside that building from the truck and the explosives that set outside. The truck bomb exploded, the building gave way, and suddenly many lives were ended and many, many more were changed forever.

America stood in shock. Who could do such a thing? Who could do such a thing? It's a question that began to ripple across this country coast to coast. And finally it's come to rest right here in this courtroom. It's fallen to you as members of this jury to answer that question.

Based on the evidence, based on what you've heard, the answer is clear. Tim McVeigh did it. Tim McVeigh and Terry Nichols in concert with each other planned and executed the violent attack on the Murrah Building and are responsible for the murders of those persons who died.

I have, as his Honor told you, some time this morning; and I want to use that time to visit with you, summarize, to

discuss a month's worth of evidence. It may take me the morning, and I appreciate the patience that you've shown to all of us throughout these proceedings; and I know I can trust that patience yet again this morning, but it's important that all of us discuss and think about and reflect upon what we've heard in this courtroom for the last month.

It's my opportunity to review some of the evidence, to suggest to you fair inference that, we submit, have been supported. It's my chance and I will to review the charges, what is at stake, what are the criminal charges against Tim McVeigh, what must the Government prove to you beyond a reasonable doubt before we can prevail and you can convict. I want to do that; but when I do that and when I'm done, you will have concluded that the evidence does in fact sustain the charges against Tim McVeigh.

When Mr. Hartzler first spoke to you in the opening and told you what the Government intended to do, to fairly present the evidence against Mr. McVeigh, he told you that the evidence would make your job easier, that it would amount to overwhelming evidence of guilt, that it would build brick by brick, witness by witness, a wall, a wall that added up to the guilt of Tim McVeigh. After a month of trial and hammered away at by a very experienced, very skilled team of defense lawyers and experts, that wall still stands, stands tall and strong, and it adds up to the guilt of Tim McVeigh.

When you retire to the jury room, evaluate what promises were made by Joe Hartzler against the evidence and see if we haven't kept our word. We promised and we've proven, in more ways than one, a number of important factual propositions.

No. 1, Timothy McVeigh, motivated by hatred of the Government, in a rage over the events at Waco, deliberately and with premeditation planned the bombing of the Murrah Building;

No. 2, that he educated himself on how to build bombs;

No. 3, that he enlisted at least one coconspirator and attempted to recruit yet another, Michael Fortier, to help him in that criminal act and that he and Terry Nichols acquired and attempted to acquire all of the necessary components to build a massive bomb; that Timothy McVeigh carefully, very deliberately selected his target, the Murrah Building, he surveyed it, and that in April of 1995, he rented the truck, built the bomb, and detonated it against the Murrah Building. That's the Government's case. Promises made, promises kept.

Contrast those promises and the evidence that supports them against the defense's promises to you made in opening.

Mr. Jones addressed you in opening and outlined to you what he expected the evidence would show. And his Honor has told you and you all know that no defendant need offer any witness, need offer any proof; but when they do, when they make promises and when they present evidence, you are entitled to examine that evidence in the same degree of scrutiny that we expect and demand that you examine our proof. And when you do so, his promises were not kept.

Mr. Jones stood before you in closing -- in opening, I should say, and said not only would the evidence create a reasonable doubt that you could not in fact conclude beyond a reasonable doubt that Tim McVeigh committed these crimes, he promised something much, much more: He promised that the

promised something much, much more. He promised that the evidence in this courtroom would prove Tim McVeigh innocent. It was a bold promise. He has failed to keep it. The evidence does not support it.

This is a murder case. This is a murder case. And as all murder cases, we must introduce you to the victims, and we did so in this case, through the testimony of fewer than 30 witnesses out of 130 that the United States of America called. You got to know them a little bit, just a little bit, through their photograph, photograph taken before their death, and a snapshot, perhaps, of people, co-workers, friends, who had worked with those individuals before they died, many times seeing those people on the day they died.

We took you first to the bomb scene, through sight and sound, through Lou Klaver. You remember her. She was the first witness, the lawyer for the Water Resources Board across the street from the Murrah Building. She just so happened to be conducting a hearing that morning and was tape-recording it, and that tape recording captured the incredible sound of the blast, the silence that fell just momentarily, and then the screams of people who began to realize exactly what had happened. No one at the Water Resources Building worked for the federal government, no one. Lou Klaver didn't. This bomber did not care.

Who could forget the testimony of Helena Garrett? Helena Garrett did not work for the ATF, she did not work for the federal government. Her young son, Tevin, barely had lived as long as Tim McVeigh's conspiracy existed. He died. This bomber didn't care.

The only thing he cared about was bringing down the Murrah Building on top of its occupants. Let me show a photograph that Miss Klaver identified, Government Exhibit 944. You'll recall she's the person centered right in the middle of that photograph, and it captured as best as we could what it looked like to these witnesses moments after the blast.

And numerous witnesses described how the sky went black with smoke and debris, and you heard Mike Shannon, the fire chief, who said there was so much smoke in the air that they had no idea which building had been bombed, so much rubble in the streets it was impossible to tell where the sidewalk began and the street ended and vice versa.

Let me show you Exhibit 1003. This is the scene that a number of the witnesses who testified before you personally experienced, the people like Susan Hunt, the office manager from HUD, who testified that on the morning of the blast, even though her office was on the 8th floor and even though it was on the opposite side of the building, she was thrown against the wall. In the course of her testimony, she stood before you, and with real dignity, name after name announced the 35 fellow employees at HUD who fell to their death that day.

This is the same scene that Florence Rogers experienced. Remember her? She was the lady in the credit union. Same scene she lived through that morning as she watched, literally watched seven of her co-employees disappear, literally disappear from a space no wider than her desk. When the smoke cleared, what the people saw was much, much worse than the fires and the smoke. The building's nine floors had

pancaked into the space of three.

The images that you saw in this courtroom were the very same ones that America saw in April of 1995, the same America that is hoping against hope that somehow, some way, there would be survivors in that rubble. And in fact, you learned in this trial there were a few, though very, very few, who, though were trapped inside the collapsed portion of that building, survived. People like Prescilla Salyers, and you recall her, she testified, she told her story. She told you how she started the morning of April 19 on the 6th floor at her duty station and ended up below the rubble. She described how with her one free hand she would use it to move debris so she could continue to breathe. The same hand she held out, was gripped by a rescue worker who at some point in the rescue operations had to let go as a bomb scare forced rescuers to evacuate the building.

There were some few people alive inside the rubble. Some very, very few. And unfortunately the stark reality is the one that Donna Weaver described. Donna Weaver you recall is the woman who worked some distance from the Murrah Building. Her husband, Michael Weaver, was a lawyer. She described being shot from her chair, running down the street, following the sounds and the smoke and the sirens and the people. She came around the corner; and what she saw was what you saw, a building that was gone. And in her words, she said, I saw Mike's office, it was gone, and I knew he was, too.

Rescuers worked on, anyway. They worked inside the broken building and did all that they could. And from every corner of America, people responded. Rescuers from across this country descended on Oklahoma City. Literally hundreds and hundreds of law enforcement officers -- you met many of them -- got in their cars, caught planes, and headed to downtown Oklahoma City. America was in shock. People needed help.

Hundreds and hundreds of people going into Oklahoma City; one man, this man, headed in the opposite direction, out of town.

Tim McVeigh that morning had parked the bomb -- parked the bomb truck in front of the Murrah Building, immediately below the cribs and the toys that one could see from outside that building, took off across the street, headed down the alley bordered by the YMCA, ditched the key from the truck, and made his way to the getaway car, that ratty-looking Mercury with a nevertheless reliable engine that had got him to Oklahoma City. He pitched the "Do Not Tow" sign that he'd set up on the dash in the seat and took off out of town, headed out of Oklahoma City.

He wasn't too worried about being connected somehow to this car. He had previously removed the Arizona license plate from that car, an Arizona car license plate, as the evidence proved, if people searched would come back to the name of Tim McVeigh. And he reasonably assumed what the reality was: On the morning of that bombing, law enforcement were headed to a much, much bigger crime, they were headed downtown Oklahoma City. He was headed in the opposite direction. He could reasonably assume that no police officer is going to notice or, if they do, bother to pull him over for a license violation.

And ironically, as the proof has established, one man he passed as he headed north was headed south, was Officer Charlie Hanger, long-time member of the Oklahoma Highway Patrol. And as you recall from Trooper Hanger's testimony on that morning, like virtually all law enforcement officers across the state, he was dispatched down to Oklahoma City, and that's where he was headed. And shortly thereafter, he got new orders that said, no, stay put, stay in Noble County. So he turned around and started heading north; and before too long, he passed Tim McVeigh's car with the missing license plate. And Tim McVeigh had been very careful not to flee the scene without being obvious about it. He didn't speed, wasn't speeding at all.

And as Trooper Hanger told you later, he did a little test drive. If you start at the Murrah Building at 9:02 in the morning and you drive within the speed limit and you travel 75 minutes, you're going to be 78 miles away from downtown Oklahoma City at the precise point where he arrested, pulled over Tim McVeigh.

You learned another answer to a question that bothered America in April of 1995. The situation was different for Tim McVeigh when Officer Hanger pulled him over. It's much different than the scene he had left moments ago, minutes ago in downtown Oklahoma City. Now, he was face to face with a police officer, someone who would be carrying a weapon, someone who would be trained to use that weapon, someone who might be especially alert to the dangers of roadside stops, and someone who had likely radioed in his location as he pulled Tim McVeigh over, and someone for all Tim McVeigh knew had correctly activated the video camera setting on his dash looking right at Tim McVeigh and his car.

You know, it's one thing to leave an innocent-looking truck parked outside a public building; it's another thing to draw down on a veteran Oklahoma trooper. Tim McVeigh tried to play it cool. Tried to be polite and courteous, hoped that he would get by. Charlie Hanger was not going to drop his guard. He noticed the bulge under Mr. McVeigh's jacket, asked what that was; and two events happened almost simultaneously: Mr. McVeigh volunteered that he was armed, and Trooper Hanger put his gun to the back of Mr. McVeigh's head. That situation was under control.

This concealed weapon that Tim McVeigh was carrying on him with the especially dangerous bullet that was in the chamber was reason enough under our law to arrest Tim McVeigh on the morning of April 19, 1995. And so due to the outstanding work of a single Oklahoma trooper, Tim McVeigh was in custody on the morning of the bombing in less time than it takes to drive from Oklahoma City to Herington.

Trooper Hanger had no immediate reason to realize what he had just accomplished because the truth of the matter is at that moment in time, no one in America would have thought an American would bomb its people. People were looking elsewhere.

As Officer Hanger locked up Mr. McVeigh's car setting there on the roadside, he checked with him about its contents, and you remember the car had virtually no personal belongings to Mr. McVeigh in it. He asked him about an envelope that was situated -- laying there on the front seat of Mr. McVeigh's

situated -- laying there on the front seat of Mr. McVeigh's car. Tim McVeigh, you want to bring that with you -- Tim McVeigh, No. And later in time, two days later when the FBI searched that car and looked inside that car and found documents with Mr. McVeigh's fingerprints and his handwriting, we all now knew why Tim McVeigh wanted to put as much distance between himself and that envelope.

He has tried in the course of this trial to neutralize the language that's in those documents. They're in evidence. You read them. You judge them. They are words of a man bent on violence. They are words of his making, and they speak his mind. And as you try to examine the mind of Tim McVeigh on April 19, 1995, start there, and you may find you need go nowhere else.

Among the contents of that envelope was an excerpt from Mr. McVeigh's favorite book, *The Turner Diaries*; and at the start of the clipping, someone had taken the time to clip out just this portion of the page 62 of *The Turner Diaries*. It begins: "But the real value of our attacks today --" and then goes on.

At the bottom of Exhibit 454 -- and you saw it into evidence -- someone -- not just someone, Tim McVeigh, that someone, wrote at the bottom, "Maybe now there will be liberty." It's not a coincidence that Mr. McVeigh picked words in present tense to have with him on the same day as the bombing.

You learned in the course of this trial the extraordinary efforts that Tim McVeigh took to plan and to calculate virtually every feature of this crime. And but for Charlie Hanger, we might all well agree that later that morning Tim McVeigh would have anonymously dropped that envelope into the mail to serve as his press release to the world of what he'd accomplished and more.

Tim McVeigh picked his clothes for the bombing as carefully as he picked that which he took with him. You saw Mr. McVeigh's T-shirts more than once. You remember the T-shirt of the likeness of Abraham Lincoln. This is the shirt that Mr. McVeigh was wearing on the day of the bombing. On the back the expressions, "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants," and droplets of blood fall from the tree; and on the front side, President Lincoln and the Latin phrase, "Sic semper tyrannous," thus always to tyrants.

Now, Mr. Jones told you in the opening statement that phrase is indeed the state motto for Virginia; and their colonial legislature, you may recall, liked that expression, used that expression. But on the front of the T-shirt that Tim McVeigh was wearing on the day of the bombing, there's no photo of the state of Virginia; there's a photo of President Lincoln, President Lincoln, a man who was assassinated, assassinated by a man who snuck up behind him and put a bullet in the back of his brain, President Lincoln, a victim who didn't know what hit him, victims just like inside the Murrah Building. On April 19, 1995, Tim McVeigh drove his truck bomb to Oklahoma City and drove away wearing a T-shirt with the words of an assassin on the front.

Little did anybody know, but at that morning of

April 19, all the roads were headed to Junction City, Kansas. Trooper Hanger told you that he asked Mr. McVeigh, Where did you get this car, this car without the plates and for which you have no bill of sale?

And he said, From Tom Manning up in Junction City, Kansas.

And he verified that and had a radio check and they did.

At the same time in downtown Oklahoma City, FBI agents were working. Just as the rescuers tried to find what they could inside the building, the police were trying to find the person who brought that building down. And one of the first clues was the axle, and you heard about and saw that axle in the courtroom. The VIN led to Junction City. You learned that it was a Ryder truck, owned by Ryder of Miami and that it was on assignment to Elliott's Body Shop in Junction City, Kansas, and that that truck had last been rented by a man named Bob Kling, Robert Kling.

So the question to face the police the morning of April 19, the same one that's facing you: Who is Bob Kling? The answer is Tim McVeigh.

Now, you have far more information now in May of 1997 than the police did in April of 1995, but it comes, nonetheless, to the very same conclusion. And you remember that what the police did, they began to search the area in Junction City, and they developed a composite, composite based upon descriptions offered by people who were at Elliott's on the day Bob Kling, Tim McVeigh, was there to pick up that truck. You've seen the composite. And you heard the artist who drew it, who testified in this case, say, I think the composite bears very striking similarities to Tim McVeigh. Well, the composite's in evidence. Mr. McVeigh's photo is in evidence. I'm showing it to you now. You decide. You decide whether those witnesses at Elliott's had it right, that the man

they had seen representing himself to be Bob Kling was in fact this defendant, Tim McVeigh.

All of this was coming together in April of 1995. You recall Trooper Hanger said just a few days later, as he did routinely search his squad car, he noticed in the back seat the business card that had been crumpled up, right behind where Tim McVeigh had been seated. Nobody else had been in that seat since. And on the back of that business card someone -- not just someone, we now know -- the evidence has shown this someone, Tim McVeigh, had written the words "TNT, call after May 1, if I can get some more." The evidence in April of 1995 was already mounting up against Tim McVeigh.

And a few months later, a grand jury in Oklahoma City returned an indictment against Tim McVeigh and Terry Nichols. And this case, this case, has only to do with Tim McVeigh; and our job throughout this trial has been to establish to your satisfaction beyond a reasonable doubt that Tim McVeigh is guilty of those charges.

Let me take just a few minutes now and outline exactly what those criminal charges are. There are 11 counts in the indictment. They fall into four separate federal statutes,



four different criminal violations.

In our business, we talk a lot about essential elements, and essential elements for your business become your checklist. They're questions of fact that each of you and collectively you must decide beyond a reasonable doubt the Government's proven. So let me go through your checklist for you on the crimes that have been alleged against this defendant, Tim McVeigh.

In Count One: Count One charges conspiracy, that Tim McVeigh and Terry Nichols and others unknown beginning in September of 1994 and until April 19, 1995, the date of the bombing, conspired to use a weapon of mass destruction, a truck bomb, against persons in this country and against property owned by the United States. There are three essential elements to that first count, to the conspiracy.

No. 1, that two or more persons agreed -- "agreed," that's the key word -- to use an explosive bomb in a truck as a weapon of mass destruction against a federal building and the persons inside.

No. 2, that the defendant, Timothy James McVeigh, knowingly, voluntarily, became a member of the conspiracy with the intent to advance or further its objectives.

And the third essential element of the count in Count One is that the achievement of the objectives of the conspiracy would have substantially affected interstate commerce; that is, there's a federal interest in this particular case.

Those are the essential elements of Count One, and you couldn't convict Tim McVeigh of Count One until and unless you're convinced beyond a reasonable doubt that we've proven each and every one of those. The answer to that question is that we have.

Let me show the essential elements of Count Two which charges a different crime, and that's the use of a weapon of mass destruction against persons. It's almost a subset, if you will, of Count One. There are four essential elements to Count Two:

No. 1, that the defendant, Timothy James McVeigh, used or aided and abetted the use of a weapon of mass destruction.

Second element is that the weapon of mass destruction was used against persons within the United States.

Third element: That the use of the weapon of mass destruction against persons within the United States had a substantial effect upon interstate commerce.

And three -- excuse me, four: That the defendant acted knowingly, intentionally, willfully, and maliciously. Those are the four essential elements of Count Two.

Count Three is the other subset of that conspiracy charge and that is the attack or use of a weapon against the property of the United States of America. Let me show the essential elements of Count Three.

No. 1: That the defendant damaged or destroyed a building or aided and abetted the damage and destruction of a building by means of an explosive bomb.

The second element is that the defendant acted knowingly, intentionally, willfully, maliciously.

And three: That the building in whole or in part was owned, possessed or used by or leased to the United States

owned, possessed or used by or leased to the United States.

Those are the first three counts of the indictment. His Honor, I expect, will tell you that if you convict Tim McVeigh on any or all of Counts One, Two, or Three, two more questions face you. One is whether those crimes resulted in the death of anyone listed in the indictment -- and you'll see those names; and secondly, whether those deaths were a foreseeable result of those crimes. And if you conclude that Tim McVeigh parked a truck bomb in front of the Murrah Building, the answers to those questions, I think, are obvious.

The fourth statute in the indictment, and those that are alleged to have been violated in Counts Four through Eleven, are first-degree murder counts. Under the federal statute, first-degree murder is committed -- and I will walk through the elements for you now -- if you find that the Defendant without lawful justification killed or aided and abetted the killing of another human being;

Second, that the victim was a federal employee with law enforcement functions who was killed while engaged in the performance of official duties;

Three, that the Defendant committed or aided and abetted the killing with malice aforethought;

And fourth, that the Defendant committed or aided and abetted in the killing in a premeditated and deliberate manner.

I expect his Honor will tell you malice aforethought is a state of mind that you must find; and in making that finding, you can decide whether the Defendant acted in a callous and wanton disregard for human life.

And I expect that he will tell you that premeditation means what you might expect it means: Someone formed a specific intent to kill another human being.

Keep these elements in mind as you listen to the evidence we discuss this morning and through the course of this day and, of course, during your deliberations, and use that checklist and see if the Government has not, in fact, proven beyond a reasonable doubt each of those essential elements as to each of those 11 counts.

Let me return now to the evidence. Tim McVeigh is a domestic terrorist. But he didn't start that way. The bombing that took place on April 19 in downtown Oklahoma City didn't happen overnight. Those are events that converged after an evolution of events and really was the culmination of all the planning and all the deliberate steps taken by this defendant to culminate in the bombing in April of 1995.

And you learned from words written by Tim McVeigh exactly when he stepped over the line, when he formed that specific intent, and when that evolution to terrorism had finished its course.

You will remember hearing testimony from Kevin Nicholas, who is the man who has a farm or worked on a farm in Michigan. He's a factory worker now and for years knew Tim McVeigh and Terry Nichols up in Michigan, and he came in here and he testified. One of the things he told you about was a letter that he saw in 1995 after the bombing, a letter from an aunt of his wife's; and he introduced that into evidence, a letter written by Tim McVeigh. And in the letter -- maybe some of you caught it, maybe some of you didn't; but it talks

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about -- dated February 10, 1995. Mr. McVeigh says, Six months ago, one-half year ago, that's when I left the legacy of passing literature behind and stepped forward to animal, moved from intellectual to animal. You remember the phrases about ripping people's heads off. In that same letter, he says, One-half year ago, that's when I made the commitment.

Count them up, moving back in time from February of 1995. And where do we land on the calendar? September, 1994. September, 1994, a date in time referred to numerous by numerous witnesses as events taking place relevant to this case.

He told people of his intent to kill long before he killed. The event that may have triggered Tim McVeigh to do the bombing is not clear. But one thing that is clear, if you think about this time line, is that Tim McVeigh had six solid months to abandon that intent, six solid months to think about it, think about it again, and walk away. And instead, he drove to Oklahoma City with the truck bomb.

Make no mistake about it: In America, everybody has a right to their beliefs, have a right to think and say what they do. This is not a prosecution of Tim McVeigh for his political beliefs. This is a prosecution of Tim McVeigh because of what he did: He committed murder. This is a murder case.

His Honor will tell you, I expect, that evidence about someone's state of mind, their political beliefs, those statements about political tendencies, while they are protected under the First Amendment, nonetheless in criminal court can be relevant evidence for you to consider. They can help you decide the question: What would motivate someone to do a crime of this dimension? You can consider and you should consider what Tim McVeigh was saying to himself and to others in writings and conversations about his hatred for the federal government and how he would give voice to that hatred in his actions.

Mr. Jones told you in opening statement that the politics of Tim McVeigh were mainstream. Mainstream. You judge for yourself. I submit that the evidence supports the conclusion forecast by Joe Hartzler, and that is those beliefs were nothing other than Tim McVeigh's intent to impose his will upon the people of this country through premeditated violence and terror.

What Tim McVeigh was saying and talking about to other people are, of course, his thoughts and beliefs, but he certainly got reinforcement about those views from one book. The centerpiece of Tim McVeigh's belief system seems to be one book entitled Turner Diaries. You've heard a lot of testimony about it in this trial. It's in evidence. Take time to examine that book. It was a book that Tim McVeigh promoted and carried with him for seven years; a book of fiction, a book of fiction; but Tim McVeigh believed in it; a book that he sent to his young cousin, Kyle Kraus, who testified, while Kyle was in high school; a book that he sent to his sister Jennifer, she testified, while she was in high school; a book that he sent to virtually everybody he knew; a book which later he would bring with him to his gun shows, put on the table, and offer for sale; a book that back in 1988, when he had first encountered

Michael Fortier, he encouraged him to read; and a book just a few weeks before the bombing, Michael Fortier was again encouraged by Tim McVeigh: "Read The Turner Diaries."

Tim McVeigh was fixated on The Turner Diaries; and everywhere he went, David Darlak, other people, The Turner=20 Diaries and Tim McVeigh seemed to go in the same sentence. It may have been a novel, but it was a book that Tim McVeigh believed in.

What's this book all about? It's about revolution, here in America. But it's not a revolution against the British. It's not set in 1776. It's about revolution in this country, in this century of our lives. And it describes how these revolutionaries can incite a civil war in this country through careful, selected acts of terrorism. That's the theme. And one of the acts of terror in The Turner Diaries is the truck bombing of the FBI building, downtown Ok -- Washington, D.C., that in many respects -- and you make that examination -- is identical to the bombing that Tim McVeigh carried out in the course of '94, '95.

The Turner Diaries is not merely an outlet for people who hate the federal government; and there are those, and those beliefs again are protected. It is not merely that. It is foremost a book about using terror for revolutionary purposes, the hope that it will incite others to revolt.

And so coming from a man who had come to personify The=20 Turner Diaries, Tim McVeigh knew exactly what he was talking about when he told Jennifer McVeigh shortly before the bombing, "Something big is going to happen in the month of the bull. Something big is going to happen." The something big wasn't the bombing; it was the revolution in this country that Tim McVeigh predicted would follow. And so Mr. Nigh and Jennifer McVeigh did set us straight: The month of the bull does not begin, doesn't fall on April 19. It begins the next day, April 20; and just like The Turner Diaries, just like Tim McVeigh believed, you conduct terror, and the country will follow; you conduct terror, and civil war will result. He was looking for the events after April 19: April 20, and when the month of the bull began.

Tim McVeigh was wrong about America. He was wrong about America's response to the bombing of the Murrah Building. The only blood that flowed in the streets was the blood that Tim McVeigh shed of the victims inside that building.

The destruction of the FBI building in The Turner=20 Diaries is fiction, absolutely fiction. The destruction of the Murrah Building in downtown Oklahoma City is real, horribly real, and the result of the acts of Tim McVeigh. The defense may offer other interpretations of The Turner Diaries. And like all literature, not good literature, but like all literature, you can interpret different things from the writings of others. But there's one sad interpretation: The bombing of the Murrah Building is the direct result of two men who hated this Government so much that they could do nothing else.

Whatever the origin was for this hatred inside Tim McVeigh -- whatever it was, all the justification that Tim

McVeigh seemed to look to, though poorly reasoned, were the events in Waco, Texas. Even before the Waco fire, Tim McVeigh was filled with hatred for his government; but no doubt it was Waco that convinced this defendant that violence against the Government was inevitable and that some offensive action was justified. Tim McVeigh told his friends: At Waco, the Government drew first blood; that it was the Government's declaration of war against the people.

In human terms, there is no debate about Waco, no debate at all. The fire and the loss of life at Waco was a horrible, horrible human tragedy. But Tim McVeigh's feelings were much different. They were on a different level. And you recall the testimony of Greg Pfaff, his friend from the gun-show circuit who said, After the Waco episode, we heard lots of criticism from lots of people about Waco; but nobody, nobody, was as livid about it as Tim McVeigh. And so over the years -- or the less than a year that followed thereafter, you could hear -- and you heard it through the testimony in this courtroom -- the rage in Tim McVeigh accelerated, crescendoed to the point that finally in the fall of 1994, he made his declaration of war against this country. He announced, I have decided with my friend Terry Nichols to take offensive action against our Government.

And so he wrote a letter to Michael Fortier, his friend in Kingman, Arizona, telling him just that. He warned Michael: Don't share this letter with your wife. Michael did anyway, and the two Fortiers talked about it.

And later when Michael Fortier asked him, Well, what exactly do you have in mind when you talk about taking offensive action against the Government, he said: I mean to bomb a federal building.

In mid September, 1994, shortly after this letter, Tim McVeigh comes to Kingman. And it's clear why he's traveling to Kingman. He wants to appeal directly to Michael Fortier: Join this conspiracy. So he asked Mr. Fortier, Do so, will you do so; and Michael Fortier says, No.

And finally, Mr. McVeigh says, What will it take? What will it take for you to join the war against your Government?

And he says, A United Nations tank sitting in my front yard. Michael Fortier from the beginning and throughout the course of his relationship with Tim McVeigh recognized the difference between political rhetoric and murder.

Rejected by Michael Fortier in September of 1994, Tim McVeigh headed back, headed back to Kansas, back to someone who did agree with him, back to Terry Nichols. And in the fall of 1994, as you heard, they began using all their energy, all of their limited funds, all their efforts to acquire ingredients that would one day, if put together, would bring down a nine-story office building.

We talked a little about the motive, what might motivate any man, this man, to do such a horrible crime. And obviously, the other question is did he have the means; did he have the means to commit murder, the motive to commit murder, means to commit murder? And the answer to that question is the same as before: Absolutely. And the proof has been overwhelming

overwhelming.

First of all, the question is did the evidence prove that Tim McVeigh knew how to build a bomb. You have to have bomb-making knowledge and the ingredients to combine them in a way that could leave the results that we saw. And in the course of this trial, maybe it struck you as it did me, how depressingly easy it is.

There are two witnesses from two very different places, Paul Rydlund, a man who appeared early in the case, from Eldorado Chemical Company, and Linda Jones, a petite little woman from the British National Forensic Laboratory, who said, in effect, the same thing; it's easy. It's easy to build your own improvised explosive device. All you need are ingredients to make a main charge and then something to set that main charge off. And both of them agreed that if you've got ammonium nitrate, nitromethane, Tovex sausages, Primadet blasting caps, TNT, and det cord, that's all you need; you can make a bomb.

Well, how do you know that Tim McVeigh knew what to do with those ingredients? In this free society, any of us can write away for a book on how to build a bomb. And you heard from Dana Rogers, the account representative from Paladin Press located here outside of Denver, and the catalog that he put into evidence that listed those kinds of things that you can buy. And he told you that according to their records, twice, in 1992 and then in May of 1993, after the Waco bombing -- excuse me -- after the Waco fire, Tim McVeigh ordered twice from their company, both times how to build bombs. In May 1993, he ordered the book, Homemade C-4.

In cross-examination, Mr. Nigh pointed out -- and he's right about this -- there are lots of different books that are offered by Paladin Press, books on everything from bounty hunting to guns. But that's exactly the point. The only orders that Tim McVeigh ever placed with Paladin Press were for bombs, how to build bombs. The bomb book that he bought in May of 1993, after the Waco fire, Homemade C-4, is not a long book. It's in evidence. It's about 50 pages long, lot of pictures on how to do it. But you'll see and hear lots of terms that you heard in this courtroom, terms like ammonium nitrate, nitromethane, anhydrous hydrazine, and TNT.

This book teaches not only what you need in the way of ingredients but where to go get it. Tim McVeigh made good use of this particular book. The last page of this book, the author writes: "The explosive made by mixing ammonium nitrate with nitromethane seems to possess all the desirable characteristics of high-grade military explosives." The author goes on to say that if you change the formula, if you used anhydrous hydrazine with that ammonium nitrate, you're going to have, as he described, the most powerful chemical explosive known to man, short of an actual atomic reaction. Those are the words in this book, the book read by Tim McVeigh. So obviously, anyone who set out on a course to buy anhydrous hydrazine, having read this book, knew the terrible things that could happen.

And so the proof in this case did demonstrate that in the course, really, of less than about 30 days' time in the fall of 1994, Tim McVeigh and his coconspirator, Terry Nichols,

acquired everything they would need to build a bomb that could do what eventually it did.

Let me take a moment and talk a little bit about the deliberative process. We'll talk a little bit about one rule you may not find in the Judge's instructions to you. The first rule, of course, as he will tell you, is that the critical question is whether we have convinced you beyond a reasonable doubt of the charges that face this defendant. It does not mean that all of you have to agree about the evidence. You have to agree about what that evidence means. And so each of you will take, perhaps, in different degrees of sufficiency the evidence of one witness or another, a document; and what it means may strike one of you very differently than somebody else. You don't have to agree on how you reason. You don't have to agree on the weight you want to give a particular document or particular witness. All that you have to agree on collectively is that the Government has met its burden and proved beyond a reasonable doubt the charges against this defendant.

And in this case, there is some likelihood that you may react differently, each of you, to the evidence in this case, partly because there is so much different evidence. There's eyewitness accounts, there's documentary proof, fingerprints, chemical analysis, physical evidence from the Nichols house, physical evidence from McVeigh's car, physical evidence from his arrest, from the Murrah Building, testimony from family members who received immunity, testimony from friends who received immunity, testimony from experts, lay handwriting opinions, summary testimony on phone records, testimony from a person with a plea agreement, stipulations, models, diagrams, photographs, all to illustrate that testimony.

In this case, the Government has presented both direct and circumstantial evidence; and I expect his Honor will tell you the law draws no distinction between the two. And so you can be as persuaded by circumstantial evidence as the next juror might be by direct evidence. It's entirely up to you to give whatever weight you think the evidence is entitled to.

The evidence in this case draws a parallel, to my mind. I think it can be compared to meals that are served across this country on family get-togethers, large meals, often prepared by very proud mothers who intend to serve up something for everybody, who know that not everybody's going to like the sweet potatoes in the same way. They know that everybody's not going to like every one of the desserts served. But their objective is when that meal is done, each and every person can push away from that table entirely satisfied and maybe even stuffed.

Well, the evidence in this case that the Government's presented is a smorgasbord of evidence, and you are entitled to pick and choose; and our prediction is once you do that, you can push away from that evidence entirely satisfied that we have proven beyond a reasonable doubt the charges against this defendant.

Let's go back to the evidence. The main ingredient as you learned, ammonium nitrate, in volume terms clearly the

biggest component necessary to build a bomb. What's the proof that Terry Nichols and Tim McVeigh bought 4,000 pounds of ammonium nitrate in September and October of 1994? Evidence starts right here, starts back at the Homemade C-4. On page 6 of this book, the author says: "Although fertilizer-grade ammonium nitrate can usually be purchased from nurseries and garden supply stores, a better source for explosives manufacture is farm supply stores": What you need, where to go get it.

And in the fall of 1994, just down the road, maybe 45 minutes away from where Terry Nichols lived, in Marion, Kansas, was the McPherson Co-op, Mid-Kansas Co-Op, located in McPherson, Kansas. And we have proven, as the evidence supports, on two different days, really separated by about three weeks' time, that farm supply store sold 4,000 pounds of ammonium nitrate -- you saw the bag, says "explosives" on the front of it -- to a customer named Mike Havens.

Now, the sales in and of themselves are suspicious, and you heard why: Two good reasons. First, this purchaser paid with currency, paid with cash. And as you remember from Mr. Nattier, that doesn't happen very often. But second, this purchaser also paid the tax. Mr. Nattier told you that you want to come into a farm supply store and buy ammonium nitrate, using it, or intending to use it, for agricultural purposes, farming, the law says you don't have to pay the tax; but you do have to fill out a form. You have to fill out a form, you have to sign that form. And that form: You know where it goes. It stays right there at Mid-Kansas. So Mike Havens decided, I'm going to pay cash, and I'll go ahead and pay the tax, because the choice was otherwise: I'd have to leave evidence, my signature, sitting in the files of Mid-Kansas. Suspicious, only suspicious, but they shouldn't be ignored.

Remember that if you took the time like Agent Lou Michalko did to go through all of the hundreds of ammonium nitrate transactions at McPherson's and all of its stores in central Kansas engaged in, what you find is Mike Havens at the top, the largest sale by cash and paying tax.

There's more. First sale took place on September 30, 1994. It's a Friday. It's a Friday, the same Friday that Tim Donahue told you during his testimony -- and you remember him, the man who has a ranch in central Kansas, started small, about a half section and today has more than 15,000 acres. Tim Donahue said, I employed Terry Nichols as a ranch hand for six months, beginning in March of 1994, ending, you recall, Friday, September 30, 1994.

Mr. Donahue doesn't strike people as somebody hard to get along with; and maybe Terry Nichols knew that when he said that morning, Not only is this my last day, but I want to leave early today, Friday, September 30. And that's what he did. Mr. Donahue said Terry Nichols left midday, thereabouts. He didn't see him again that day until about 7 p.m. And 7 p.m. you remember the circumstances that took him to Terry Nichols' ranch house. He drove up there to look at a waterbed and to give him his last paycheck. He saw Terry Nichols there, but he also saw a second man, a man who he identified from this witness stand as this man, Tim McVeigh. Terry Nichols, Tim McVeigh together on Friday, September 30, 1994. Last seen him



McVeigh together on Friday, September 30, 1994. Last seen him midday, saw him again with Mr. McVeigh at the end of the day, enough time for two men to drive to McPherson 45 minutes away, buy 2,000 pounds of ammonium nitrate in a false name, take it off to a storage shed and get back to the Nichols house.

If you're not confident from Mr. Donahue's testimony, alone remember Marife Nichols who said: I lived there, lived there with my husband. In mid September I left to go back to the Philippines; and when I left, Tim McVeigh was there. Tim McVeigh, a long-time friend of Terry Nichols, was there at the house in Marion, Kansas.

Special Agent -- excuse me -- I guess Fingerprint Specialist Lou Hupp testified more than anyone perhaps, in terms of appearances in this courtroom, but you learned one thing from his testimony and that is he can't tell you when a fingerprint is placed on a document. It's not something that he can tell you, but he can tell you positively -- and he did in this case -- that I found Tim McVeigh's fingerprint on the receipt for September 30 -- Friday, September 30, for the Mike Havens' first purchase of 2,000 pounds of ammonium nitrate. Tim McVeigh's fingerprints on the receipt that has the name Mike Havens.

That's not all. Where was the receipt found? Where was it found? You have to go to the testimony of Joanne Thomas who is a financial analyst from Omaha, woman who came down here to testify that in April of 1995, she and others from Omaha came down to Mr. Nichols' house in Herington, Kansas, and did a search. She was the one who found, tucked back in a drawer in the kitchen cabinet, a pink receipt of Mike Havens wrapped around some coins. She introduced it into evidence. Tim McVeigh's fingerprints on Mike Havens' receipt found in Terry Nichols' house, circumstances that you can consider, should consider, in coming to the conclusion Mike Havens is two men: Tim McVeigh and Terry Nichols, joined in common purpose of acquiring ingredients necessary to build a bomb.

But there's more. 2,000 pounds was not enough. 1 ton of ammonium nitrate, already twice what Linda Jones would say is the kind of bombs that she encounters, wasn't enough. In October 1994, October 18, just a few weeks later, Mike Havens goes back to the same store, buys another ton, another 2,000 pounds of ammonium nitrate. And the proof shows that Tim McVeigh and Terry Nichols were back in central Kansas at the time of the second purchase at the McPherson store.

On October 16, just two days before the second Havens purchase, October 16, someone checked into a hotel in Salina Kansas -- Salina, Kansas, just due north of McPherson, not too far at all, and that someone used the last name of Havens, and that someone left a fingerprint that Lou Hupp identified to be the fingerprint of Terry Nichols, and that someone recorded their license number on that registration card as Michigan WX1640. And we put into evidence a picture of a Michigan license plate found at the Nichols search, the license plate number: Michigan WX1460. Terry Nichols back in Kansas, mid October, just north of McPherson, just north of where Mr. Havens returned to buy yet another ton of ammonium nitrate.

There are lots and lots of aliases in this case. It's a central theme that seems to run through the evidence,

numerous false names: Mike Havens, Terry Havens, Shawn Rivers, Daryl Bridges, Tim Tuttle, Joe Kyle, Ted Parker, Robert Kling.

Now, Mr. Jones may tell you, and I won't disagree, there's nothing against the law in using a different name if that's all you're doing, but you cannot ignore the question of whether there's something up, something big is up when you have so many aliases all surrounding travels and purchases and headed in one direction, acquiring ingredients for a bomb.

When you use an alias, maybe you can keep creditors off your trail, but it certainly interferes with efforts by law enforcement to track down participants, and it certainly interferes with the evaluation of where you've been and what you've been doing. And that's the reason why these two men use so many aliases in such a short period of time. All of that evidence adds up to the conclusion that Terry Nichols and Tim McVeigh bought 4,000 pounds of ammonium nitrate.

But there's more. You have Tim McVeigh's statements made to his friends Lori and Michael Fortier, and each of them testified that Fort -- excuse me -- that McVeigh confided in them, We bought ammonium nitrate for our bomb, confided in them, That's going to be our main ingredient, the ammonium nitrate.

Lori testified that McVeigh told her that he had already purchased the ammonium nitrate when she saw him out in Kingman in late October. That would be after September 30 and October 18. And around the same time, Michael Fortier said McVeigh said he and Terry had already bought the ammonium nitrate. You remember part of the description that Michael Fortier gave about that story, he said McVeigh complained -- I don't know if "complained" is the right characterization -- but he said, Here's Nichols who's got this farming background; surely he can go into a farm store, pull off the sale in an unsuspecting way. But no, it didn't happen that way. He complained about Terry Nichols. Those kind of details give credit to the testimony of Michael Fortier.

And in that respect, and in many other ways, throughout this case the testimony of Lori and Michael Fortier has been corroborated. They offer direct evidence, the kind of evidence that we talked about earlier when someone says, That's a person that I know, have known for years, and that person shared with me his secrets about a criminal act. That's direct testimony.

And throughout this case, there has been the testimony of Michael and Lori Fortier ringing through all of our ears as we listened to the pieces from totally different sources, totally different witnesses, totally different documents to come to the same common ground.

And the fact that so much other evidence supports and links into what Michael and Lori Fortier told you is itself enough reason to conclude that what they told you was the truth.

It can't be overstated, however. I mean there were exceptions. There was some evidence offered through Michael and Lori Fortier that stands alone. Nobody else -- nobody else told you about an event that Lori Fortier told you about in her trailer. Nobody else told you that Tim McVeigh emptied her

kitchen cabinet, took out the soup cans, and using those soup cans to simulate barrels full of explosive material demonstrated for her how he intended to configure his bomb. Nobody else said that, but you can believe it.

And as you test that testimony, think about why Tim McVeigh was doing what he was doing. He was trying to demonstrate to this woman what he knew about bomb-building in a special way. He used the term "shape charge." Anybody in the military knows about shape charges. Talk about shape charges, why are shape charges so important? Because, as he said, they maximize effect. They maximize effect. You can build a bomb, but then you can build a very good bomb, a very efficient bomb, a bomb that can take down a nine-story office building that had only been standing 18 years.

And when you think about Linda Jones's testimony about efficiency, I mean she said it more in a clinical way; but it's true, it's what you would expect. Not all improvised devices are built alike. Some don't detonate with the same degree of efficiency as others. What she said about the bomb that went off in downtown Oklahoma City is that it was very large and it was very efficient. The sign, a signal, some evidence that whoever configured that bomb, whoever built that bomb, took a lot of time, educated themselves to the end, made sure that they got the right ingredients, made sure they configured it in a way that would produce the results they intended. Somebody like -- somebody like a man who would sprawl out on a kitchen floor and use soup cans months and months before the bombing to say, This is what I'm going to do and this is why I'm going to do it.

And there's another reason you can believe Mike and Lori Fortier, and that reason was disclosed in a letter that Tim McVeigh wrote to his sister. You saw the letter. In the letter Tim McVeigh says: Jennifer, you can trust Michael and Lori Fortier. And at the time he wrote the letter, he trusted Michael and Lori Fortier. He trusted them enough to reveal to them incriminating information, incriminating secrets, like exactly how he planned to place the barrels inside that truck.

In this courtroom, Tim McVeigh has portrayed Michael and Lori Fortier as morally corrupt drug abusers. Not too long ago, they were his friends. The United States did not select Tim McVeigh's friends; he did. The United States did not select Michael and Lori Fortier as witnesses; he did. And as friends, knowing what they knew, they came in and told you.

Lori Fortier testified pursuant to a grant of immunity. So did Jennifer McVeigh. And as witnesses, the rule applies to them precisely the same. Provided they tell the truth, that's the proviso. Then the United States of America can't take those same statements and use them to prosecute them. That's what a grant of immunity means, a promise not to use the testimony, their truthful testimony, to prosecute them.

Michael Fortier testified pursuant to a plea agreement. It's a different animal of sorts. And that document, that plea agreement, is in evidence; and you should examine it. It requires him to appear as a witness. It requires him to provide truthful testimony. And in return, the United States will make known his cooperation to the sentencing

court, and Michael Fortier may receive a reduced sentence, a lesser sentence than if he had not cooperated, if he had not appeared before you as a witness.

Plea agreements are contracts. And I expect his Honor will tell you that the United States is permitted to enter into such contracts. This contract between the United States of America and Michael Fortier was negotiated and signed off on behalf of by Joe Hartzler, representing the United States. And there are two provisions in that contract that should not escape your notice. First, Michael Fortier loses all the benefits, past and future, if he doesn't testify truthfully. A condition of his plea agreement.

And second, the agreement says if any evidence develops indicating that Michael Fortier was involved in any agreement at any time with anyone to bomb any federal facility, that agreement's gone, and Michael Fortier can be testified (sic). Time has passed, months have passed, more than a year has passed since that plea agreement was entered into, that contract was entered into. The United States stands by its plea agreement with Michael Fortier.

What happened in this courtroom happens all the time around the country, in other courtrooms, cooperating witnesses testify, juries are faced to examine what are the pushes and the pulls, what are the motivations of people, where might they break down, and even though the law requires truthful testimony, do something different. That's your job, that's the job of assessing credibility. That's your job for Lori Fortier, Michael Fortier, and Jennifer McVeigh.

And the courts recognize this practice and in fact I suspect the Court will tell you about a jury instruction that says just that, be aware, be aware of those kinds of influences that may be brought to bear on witnesses, be aware, examine them, ask the hard questions, ask them not once, but just twice, examine the testimony of those witnesses with special care, great scrutiny, caution, think about it, think about it more than once.

As you do, think about this. Think about how in essence what Michael and Lori Fortier, these morally corrupt drug abusers, these former friends of Michael -- excuse me, Tim McVeigh have in common with Jennifer McVeigh, also testifying under a grant of immunity. What is it that they have in common? What they had in common was a unique personal relationship with Tim McVeigh in a way that permitted him as he demonstrated, to open up, to share in correspondence and in conversations his plans to kill other people.

Jennifer McVeigh got the correspondence, Jennifer McVeigh knew the questions, and she didn't want to ask her brother. She had learned just like Michael and Lori Fortier, this man is on a course that may destroy others.

So as you evaluate the credibility of the Michael and Lori Fortier, think about Jennifer.

I'm going to return before morning break to one discrete area of the evidence, and that is storage lockers. Lots of evidence about storage lockers, and it answers the question: What do you do if you got 2 tons, 4,000 pounds of ammonium nitrate and you want to keep it safe and you want to keep it secret and it has to stay there for six months or so

keep it secret and he has to stay, there for six months or so until April 19 rolls around.

Well, you do what Tim McVeigh and Terry Nichols, did: You go out and get storage lockers in phony names, paying cash. The first one on September 22, 1994, was obtained by Tim McVeigh. Let me show you a photograph of that. Exhibit 359. You remember this one. And you saw so many pictures of storage sheds, this one's not much more distinctive than the others, but I'll tell you, as the evidence will support, this one is in Herington, it's a Unit No. 2, in Herington, Kansas, a little, bitty town just south of Junction City and just north of Marion.

On September 22, 1994, this unit, Unit No. 2, was rented and Helen Mitchell -- you remember her, the woman who works with her brother who owns businesses in Herington, and she's the bookkeeper for the lumberyard and she also takes care of leases on the storage sheds. And she came in and said, I found the lease when the police asked for Unit No. 2 and here it is, signed by Shawn Rivers. That was the name given by this renter. I can't identify him, it's been too long ago, I see a lot of renters, but I know this is my record, and it is in the name of Shawn Rivers.

It was entered into on September 22, 1994. What's so important about that date. Well, the importance of the date is it's before they buy the first ton of ammonium nitrate. Bad planning if you go out and buy a ton of ammonium nitrate and nowhere to put it, so you got to get a storage shed first, and that's what they did: September 22, under a false and phony name, they already had this storage shed.

For some unexplained reason, and you'll remember the convergence of these facts, in September of 1994, September 22, precisely, Terry Nichols was still living at the Donahue ranch, and I asked him, what's the address, if you live at that ranch house, what's the address. His answer was the same answer that Mr. Shawn Rivers gave on that lease, the very same answer, Route 3, Box 83, Marion, Kansas, that's the address that Shawn Rivers gave Helen Mitchell on September 22, 1994. Well, who was there, who was living there at that time: Tim McVeigh. As Mr. Hartzler said, no case ever answers every question; why Tim McVeigh gave an address that might be traced back to him: Who knows, but he did. And you know that because when Helen

Mitchell pulled that lease out of her file, turned it over to the FBI; what they found on the FBI -- excuse me, on the lease was eight fingerprints of Tim McVeigh. Tim McVeigh is Shawn Rivers. Tim McVeigh, the man living with Terry Nichols in September of 1994, on that date, September 22, went out and rented a storage shed in a fake and phony name, and for the purpose that I've suggested.

There was more evidence about storage sheds. And you can travel through lots of documents and try to review all of the witnesses' testimony about this, some of which is less exciting than others, no doubt, but it boils down to this, it boils down to this book, Exhibit 250, that Mary Jasnowski, the lawyer from Omaha that headed up the search of Mr. Nichols house in April of 1995, put into evidence and she said, This is a book that I found in the Nichols' house, the same book that

Mr. Hupp said had Nichols' fingerprints on it.

On the pages marked here at the top, Joe Kyle, No. 40; Ted Parker, No. 37, where have you heard those names and numbers before? The answer is Shari Furman. Remember Shari Furman's testimony? She came in and said that Boots had some storage sheds in Council Grove, Kansas, I'm his bookkeeper, I keep his records, Boots is not real good about record-keeping, I do my best. I don't have a lease for exhibit -- excuse me, for Unit 40, Joe Kyle, Boots probably handled that one, there's no lease. I did handle the lease for Ted Parker; I got a signed contract. And I got it because I went out to the storage shed in Council Grove -- remember the story -- and I met the man to wanted to rent another unit, rent a unit, introduced himself to me as Ted Parker, he wrote the name on the form, Ted Parker; and after the bombing, I look at TV, Ted Parker is Terry Nichols, that was Shari Furman's testimony.

Ted Parker, Joe Kyle, in Terry Nichols' house in his notebook, one and the same.

The testimony in this case about storage lockers boils down to one important fact: All of them, except for the one out in Arizona, all of them in central Kansas, the place where they were acquiring bomb components, were paid through April 21. Bombing's on April 19, they were paid through the date of the bombing.

And when they were searched -- and they were -- they were empty. The United States of America found no evidence, no physical evidence inside of those storage lockers. And the rest of the evidence explains why. You remember the ammonium nitrate, we'll talk about that just very briefly. Sold in ton quantities in shrink-wrapped pallets and in double-lined bags. That's how they're packaged. Makes it hard to trickle out. By April 21, 1995, when the FBI got to those storage sheds, they were simply too late. That ammonium nitrate, other materials had gone up in smoke in Oklahoma City.

Your Honor, this might be an appropriate --

THE COURT: All right.

MR. MACKEY: Thank you.

THE COURT: We'll take our morning recess at this time, then, members of the jury, and of course you recognize that the case is not been given to you for a decision; that -- just as has been true in all recesses up to now and will be true until you're instructed otherwise -- you must keep open minds, do not discuss the case or these arguments, and avoid anything outside of our evidence which may influence you in any way on the decisions to be made. You're excused now for 20 minutes.

(Jury out at 10:19 a.m.)

THE COURT: Recess, 20 minutes.

(Recess at 10:20 a.m.)

(Reconvened at 10:40 a.m.)

THE COURT: Be seated, please.

(Jury in at 10:40 a.m.)

THE COURT: Mr. Mackey, you may proceed.

MR. MACKEY: My folks didn't use the term "deferred gratification," but that's a principle I learned as a kid. Some things just take a lot of effort.

Phone records. Phone records. A lot of witnesses, a long time, but it was worth the time in this case.

The Daryl Bridges phone records will help you. They will guide you. They will direct you to answers that you must answer (sic), to help you come to the conclusion that Tim McVeigh is guilty.

Mr. Jones stood up in opening statement and said the Bridges debit card didn't have a camera on it. Well, that's exactly the point. Tim McVeigh and Terry Nichols would not have used a card thinking that it would be easy to track how they were using it. They thought if you buy a card in a false name and if you don't get a record in the mail from the company that nobody is keeping records, nobody can find the phone calls to Ryder, nobody can find the phone calls to the various companies, nobody can find the phone calls that you now by virtue of Mr. Dexter and others have found. They didn't realize that; and of course, how could anybody have known about Fred Dexter?

Mr. Jones said the phone records in his opening statement, he would prove, are unreliable; that you would be foolish to place any weight on them. How could he have known about Fred Dexter?

Computers are amazing things, and we learned a little bit about that in this case. With computers, with time, with skill, with dedication, you can find them. Deferred gratification? Just wait, do the work. It's there. It wasn't quick, it wasn't easy; but the phone records produced to you in the course of this case are reliable, and they'll help you piece together questions that you'll have.

The question that occurred to me as Mr. Jones attacked the phone records in opening statement is "Why the bother?" Well, the answer is because they incriminate his client, because he wants you to think that they're unreliable, because he wants you to look the other way.

His Honor told you at the time that we produced the testimony that the phone records themselves, the Bridges summary, doesn't tell you, and you cannot conclude by just looking at the phone record, who it was that made that phone call from a pay phone, who it was that was in Terry Nichols' house when that phone call came in, and certainly the content of the conversation. That's why there is a whole range of evidence in a case like this, bits and pieces, brick by brick.

But this case is done, and we put in all that other evidence that with in combination the phone records, there it is. That wall is built.

We'll start with the most natural question: Who is going to use the card? And the answer is, at least in my neighborhood, it's who paid for it. And the proof was seven money orders all made payable from, quote, "Daryl Bridges," this false and phony name, two of them identified by Jennifer McVeigh as "the handwriting of my brother," and the other of Terry Nichols by other witnesses and your own observation. The two men who used the card are the same men who paid for it.

And Kevin Nicholas -- remember the factory worker/farmer from Michigan. He said Tim McVeigh came and stayed with me, I saw he was on the phone. You can tell from Kevin he counts his dollars. He was alarmed and maybe a

KEVIN, HE COUNTS HIS COLLARS. HE WAS ALARMED AND MAYBE A little bit worried that his friend was going to take advantage of him and run up a big phone bill. He asked Tim McVeigh about it. Tim McVeigh said: "Don't worry. I'm using your phone. I'm not charging on it. Terry and I share a debit phone card." And all the questions about the unknowns got answered in this case. And look at where those phone calls are taking place. I mean, if any of you have a detective's instinct, this is part of the proof that you can enjoy, because you can look at pay phones located in cities where other proof shows Terry Nichols was or Tim McVeigh was. You can look at pay phones -- excuse me -- calls that come out of motels and ask yourself, Didn't someone testify that Tim McVeigh was registered at that same room -- excuse me -- at that same motel the same time as this phone call? Those are pieces that come together, and they answers the questions that the records alone can't.

For example, the last two phone calls in the Daryl Bridges card, April 17, last two phone calls -- after that, both these defendants are in custody -- April 17 are two phone calls. They both come from a pay phone in the Kansas City airport. Look at the records. It doesn't say who is on the phone. It doesn't visualize who picked up the receiver, but Marife Nichols did. She testified, "On that day, Terry and I took Josh," his son, "to the airport in Kansas City, put him on a plane to Las Vegas." Where did that phone call go to? One of those two from that pay phone? Las Vegas. Las Vegas. The residence of Josh's mother.

And the next phone call, the other phone call on that last day? Where did it go? It went to the Dreamland Motel. Terry Nichols -- you know because Marife was here -- said Terry Nichols used the pay phone; and now with the Bridges phone card, we know where he called.

And you know from Eric McGown, the 19-year-old son who lives with his sister and his mother -- that lived there at the Dreamland -- that's their home as swell their business. You know from his testimony, he put into evidence the registration card for Tim McVeigh. Where was Tim McVeigh according to that registration card and Eric McGown on that same day? The Dreamland Motel. Circumstantial, but direct and circumstantial count the same in this game. You decide if that hasn't answered the question of who was using the Bridges card and how they were using it.

And when you think about that, when you think about that, think about this book again. Turner Diaries, Homemade=20 C-4, two short books that became very important to Tim McVeigh; because in this book, in this book, just like it said, go to farm supply stores for ammonium nitrate. It tells you where to go if you're looking for nitromethane.

Page 13, you'll see it: "The best place to look for nitromethane is at drag strips and stock car races." Right here. And how many witnesses did we hear who were from drag strips or race car tracks? Here's the Yellow Pages put in evidence before you, Yellow Pages that correspond -- you'll see the highlighting -- to calls that were made on the Bridges card.

Another place to look for nitromethane according to this book -- another place is hobby shops. There is a Yellow



Pages for hobby shops. Somebody using the Bridges card was calling hobby shops, somebody who read this book, somebody who said, "If I'm looking for nitromethane, follow the map."

And then this book says, "If all else fails, if all else fails, nitromethane can be ordered at extremely high prices at chemical supply companies," right here in this very same book.

Somebody -- somebody using the Bridges card called chemical company after chemical company right down the Yellow Pages, as if they had read this book.

And I will tell you that you can read this book more than once and not find any explicit reference in here about barrels. They don't talk about where you get barrels. But Tim McVeigh and Terry Nichols didn't need Homemade C-4 to say where you get barrels. They went back to the Yellow Pages. And you saw again in the fall of 1994 nitromethane, ammonium nitrate, all these other components, searching, searching with their fingers for barrels, containers, something that would house. Visualize: Maybe soup cans.

Well, what was the defense's response to all of this? Mr. Dexter was on the stand a long time, and part of the cross-examination about the Yellow Pages is, "Well, on that same yellow page, there is entries, are there not, for chicken dinners?"

"Yes.

"There is entries on there for hogs?"

"Yes."

Here in the Yellow Pages. They're not in the Bridges summary, and that's the point. Nobody using Bridges' card called for chicken dinners. Hogs? It's a big record, it won't take long to look at it. There are no calls to anybody listed in the phone book under "Hogs." There are for nitromethane, for ammonium nitrate. There are no barrels. There are for things that matter. Things that matter.

We've talked about the first of the ingredients, ammonium nitrate, and I'll talk to you more about that; but you need more. All the experts -- and even these experts agree you need something more. You need a fuel. Nitromethane got talked about a lot in this case, for good reason, because there was a lot of evidence that Tim McVeigh and Terry Nichols set out on a course to acquire that second important chemical, that sensitizer, which you pour into that oxidizer to make it work.

And the book says, "If you apply yourself to the task, you can do it." Well, that's another way of saying premeditation, planning, and deliberation.

Let's start with Lori Fortier. She remembered in October of '94, again, October, September, a refrain that's repeated so many times by witnesses, that she looked out of her window and saw someone she didn't recognize. Now, this is not a large, luxurious estate. This is a house trailer. And she looks out and sees somebody she didn't recognize, and she responds. She heads out the door; and just as she gets there, she recognizes, This is somebody I know; this is Tim McVeigh.

He was dressed in a disguise. This was his biker outfit. And you saw the picture in evidence, a picture of Tim McVeigh dressed in a motorcycle shirt with a bandana, Harley.

And there is nothing wrong with people who ride motorcycles -- nothing at all. But they are people that acquaint (sic) drag strips and acquaint race car strips and buy nitromethane. If you want to disguise yourself and buy something that could be used for a criminal purpose, why don't you look like somebody who could use it for an innocent purpose?

Jennifer McVeigh said that she remembered talking to Tim McVeigh and asked about this biker outfit; and he said, "It's a disguise." He said it. We don't have to conclude. He said it to his sister, and she told you.

And yet there was a third reference to "biker," and it came from Michael Fortier; and he talked about how Mr. McVeigh said, "I want to get some fuel." He said mistakenly anhydrous hydroxine. He was wrong about how you pronounce that last word, but that's actually a reason why you ought to credit his testimony. It's not canned. I mean, he gave you what he recalled: Anhydrous hydroxine. And he said, "McVeigh told me his plan was to dress up like a biker and go to a raceway."

And that's what Linda Juhl from Mid Chemical Company in Oklahoma talked about. She said, "I remember getting a phone call from a young male who was calling from Kansas, who was asking with these chemicals." You'll find those phone records trace right to Mid Chemical, Kansas. Somebody -- somebody used the Bridges card to call Linda Juhl and asked about a chemical that you can use to kill people.

Glynn Tipton: Glynn Tipton, like Tim Chambers, two men who spend their weekends, at least during race season going around the territories, working out of the backs of trucks, and selling to people who consume those fuels. Decent living, deal with a lot of different customers. Glynn Tipton remembered one of the customers that he encountered first weekend in October of 1994. It was in Kansas. He was at a racetrack, do you remember, just south of Topeka. Just south of Topeka.

Mr. Tipton talked about this man who in this courtroom he said is this man, 90 percent certain, 90 percent certain, because as he said, this image, the reason I remember at all is burned in my memory because this guy wanted something I had never encountered before: He wanted anhydrous hydrazine. He admitted that's a little bit out of his league, wasn't familiar with it, had to do some research, had to check with people; and when he checked, he learned that if you mix anhydrous hydrazine with nitromethane, two chemical terms that are talked about in this book, you will have an explosion of immense proportions. I mean, he remembered that.

And so he remembered when this fellow called him back later the next week at his office in Manhattan, Kansas. And by that time, he learned that he was not going to be able to deliver; but back-to-back occasions of dealing with this person, all talking about something that to this man, Glynn Tipton, was very unique, very unusual.

And you'll see in the Bridges card on October 7, there is a phone call that afternoon to VP Racing. That's in Manhattan. That's where Mr. Tipton worked. That was his phone number. That's what he said. October 7, 1994. Comes from the residence of Michael Fortier, and Michael Fortier shared his home and his phone with Tim McVeigh on many, many occasions.

Well, stay with me for just a moment on October 7

well, stay with me for just a moment on October 7, because earlier that same day, the top entry there is a phone call to Arctic Traveler. Arctic Traveler was maybe mentioned once or twice in this courtroom, because it was one witness, one witness only, David Pinnell. Mr. Pinnell was the man who was working for Arctic Traveler in October of 1994, a long history with the Air Force and was then for a brief period of time selling small generators. Remember that? Small generators to people who called in and inquired. They had a good story in the Soldier of Fortune magazine reviewing their product. They got a lot of phone calls after this article. One came on October 7, 1994. He knows that. He didn't have the Bridges record. He knows that from his own records.

And those are the records where he sat down, as any businessperson would, who is following the lead on a sale, and you write down the information the caller gives you. Now, this caller did not give the phone callback number, and he told you why. But he did give him his name and he did give him his address, and that's in evidence. And the caller: Tim Tuttle. The address? Kingman, Arizona, same day from the same place. Tim Tuttle: Michael Fortier says that's the name, an alias, used by Tim McVeigh.

Kevin Nicholas, his friend, who has no reason to lie, says, When we do gun shows, Tim McVeigh used the name Tim Tuttle. Pieces that fall together, bricks set one upon another, a wall that begins to build.

On that day, just like Glynn Tipton said, I got a second phone call from this person, a man asking about these two very volatile chemicals. It was Tim McVeigh, and he was looking.

It didn't work. He didn't get the stuff from VP Racing, at least the one in Kansas, at least the one in Kansas.

He took more time. He took -- just like Homemade C-4 said, "Apply yourself to the task, keep at it, you can run it down." And so Terry Nichols and Tim McVeigh ran down and -- ran down to Ennis, Texas, a few weeks later, October 20, 21 of 1994, drove down from Junction City through Oklahoma City, spent the night. You remember Mr. Patel from the Amish in Pauls Valley, Oklahoma, a small city south of Oklahoma City and north of Ennis. The next morning, they went to the racetrack. It's another Tipton look-alike, if you will. Tim Chambers, Glynn Tipton: They both worked for the same company. They don't know each other, but they both in this case, as you know, met Tim McVeigh.

Tim Chambers came in this courtroom and said: It was that weekend, I'm selling nitro. This guy comes up. He asked me to -- if I could sell it. I sold it to him, and here's the receipt. He brought it to you. He found it. October 21, 1994, cash, siphoning pump. Someone would need a means to get the chemical out of those drums. Bought a siphoning pump, and it's that person spent almost \$2,800 buying more than 160 gallons of nitromethane. Nitromethane. And that somebody was Tim McVeigh.

Tim Chambers did not say, It's the man over there with the blue plaid shirt. He couldn't do that. He said, I'll tell you what I remember. Do you remember how he went through the description, his physical description? It was almost like

-----, the first ----- -- the -----  
scrolling through. Jeff Davis. I mean how people recalled certain features; and you line them up against the man in question, and you have a person who fits that description. Talked about his height, talked about his build, talked about his weight, and he talked about facial features that, in his description, reminded him of a possum, eyes that are close together.

By October 21, 1994, Tim McVeigh and Terry Nichols had 2 tons of ammonium nitrate and more than 160 gallons of nitromethane.

And the biker. You remember Mr. Chambers said, This person said, I'm a biker and that's why I want nitromethane.

Jennifer, biker; Lori, biker; Michael Fortier, biker; Tim Chambers, biker. Pictures of Tim McVeigh looking like a biker, disguised, because what he was engaged in was not innocent street-racing, not even something a little more exciting like drag-strip racing. He was buying it for the purpose promoted in this book and committed to him.

Mr. Chambers gave you one other final reason to link this event to this courtroom, and that is he said, When I loaded those three drums, 54 gallons, I did so in the back of a dark-colored pickup with a white -- faded white, he said, topper, flush with the cab. All of us have seen campers. This is a topper, runs flush to the cab; and that was the description he gave of the vehicle driven by the man who bought the nitromethane.

Finally, let me return to the Bridges card. If you want other proof that they had what they were looking for by that date, go back to the Bridges card; and when you scroll through the activity there, you'll find that after October 21, after the date of the receipt, all of the phone calls to Coogle Trucking that we know is a supplier for nitromethane, all the phone calls to VP Racing, all the phone calls to chemical companies, all the phone calls to hobby shops, all the phone calls that anyone with any research would say, That's where I'd go if I'm looking for nitromethane -- they end. No more phone calls after that date. They didn't have to call anymore. They had what they needed.

Oxidizer, sensitizers, words that hopefully many of you will have little reason to remember for future events; but they're materials that got used in this courtroom. And everybody said that's not enough. In addition to ammonium nitrate, in addition to chemicals, you've got to make something explode. You've got to set off that small series of explosions that will cause the big one. And that's when we learned about det cord and that's when we learned about boosters and that's when we learned that Tim McVeigh and Terry Nichols acquired once again all the ingredients they needed to build this bomb.

Greg Pfaff, one of the early witnesses: He's the fellow, remember, from Harrisburg, Virginia -- I think I have it right. He runs the deli, once was on the gun-show circuits. That's how he got to meet Tim McVeigh. He remembers this unexpected phone call in the fall of 1994 from Tim McVeigh, this person he knew; and Tim McVeigh says, Can you get me det cord? Can you get me det cord? Now, you judge Mr. Pfaff and judge whether that might be a conversation he would recall. He

recalled it; and recall, too, that Mr. McVeigh said, If you can get it, I'm prepared to drive across the country to get it, to get it from you. Don't send it by mail. I'll come get it.

That's not where Tim McVeigh got the det cord, but that's evidence you can consider as to whether Tim McVeigh was intent to getting det cord.

He obviously got it from somewhere. Tim McVeigh got det cord from somewhere, because, as you remember, det cord is this hollow tube. And running down the center of this hollow tube is something called PETN. PETN. It's the same substance that Mr. Burmeister -- Agent Burmeister said he found on Tim McVeigh's clothes, in his pockets, and on the earplugs. That's where PETN rests until you cut it, until you handle it, until you do so in a manner that can leave residue.

Now -- and I'll take you back to April 19, 1995, that -- the day that Tim McVeigh was taken in custody on a public highway in Oklahoma. People at Noble County had no idea that they were dealing with a person later charged with the Oklahoma City bombing. They processed him like they would anybody else, followed the same procedures, took his clothes, put it in a new bag and set it aside, took his contents in his pockets, his pants, including the earplugs, put it in a Ziploc bag, put it someplace else.

What they did tell you is that there were certainly no other prisoners in the Noble County Jail that were charged with high-explosive cases, no other source, no other likely reasonable source for any PETN that might later be found in evidence in two different places in our jail. They told you that.

The defense has suggested that you should ignore -- more than ignore -- maybe condemn the PETN finding testimony of Agent Burmeister. You shouldn't do that. You should credit it. And you should reason that it is evidence pointing once again in the direction of guilt of Mr. McVeigh; because if you reject it, you will have had to imagine, almost as Ms. Wilkinson visualized for all of us, a little fairy that would sprinkle PETN in the clothes of Tim McVeigh, knowing you ought to put more PETN the right pocket for a right-handed man than in the left.

Actual contamination is one thing. Suggestions, accusations of contamination is something entirely different. And in this case, in this record, with all the witnesses, both from the jailer in Noble County all the way up certainly educational line to people like Agent Burmeister and Dr. Fred Whitehurst, what you have seen is a question that has to be posed to you; and that is, is there reasonable likelihood of contamination? Did it happen in this case? Not whether, in fact, if we could go far enough the earth turns flat, but what's the evidence in this record? What is the proof, the affirmative proof, that the PETN that was found came from a source other than high explosives that Tim McVeigh handled?

Agent Burmeister was saluted, if you will, by Dr. Whitehurst as an extraordinarily careful chemist, a man who operates by principles of science, in this case and every case; said, I did every test possible. I did test upon test. He didn't stop with the first finding. He went after it again and

again. And further, before I came in this courtroom -- further, before I testified before you, I ran down everything I could about the chain of custody. I wanted to satisfy myself before I testified to you that PETN that I found was not the result of something else other than Tim McVeigh putting on his clothes and putting in his earplugs.

The fact of the matter is that 75 minutes after the bombing and 78 miles from the bombing, Tim McVeigh was pulled over at that precise moment he was wearing clothes with PETN and other explosives residues consistent with all the other evidence in this case. If that's all the evidence there was, maybe you should think long and hard. But you have to take it in the connection with the rest of the evidence, all the evidence about ammonium nitrate, nitromethane, and everything else. It all adds up. It all adds up.

Back to boosters, back to things that make the main charge explode. And we told you how his first step in 1994 was to reach out to friends, sort of the easy way, if you will. That didn't work. That didn't work. Tim McVeigh had to commit burglary in order to get the necessary ingredients that would be part of his bomb.

On October 1, 1994, Michael and Lori Fortier got a phone call from Tim McVeigh -- and it was talked about and is in the records -- and Tim McVeigh said, Go out of town and rent a storage shed under a false name. They didn't end up doing that. You heard the explanations for it.

Later, McVeigh and Nichols together show up in Kingman and they at some point at some time have gotten their own storage shed. And they invite Michael Fortier out to the shed. He goes out there with Tim McVeigh and Terry Nichols. He goes inside the storage shed, and McVeigh shows him what he estimates to be about 12 boxes, 12 containers; and McVeigh tells him, These are explosives that Terry and I have stolen at a quarry not too far from Terry's house. And Michael Fortier remembers noticing on the box, one of the boxes he saw, this yellow triangle, this distinctive industry-regulated requirement that if it's explosives, tell the world so they don't get too close. He remembers seeing that. It registered in his mind, and he told you about it.

He also -- that is, Mr. McVeigh -- told Michael Fortier, the same man to whom he revealed lots of things, how they did it, not only where they went but how they did it. And they said, We took a handheld drill of Terry's and we went out and drilled the locks to break into these magazines, these explosive magazines, to store it. And then he told you that -- or Fortier did -- that sometime after the burglary on the way to Kingman, they almost got into a car wreck. That would have been a car wreck, and that's what they were talking about. He said, Lots of explosives we had stolen were almost in a car wreck.

Well, do you remember Jennifer McVeigh and this conversation about I talked to my brother, he said something about a car wreck, and he said something about carrying explosives up to 1,000 pounds? And there was cross-examination about, Well, we're not talking about two Christmas boxes full of blasting caps. That's not a thousand pounds.

Well, someone has got the dateline wrong. You won't

well, someone has got the date wrong. You won't have it wrong. You won't have it wrong, because this episode happened in the fall of 1994, not Christmastime, 1994. And you know why? Think about the proof: Bud Radtke, Allen Radtke, Bud, the blaster from quarry -- from the quarry in Marion, Kansas, came in here. Looks like he makes a living filling holes with explosives, detonating them, and watching rocks go away. I mean that's the kind of people you met in this case. And what he said is, When I discovered that burglary at my explosives locker, we went through it and tried to make some kind of judgment as to how much had been stolen. He recounted the number of boxes of Tovex sausages that were stolen. If you add it up -- listen to his testimony -- there was more than 400 pounds alone of the Tovex sausages taken in that burglary in central Kansas just a few miles down from Terry Nichols' house.

But that wasn't all. There was the blasting caps, several, several boxes of blasting caps also taken in that burglary; so the event that we're talking about when you think about the weight of the evidence is clearly the fall of 1994, not Christmas of 1994.

Finally, the question about at least as to the presence of these defendants at the place of the crime in October of 1994 is answered once again by Tim Donahue. Remember his testimony? He said, Once I gave the last paycheck to Mr. Nichols, I was a little bit worried because he still was in the house and so I hovered around. He admitted it. He hovered around the property. He's responsible and watched until Sunday, October 2, he saw Terry Nichols' truck take out of town. And then that was the last time he saw it. Terry Nichols was in central Kansas in the same weekend this burglary took place.

Those burglary -- or excuse me. The explosives taken in that burglary for some reason were taken halfway across the country, maybe to clear out of town, to Kingman, Arizona; and you know now where they were taken. You heard the testimony about a storage shed. Let me show you Exhibit 170. This is the top of that lease; and it shows that on October 4, two days after Tim Donahue last saw Nichols, on that day, Tim McVeigh using his real name rented a storage unit, Unit No. A10 in Kingman, Arizona. This is the picture of that particular storage shed.

The question that occurred to you as you listened to that testimony in light of other testimony is why would Tim McVeigh use his own name, especially after he had asked Michael Fortier, Get a storage shed but use a different name? Well, the answer was from Jodie Carlson, and she was the woman who came in from Kingman storage and said, My practice has always been at that place, you don't give them a unit, you don't sign up a lease unless they produce a driver's license. Tim McVeigh didn't have a choice. He had to produce a driver's license, had to use his own name. And that's what happened. Contrast that with Sharri Furman and with the other people in the Kansas units -- or the units in Kansas. That's not the practice. They could freely use false names.

Why do you need a storage shed on October 4, 1994, if you're Tim McVeigh in Kingman, Arizona? The answer is: Just a

few days earlier, you've stolen several hundred pounds, maybe up to a thousand, of explosives and you need a place to hide them.

The proof about the burglary doesn't stop there. There is more. Remember again what came out of the Nichols' residence in April of 1995. Let me show you Exhibit 140. This is the picture of a cardboard box found in the Nichols' residence in April of 1995. And more than one witness said, Look at the orange coils. To some of us, maybe they look like extension cords. That's not what they are. Those are Primadet blasting caps that Bud Radtke said are just the same kind, just the same length, just the same delay that were stolen in my burglary in October of 1994. Primadet blasting caps still in Nichols' house, still under his control months later. That fit, that matches just what the blaster said they lost in that burglary.

Think about, if you would -- and you saw some of the photographs. I want to show you at this time the magazine that was broken into, what it might take to accomplish that job.

These are explosive storage lockers. They're not meant to be gained entry easily. They're meant to discourage theft; and for that reason, as you'll see, there is a shroud, a metal container -- there it is -- over the lock. Can't get in unless you have a key to open the lock or unless you use a drill to reach up into that shroud, reach up into that container and drill out the padlock, just what Tim McVeigh said they did when he talked to Michael Fortier.

Jim Cadigan was an expert who testified in this case. He told you he works for the FBI in their tool-mark impression section, and he told you that he took a drill bit that was taken from the Nichols' residence, a drill bit, and he made a test impression and then he compared it to the tool marks or the drill marks that were left in the padlock from the crime scene; and this is the exhibit that he showed you.

Now, remember as you examine this, this is not like an album, stereo album broken in half. Think about the conditions: Outside, late at night, with a handheld drill, trying to stay secret, trying to stay silent, you drill up the padlock, and you leave it behind.

It's not laboratory conditions. You're going to leave behind the kind of defects that you see on the left-hand side of the screen.

Mr. Cadigan has got a different way of doing work at the laboratory. He can make a test impression that is much more controlled. When you make those comparisons, the point of the matter is they match. That was his testimony. The drill bit that came out of the Nichols house made the same impressions on the padlock found at the crime scene, further proof of just what Tim McVeigh told Michael Fortier: They committed this burglary for what was inside.

Let me show you finally Government's Exhibit 122, and this is the picture identified by Mr. Radtke. This is inside that storage shed. And you'll notice on the boxes that you can see in the left- and right-hand side that distinctive orange- or yellow-colored diamond, just the way Michael Fortier described what he saw with Tim McVeigh and Terry Nichols in



this storage unit out in Kingman, Arizona.

Tovex sausages, as you learned, is a booster. It will work. It will perform that part of the function, but so is TNT. So is TNT. You learned that in this case. They're just as effective as Tovex as maybe more so. Experts might disagree.

What you also learned in this case was that Tim McVeigh travels fast and light. You heard that phrase used by his own defense counsel, "travels fast and light." And that's what and how he was traveling when he got pulled over by Trooper Hanger. And you remember that when Trooper Hanger went to his car later, he found the card. And on the back side of that card in Tim McVeigh's writing, "TNT." You need to consider that as you consider whether Tim McVeigh acquired boosters enough to make the bomb that he intended to explode.

And remember, as you study the language, that this card doesn't say, See if I can get some TNT. It says, "See if I can get some more TNT."

What do you have if you have all these ingredients? You go back to Homemade C-4 and you have, as this author describes, something that can shatter concrete and shred steel. And that was the effect it had in April of 1995 on the Murrah Building.

Let me return briefly to Kevin Nicholas. And he comes up so often, partly because he in some ways can be a barometer to guide you in deciding credibility of other people. Think about the Christmas boxes of blasting caps. Kevin Nicholas said, I'm sitting at home. It's dinner. It's near Christmas. He showed you pictures of his home later, and there was snow on the ground in central Michigan. It's up in the Thumb. And he says the phone call rings -- or excuse me -- the phone rings and it's Tim McVeigh. And Tim McVeigh says, I've been in a wreck; I need your help. I've been in a wreck, and I need your help.

Kevin responds. He's a friend of Tim McVeigh. So he gets in his car and he drives down to a Speedway stop, and there he finds Tim McVeigh tucked back away from the public area in between some semitrailers. And his car is damaged. There is no doubt. Clearly by December of 1994, Tim McVeigh's driving had caught up with him. He had been in a wreck; and Tim McVeigh, according to Kevin Nicholas, said, Let's get the stuff that's in my car and put it in your pickup truck. That's what they do. Just at the moment Kevin is going to pick up these boxes, maybe without regard for the content and maybe because he didn't know the content, Tim McVeigh says, No, I'll handle that. And he's the one who carefully puts them in back of Mr. Nicholas' pickup truck.

Later when they make their way to Kevin Nicholas' house, Kevin asks him and Tim McVeigh says, Those are blasting caps in those boxes. Kevin Nicholas said, Those boxes were wrapped like Christmas presents. A disguise, a means and manner to fool people at Christmastime into thinking something innocent was inside, when something, stolen explosives, was in fact inside.

The Bridges card is at work again. Let me show you a particular exhibit. And just like Kevin Nicholas reported from a Speedway bus stop to his home, there was a phone call placed

a speedway bus stop to his home, there was a phone call placed on December 17, 1994 -- December 18.

Kevin Nicholas' testimony takes you back in time, not too far back in time, to Kevin -- excuse me -- to Michael and Lori Fortier. And they started the time line about those boxes. They told you about the episode where they went out to McVeigh's motel room; and after he asked them to bring these matters, they came out and wrapped -- Lori did, wrapped these boxes full of blasting caps. Kevin Nicholas, Michael and Lori Fortier, they agree. In December of 1994, Tim McVeigh was disguising stolen blasting caps and taking them across the country.

That episode in December of 1994 at the motel led to some other part of this case, and you heard from it -- from Michael Fortier about it. That same visit to the motel room, Tim McVeigh says, Come with me to Kansas. There are some guns there. I'm going to give them to you. We're going to sell them, and he does. And he tells you about leaving the day after or the day of his birthday. He remembers that, falls right on this time period, December 15, and they travel together off to Kansas. They spend the night in Amarillo, Texas; and the next morning, they go on to Kansas. Before they get to Kansas, they stop in one place that Tim McVeigh wanted to be sure to stop. They stopped downtown Oklahoma City. Michael Fortier remembered it. He said, We drove around the north side of the building first -- the south side, I'm sorry, to the courtyard. He remembered seeing that. He made a turn around, and then he saw what he described as a wall of glass. No doubt that they were right in front of the Murrah Building in downtown Oklahoma City.

They had lots of conversation at this time about the bombing plan and what Tim McVeigh planned to do, and it was in fact during this trip at this time in downtown Oklahoma City that Tim McVeigh tells Michael Fortier, We're going to stage a getaway car. We haven't decided yet, Nichols and I, as to whether we're going to bring it down in advance and leave it there or whether Nichols will be down there on the day of the bombing waiting for the bomb to go off and the two of us to escape together.

But they talked about it, and Michael Fortier told you about it. And during that trip, McVeigh drove Fortier up an alley and he said, This is going to be my escape route. And Michael Fortier asked why.

And he said, You see this large building? I want to be sure -- I want to be sure that there is a large building between me and the blast. He was worried about protecting himself, being too close to a blast that might kill others.

Michael Fortier remembered that conversation and he remembered that route. He remembered the building. He stepped down from the stand, looked at the model and said, This is it. You know, this is it.

And you know from exhibits and because you have become more familiar with downtown Oklahoma City than Michael Fortier was that the building he was describing was the YMCA, a large multistory building in this direction from the Murrah Building. And this was the alleyway -- two alleyways that joined together, and this was the escape route that Tim McVeigh

described to him in December of 1994, months before the bombing.

In that alley, in the very same alley, the FBI later found the key to the bomb truck.

You might not be surprised that a bomber, any bomber, once he left the truck would get rid of the key. Any bomber would want to get rid of incriminating evidence, and what could be more incriminating than the key to the bomb truck?

It was found in the alley, the very same alley, that Michael Fortier had described to you as being the alley designated by Tim McVeigh as his escape route.

We learned in this -- in the course of this trial what many of us already knew, and that is there are more cars on the road than there are key codes, and so no doubt somewhere somebody has a key that matches yours. But it's not likely the key that you would pull out of a defense counsel's pocket, for example. The percentages are much, much smaller, much, much, smaller than that.

What's the percentage that laying in the alley, in the very same alley that Michael Fortier identified as the escape route, is a key that has the same key code that matches a 20-foot Ryder truck, Unit 137328? Is that just a coincidence, or is that another brick in the wall?

The defense complained that we should have brought the agent in who actually picked it up off the ground. Instead, we put on two witnesses. Jim Elliott. You remember him? He was a small, gray-haired fellow from the FBI who brought you the axle early on in the case. He testified, I took this key into evidence. That's his job. He controls the evidence. And the second witness we brought in was Dawn Hester, the FBI photographer from Texas; and she said, That photograph that you just saw was my photograph. I took it before it got picked up. And in this case for some reason, the photograph isn't worth a thousand words. They want yet more evidence, more testimony from more agents. The key is not going to turn into a tie rod. It is what it is; and two people who had firsthand knowledge about it, where it was and what it is, testified in this case.

In that same trip to Oklahoma City in December of 1994, Michael Fortier recalls, too, that Tim McVeigh said, If need be, if need be, I will take my truck, my bomb truck, and drive down the stairs and into the Murrah Building. And it was his state of mind at least in December of 1994 -- and Michael Fortier again showed you where the stairs would have been at the Murrah Building. And that's a fact that you can rely upon, because remember, the next time that he was in Oklahoma City was for the grand jury, was for the grand jury, when he got a lawyer and then began to cooperate. At that point in time in late May, 1995, the Murrah Building was gone. It was gone. He remembered the stairs because he was there, just like he said, with Tim McVeigh. He remembered the stairs because it was the measure of a man, as he described to you, prepared, so he said, to kill himself to kill others.

Michael Fortier pled guilty to the crimes he committed, including interstate transportation of stolen weapons. And there was evidence in this case about the theft of guns and/or matters from an Arkansas gun dealer. Lori

Fortier testified about a conversation with McVeigh where McVeigh said, We're going to do it as a fund-raiser; and if you think about it, a man who travels light, doesn't have a job, that's probably a particularly accurate way to describe that robbery.

And keep in mind, too, that even though it may be easy to build a bomb that can do so much damage, there are costs; and those costs can run up.

In the course of this case, we learned that the ammonium nitrate cost almost \$500. We learned that storage sheds that we've talked about here, the rental fees, were more than 600 bucks. The nitromethane from Tim Chambers was approximating 2800. The Ryder truck rented much later in April of 1995 cost \$280, and the phone call bills on the Bridges card for this time period cost more than \$300, almost \$4,500 to acquire the ingredients needed to build this bomb. And that's setting aside the free Tovex and blasting caps.

And so there was a need for money. And some of those costs, remember, are incurred in the fall of 1994, and some of them are incurred in 1995. And so there was a need for money, and the answer to that need was the robbery.

You heard about that robbery from Michael Fortier, you heard about it from Lori Fortier, and you heard also about it from Kevin Nicholas. Lori and Michael recalled that Tim McVeigh said Terry Nichols did the robbery of this gun dealer in Arkansas, and he described a pistol-grip shotgun that he used to carry out this robbery.

Kevin Nicholas said, He told me about his former friend in Arkansas who lived back in a remote area of the woods, the same words that the Fortiers used to describe this victim; and he said that this fellow would be easy to rip off because he lives out in the woods and because, he says, I don't think he's the kind of guy that would report it to the police.

We did not call the victim of the robbery in this case. We did not call the gun dealer who was robbed. But this is a bombing case, not a robbery prosecution. What's important about the robbery to this case is whether it provides you facts that help support the conclusion that two men would do whatever it took, including burglaries and robberies, to get money and to get materials that could be used to build a bomb. And that's what the relevancy is of the robbery in this case. That's why it's important.

Let me turn now to Jennifer McVeigh for the final time. Jennifer McVeigh was a reluctant witness, and that's understandable. That is understandable. But it was Tim McVeigh who put her in the position, who put her in the witness stand. It was Tim McVeigh who put her in a position to know facts that were shared with you.

Over the course of time, he wrote to her, as she described to you, both in general and then later in more specific terms the measure of his hatred for government. And perhaps the single most significant document in this entire case in terms of evaluating whether a person, any person, this person, may come to hold a hatred so deep to do something so horrible was in a document that Jennifer McVeigh brought to you. Let me show you that document.

Tim McVeigh remembered that in the fall of 1994

Jennifer McVeigh remembered that in the fall of 1994, when Tim McVeigh was back, around Thanksgiving time, Tim McVeigh used her computer. Jennifer McVeigh later had a conversation with Tim McVeigh about this -- about this very document, so she remembered it. And for some reason we'll never know, this document existed after April of 1995. It wasn't destroyed, but its words still ring for what they said. It's addressed to ATF: "All you tyrannical MFers will swing in the wind one day for your treasonous actions against the Constitution and the United States. Remember the Nuremberg trials, war trials -- but, but, but I was only following orders. Die, you spineless cowardice bastards."

Those are words of Tim McVeigh. They measure his intent, and they were delivered to you through a witness who would rather not.

We will have to take Jennifer McVeigh's word that there was nothing else that she destroyed, and she destroyed more than one thing. That was even more graphic than this document. We'll just have to take her word at that.

Remember in early 1995 the return to Kevin Nicholas, because in that same letter that we talked about earlier there was an enclosure; and he mentioned it was with the letter, the same letter that talked about moving from intellectual to animal, to ripping people's heads off. It was attached -- was an enclosure. And in that enclosure were the words, "I will celebrate any time," referring to ATF, "one of those Gestapo bastards dies."

Terry Nichols' fingerprints were on that enclosure. Tim McVeigh's fingerprints were on that enclosure. It's evidence of their state of mind in 1995, months, shortly, weeks before the bombing.

In the final weeks before the bombing, Tim McVeigh sent more than one signal to his sister: Something was imminent. Something was imminent. What other interpretation can you make from the letter dated March 25 that she brought in to you and showed you than his instructions in that letter: "Don't send any more letters after April 1. Don't write after April 1." The warning is going up. He's alerting his sister. Something imminent is going to happen. Words like "Something big is soon to occur."

When you think back to April of 1995, think back to that time period in our history, is there anything -- anything at all that happened that was bigger than the bombing of the Murrah Building?

Spring arrived, 1995. All these materials that had been sitting safe and secure, all the planning, all the final configuration of these efforts were going to come to fruition. Spring was here. Spring of 1995.

And what you learned from this evidence is either that Tim McVeigh bombed the Murrah Building and killed the people inside, or that he was the unluckiest man in the world:

Tim McVeigh just happened to be at a motel in Arizona when someone using the Bridges card called a Ryder dealership.

Tim McVeigh just happened to buy a car at a Firestone store in Junction City on the same morning that someone using the Bridges card called a Ryder dealership in Junction City, someone using the name Bob Kling.

someone using the name Bob Kling.

Tim McVeigh just happened to check into the Dreamland Motel in Junction City on that same day.

Tim McVeigh just happened to be the only registered guest at the Dreamland Motel when someone using the last name "Kling" ordered Chinese.

The Dreamland Motel just happened to be walking distance from the Plaza Stop pay phone where a cab picked up a rider for McDonald's.

And Tim McVeigh just happened to be captured on the security camera at that same McDonald's as he leaves the restaurant 20 minutes before someone, it just so happens, named Kling arrived at the Elliott dealership down the street, which just happens to be located within 20 minutes' walking distance.

Tim McVeigh just happened to check out of the Dreamland Motel the day before the bombing.

And a key that would operate this Ryder truck, the bomb truck, just happened to be found in the same alley that Michael Fortier told you was his escape route.

Tim McVeigh just happened to be 75 minutes and 78 miles away from the bomb scene on the day of the bombing.

And when arrested, Tim McVeigh just happened to be carrying literature -- literature that declared his intent.

And when arrested, Tim McVeigh just happened to have traces of high explosives residue on his clothing, in his pockets, and on his earplugs.

Actually, it did not all just happen. These were acts committed intentionally, deliberately, with premeditation, all part of the plan of Tim McVeigh and Terry Nichols to bomb the Murrah Building and to kill the people inside.

These events that crescendo to April of 1995 really began back in Kingman with the Fortiers. Michael Fortier talked about having been to the VA hospital and coming home and doing some rehab on his back; and as part of that rehab, he would take a walk. And he took a walk with you in this courtroom as he described the conversation, a very telling conversation, about the relationship between him and what would become his former friend.

In that walk, Michael Fortier says, Tim McVeigh told me Terry is thinking about backing out. I need your help. He remembers that. Michael Fortier said no. Michael Fortier said no.

Michael Fortier was then asked by Tim McVeigh, Will you at least drive me out to the desert after the bombing, so I can hide?

Michael Fortier said no.

And then Tim McVeigh said that's all right. Terry Nichols is in too deep to get out now. He'll do it. He'll do it.

Well, by the time that McVeigh left Kingman, Arizona, in April of 1995, Michael Fortier and Tim McVeigh were on very different planes in very different places. Michael Fortier wanted nothing to do with killing innocent people, and Tim McVeigh wanted nothing more than to do just that.

In that final conversation, Tim McVeigh said, I recognize what we have here. We're no longer friends. We're taking separate paths in life. And that's what happened. Tim

McVeigh left Arizona in April of 1995, leaving behind a man who had made clear his declaration: Political rhetoric? Maybe. Murder? Never.

The last calls from Kingman, Arizona, signal exactly where Tim McVeigh was headed. The last calls out of the Imperial Motel, two calls that go to the same place: Terry Nichols. That's where he was headed. Junction City, central Kansas, back to the ingredients, back to his co-conspirator, back to someone who would help.

The most important question in this case is whether Tim McVeigh was a person who drove off with the bomb truck from Elliott's Body Shop. Is Bob Kling Tim McVeigh? And the answer is yes, in light of all the other evidence we've already discussed and some that I'd like to discuss with you now. What are the reasons to believe Bob Kling is Tim McVeigh?

First reason is Eldon Elliott. Eldon Elliott, you recall, is the owner and the operator of this business in Junction City. He's got the Ryder dealership, but the name of the business is Elliott's Body Shop. He's a body shop guy. That's what he does. He repairs cars.

He also has employees like Tom Kessinger and Vicki Beemer that help him out in those duties, but he is a small businessman. And no one would have predicted, certainly not Eldon Elliott, how his life would change as a result of what happened in Oklahoma City.

But it did, a change that came to a point of him coming into this room, coming into this courtroom, and on the witness stand pointing out Tim McVeigh as the person who came in and rented the bomb truck. That's the man, Eldon Elliott said, who I dealt with on two occasions in April of 1995 and who drove off with my 20-foot Ryder truck, never to be seen again, Unit 137328. That's the man.

The question that will face you about Eldon Elliott: Is his identification reliable? Can you give it credit? What weight do you give it? So you need to examine the evidence surrounding that transaction to test those facts, questions that were posed to many of you during the voir dire: What is it that matters most in deciding whether someone has correctly identified a person?

Well, remember the events of Saturday, April 15. This is the day in a shop that was closed for all other business. Eldon Elliott was alone. It was Saturday morning. There was no other body shop business, no other customers. He was alone. He described that to you.

And he remembers sitting there behind the counter doing some business when Tim McVeigh walked in the door. You saw the pictures. This is not a luxurious waiting area. This is a small, compressed business, where the customer is literally on top of the counter by the time they get through the door. You saw the pictures. There's not much space that separates the person doing the business from the customer.

Tim McVeigh walked up. He said, He walked up to the counter and told me I'm here to reserve a truck, began a conversation, a business conversation about the renting of the truck.

Tim McVeigh said, My name is Bob Kling. That's how

Eldon Elliott remembered it. And he said, I called yesterday or the day before, Friday, and spoke to Vicki -- he remembered the name -- and reserved -- or got a quote, I should say, on a 20-foot Ryder truck. This was all conversation that they're having between the two of them.

Mr. Elliott entered in the computer, pulled up the record and, like McVeigh said, there is a Bob Kling quote here for a 20-foot Ryder truck.

Elliott needed more information, and so he asked him for a driver's license. And that's when Tim McVeigh produced the Robert Kling driver's license, the one from South Dakota, the one with an address in Redfield, South Dakota. And Mr. Elliott had to take the time then to enter that information. Some would say he's not a good speller, but he entered information into his computer about this address maybe Maple, in Redfield, South Dakota. That takes time. The customer is waiting just a short distance away.

McVeigh is told, You need \$80 to turn a quote into a reservation. We can't fix or reserve or promise you this deal or this truck unless we get 80 bucks up front.

McVeigh said, Let me pay you now while I still have all the money. I mean, he remembered that conversation. He remembered that conversation about the choice by McVeigh to pay the whole thing up front.

Then the subject of insurance came up. Here's a man who has got somebody else's trucks that he's giving yet to somebody else. He's going to ask him about insurance, and he did. As you heard his testimony more than once, the subject of insurance came up. They talked about it at length. McVeigh said, I don't need insurance. I'm a good driver. You remember Elliott recalled the explanation. He says, I drive deuces or 2 1/2 ton trucks out at the military base. There had to be some conversation about military, because look what they did on the contract. They gave him the military discount. There was conversation between McVeigh and Elliott about that.

But it didn't end there. They wanted to know, where are you going? How long will you have my truck, especially if you're not going to take insurance?

And McVeigh said, I'm going to Iowa, then over to -- excuse me -- going to Omaha, then over to Iowa, then back.

And Elliott, says, Well, will you need some extra miles?

He says, No, but I will need extra days. I will need two more days, more time before I have to turn in this truck. And he had that conversation.

They continued. More conversation. Finally, all this information is generated into a form, to a piece of paper, to a document that Elliott presents to Tim McVeigh. Yes. Standing up, on the counter, inches apart, handed him the form and says, Sign here. And you saw that document is in evidence, Government exhibit, that shows where "Robert D. Kling" was signed on that reservation form created on Saturday, 1995.

At that point in time, they're just inches away from each other, and that's when Tim McVeigh pulls out \$281 -- he remembered taking change and then giving him \$1 back -- and paid for that truck in full up front.

Then Eldon Elliott told you that it's his custom when



THEN ELDON ELLIOTT TOLD YOU THAT IT'S HIS CUSTOM WHEN he deals with customers, and he's a businessman, to look them in the eye. That's his practice, and that's what he did. He looked Tim McVeigh in the eye when he dealt with him on that Saturday morning, and he had plenty of opportunity and good situations.

But Eldon Elliott encountered this man a second time. Remember, this is Saturday. He's there by himself. They do this transaction. But Monday rolls around; and someone, this someone being Tim McVeigh, has to come back and pick up that truck; and so Eldon Elliott saw this same man a second time within a two-day period, from Saturday morning to the following Monday afternoon, two and a half days.

And again, he's involved in the conversation, not nearly to the same extent in terms of volume of time as he was on Saturday; but Vicki Beemer beckons him for some assistance, would he do the walk-around, the damage inspection; and that's when Eldon Elliott walks out of the body shop and has to nearly brush against Tim McVeigh as he goes out this office door to walk around the truck. And they see each other, and Eldon Elliott remembers greeting, said Hello, and then he says, Insurance -- this is a businessman thinking -- have you changed your mind about the insurance? They talk again about that topic. Eldon Elliott remembered it. It was the second opportunity for him to fix in his memory, in his mind, the picture, the image of Tim McVeigh.

In courtrooms, juries make decisions about the credibility that is given eyewitnesses. That's what juries' jobs are in part.

You heard testimony offered by the defense from Dr. Wells. He's not a juror, but he's a college professor who studies influences on eyewitness testimony. You recall his testimony.

But in this case, if you measure the facts against either your common sense, how you would judge the reliability of eyewitness, or against the rules that he described from his research, you come to the same conclusion: Eldon Elliott can be believed. His identification is reliable.

He talked about those influences in terms that have now escaped my memory, but they translate into nothing more than what you expect. What's the lighting? What's the opportunity to observe? How close are they? What are the distractions? And all those ingredients, all those factors that are talked about in one way from a college professor again are satisfied based on the words and description and the facts from Eldon Elliott.

His memory of dealing with someone in an uncrowded office on Saturday without any distractions, no phone ringing, nobody walking in, no other customers waiting, and then the opportunity to reinforce that memory by seeing him two days later: That's just what Dr. Wells said are the kinds of thing that make identification testimony reliable.

As you struggle with this question about Eldon Elliott and his identification, think about the facts, think about the circumstances of Eldon Elliott as he described it. Then contrast that with eyewitness testimony offered by the defense in this case.

You heard the name Daina Bradley from Mr. Jones during his opening statement. Mr. Jones told you that I'm going to prove Tim McVeigh innocent; and part of that proof is I will produce to you credible testimony from a witness at the scene who says I saw someone, and it was not Tim McVeigh. That was his promise to you.

And true to that promise, brought Daina Bradley into this courtroom. Each of you saw Daina Bradley. Each of you watched her testify, and each of you listened to her very intently. And nobody honestly could evaluate her credibility without doing so, without seeing her, listening to her, how she chose her words, and how she described when she did the identification she made.

In a courtroom, you can discount someone's testimony, you can disbelieve it, even if you don't think they're lying. People make honest mistakes. They can be confused, not that they would come in and intentionally mislead a jury, but they can simply offer evidence that's unreliable, simply mistaken or confused. And in this case, there were several horribly sad moments; but among those sad moments was when Daina Bradley took the stand. This is a young woman who has spent eight years of her life in a mental health facility, as she described, on lots of medication. This is the witness brought to you by the defense.

And by the time of the bombing, she was only 19 years old. I mean her world at that time consisted of herself, her two small children, her mother and her sister. And that same world was gathered in one place on April 19, 1995. It was gathered in the waiting area of the Social Security office in the Murrah Building.

The bomb went off. She was there. Her mother died. Her two children died. Her sister was severely injured, and Daina Bradley was trapped in that building for five hours before she was freed. And even then when she was freed, it was at the price of her leg. Tremendously, tremendously traumatic experience, the kind of trauma, as even Dr. Wells would say, that can affect somebody's recollection of an event they saw before all of that world came crashing down on them. That was Daina Bradley. That's the eyewitness testimony that the defense has offered to you and has said you should rely upon.

Contrast that testimony with Eldon Elliott and the events surrounding his identification. Much, much different.

And when Mr. Jones stands up here to talk about this case, listen to him carefully when he describes -- when he describes what credit you should give to the testimony of Daina Bradley. I submit to you that you can understand people, you can understand backgrounds, you can understand circumstances, and you can conclude that Daina Bradley was simply, as she said, a person who was told one thing one day and can't remember it the next.

What are the other reasons to believe, other than Eldon Elliott's identification, that Bob Kling is Tim McVeigh? As it turns out, Lori Fortier has never met Eldon Elliott; but they both met Bob Kling. In this case sometimes, as any case,

it's the innocuous facts that grab, it's the innocuous facts

that give the ring of truth to stories. And so I could hear the bells ringing when Lori Fortier said Michael -- excuse me -- Tim McVeigh came to me -- "came to me and said he'd like to borrow my iron so he could laminate plastic on his driver's license, and I said no, because I thought this guy who lives out of the trunk of his car would ruin my iron. It's an innocuous fact, but it rings with truth. And the rest of the story, as Lori Fortier told you, is previously Tim McVeigh had borrowed their typewriter. He had this false ID kit, and he came up with a false driver's license.

And when she said, No, you're not going to ruin my iron, Tim McVeigh had to let go of that piece, that clue to this case, and hand it over to a witness in this courtroom, hand it over to her. And she took the time to laminate that plastic on that driver's license, so she handled it. She looked at it and she saw and remembered, just as she told you from the stand, the name on that driver's license -- this is an event prior to April of 1995 -- was Robert Kling. She remembered the state was one of the Dakotas, maybe North Dakota; but "Robert Kling" was the name on that driver's license. She remembered that.

Tim McVeigh didn't tell her when he said, All right, go ahead and laminate this plastic for me that I'm going to use this to rent the bomb truck that will kill many. He didn't tell her that. But remember that Lori Fortier was a person who was picking up signals. Her antenna is up like it should have been that Tim McVeigh is a man who may well be doing something dangerous; because when the bomb went off, something clicked and she said, Oh, my God. And she went back to her typewriter and she examined it, and there again was the name Bob Kling, the typewriter used to type that false driver's license.

That's a true story. That's a true story. Tim McVeigh handed Lori Fortier the driver's license in the same name that he then handed Eldon Elliott months later.

And one other fact about that driver's license -- one other fact about that driver's license points in the direction of Tim McVeigh: A man who with incredible attention to detail, if it fits his criminal plans, would take the time to create a false identity of Robert Kling, knowing that it would be used to rent a truck to bomb a building on April 19, and put for the date of birth for that Robert Kling April 19. That's what's on the driver's license. A bomb on April 19, no mistake, Waco anniversary, Tim McVeigh's plan. On that same driver's license, date of birth, April 19. No mistake.

Eldon Elliott and Lori Fortier never met each other, but they did meet Bob Kling.

There is more; more reason to believe that Bob Kling is Tim McVeigh. Trace his movements on Monday, April 17. We did that for you in this courtroom. Find out where he started and where he ended up, and you'll find that he's the man at Elliott's counter on Monday, April 17.

We know how he got there. Eric McGown testified that as a kid, he's developed an interest in cars, another innocuous fact that gives credit to his testimony that he and Tim McVeigh ended up in a conversation about this ratty roachmobile Mercury that was sitting outside his motel, the car that Tim McVeigh drove in. And they talked about it, and he showed him the

drove in. And they talked about it, and he showed him the electric button that popped open the trunk, a feature that he thought, wow -- age 19, maybe younger than -- was pretty incredible for a car so old, the kind of thing that he remembers.

What he said then -- You don't need to know about electric buttons, but you do need to know that Eric McGown said that car was gone after Easter Sunday. He came in in it, he was there, we talked about it, we had a conversation. That car was gone from the Dreamland Easter Sunday. It's an important event, because if you don't have your car, then you need other transportation. If you need to get from the Dreamland to Eldon Elliott's some 4 miles away, you need transportation.

One way to get there: You call a cab. Daryl Bridges back at work again. Deferred gratification. Coming to satisfy a question that only it can do so in this case. Look at the Daryl Bridges card. There is a call to Bell Taxi on Monday, April 17, from a pay phone located near the Dreamland. That's the testimony. That's the testimony. So if you don't have a car, you may need a cab; and a card controlled by Tim McVeigh and Terry Nichols -- someone called for a cab on Monday, April 17, 1995. We know who took the cab ride. It was Tim McVeigh. And we know where he went. He went to McDonald's. Why McDonald's? Why McDonald's? Well, it's not so obvious. It's not so obvious. Probably would not want to have the cab pull you up to Eldon Elliott's Body Shop if your intent was what Tim McVeigh's was. So you get close. You get within walking distance, a shade over 1 mile, and you go into McDonald's. Tim McVeigh didn't plan on the security camera working there to capture his movements, as he didn't plan on the one at the Regency Tower; but that was the image that you saw in this courtroom, the image captured by that same security camera on April 17.

He walked out of there at 3:57, a little bit after 3:57 on Monday, the same day the bomb truck was rented, at McDonald's, located within walking distance from Elliott's.

In order to calculate time, you need two numbers, and McDonald's gives you 3:57. What's the other time? The other time came from the testimony of Vicki Beemer who said, When you look at this contract, it says 4:19 at the top. 4:19. A coincidence, perhaps, but 4:19 p.m. on Monday, April 17. That tells me as a long-time clerk on Ryder documents that's when I pulled up the document off the computer; and I would have done so, she said, within 30 seconds of the time this customer walked in to be waited on. So we have both the times and we know roughly 20 minutes; and you know from hearing Agent Witt testify you can walk from McDonald's to Elliott's, rain or no rain, and get there within that same time period.

The defense does not dispute that Tim McVeigh was at that McDonald's on Monday, April 17. They asked the question. They don't dispute that, but they want you to have Tim McVeigh's face vanish from your calculations as soon as he vanishes from that video. You shouldn't take that invitation, because you know where he went.

The reason that they emphasize that he went someplace else is because the clothes that the McDonald's tape shows he was wearing -- they are not military clothes. They're not

camouflage. Eldon Elliott said possibly that when Kling came in on Monday he was wearing military clothes. He said possibly. He said possibly. 70 percent of his business are military people. This is Fort Riley. This is people coming in and out, people renting trucks virtually all the time wearing military clothing. That's reasonable for him to have thought that. He may well have been mistaken that he was, but it's reasonable for him to have thought that.

But then think about Dr. Wells, the defense witness, who said, When you test what people recall in the way of memory, clothes is at the bottom of the list. They'll remember faces and physical descriptions far longer and with more detail than the clothing that that same person was wearing.

Eldon Elliott may have been mistaken about what Tim McVeigh was wearing, but he's not mistaken that he was there on Monday, April 17.

MR. MACKEY: Your Honor, I have probably maybe half an hour or so. Shall we break and --

THE COURT: Well, members of the jury, would you rather go to lunch now, or stay on with this? I'm not going to particularly put it to a vote, but I vote that we continue.

MR. MACKEY: Well, thank you for your patience, because I know it is hard to listen to people for a long time.

When I got trained about public speaking in high school, there were three rules: One is you stand up tall so people can see you; one is you speak loudly, clearly so people can hear you; and the second -- or third thing is you keep it short so people like you. I recognize that this case may have violated those three rules of public speaking, but I appreciate your patience.

Let me turn to a very different way to analyze the very same question: What's another reason to believe that Bob Kling is Tim McVeigh? One of the things that you learned about fingerprints, and we talked about it a little bit, is even though somebody touches something, it doesn't mean that an examiner is going to find it. If it's there, you know they touched it; but the converse is not true. Just because you don't find fingerprints doesn't mean he didn't touch it. And there was proof of that in this courtroom.

We upset, we literally took the countertop out of Eldon Elliott's. We took the contracts. We did everything that we could to find fingerprints at Eldon Elliott's that would match anybody; and certainly Tim McVeigh's fingerprints were not on that counter, not on the documents signed by Robert Kling.

Now, just because no fingerprint proof was found doesn't mean Tim McVeigh didn't leave proof that he is Robert Kling on those documents.

That proof comes in the way of similarities between the handwriting of Robert D. Kling on those documents, and we'll show those to you in a minute and other handwriting authored by Tim McVeigh. All of us in our life's experiences know that over time, you can become acquainted with somebody else's handwriting. I mean, all of us can think of people that we know and that we have seen enough handwriting to recognize similarities.

In this case, what you learn about Tim McVeigh's practices of handwriting make him different. His practice, as Jennifer and others who corresponded with him, was he prints. He prints, often with a distinctive back slant; but he prints. And when he signs his signature -- you've seen many examples of that -- it's a signature that is absolutely illegible. It is some squiggly lines, and no one can say I recognize that to be the word "Timothy James McVeigh." People have come to recognize the signature as the one he uses, but not the words "Timothy James McVeigh."

So based on this evidence, there was little cursive writing that Tim McVeigh left behind, cursive writing being the kind that we learned in grade school, the kind that is different than printing. But if you look hard enough -- and the proof in this case provided it, you will find cursive writing of Tim McVeigh. And when you make that examination of that cursive writing and compare it, as lay people can, drawing your own conclusions about whether it is like or dissimilar, you will see, as we propose you will conclude, that Robert D. Kling, the signature, was written by Tim McVeigh.

One of the first examples of the handwriting, cursive handwriting, that came before you in this case was a letter that Jennifer McVeigh talked about. You remember the content of the letter probably more than you remember the writing itself. This is a letter where Tim wrote to -- or Tim McVeigh wrote to Jennifer and said, I want you to sign a document for me. I need to do a business deal and get a reference, and would you sign the name Todd Krieger to this document? And in the letter, he gives two examples of the name Todd Krieger. And in the letter he says, If you write it this way, the forgery may be detected. But if you let your hand flow, the forgery will be harder to detect. This is a letter he sent to his sister asking for help; and in that letter he writes out in cursive style the name "Todd Krieger." And Todd Krieger testified in this case. He was a former boss of Mr. McVeigh.

You also heard evidence from -- in the way of a stipulation from Mr. McVeigh's brother-in-law, Bill Davis, who said, He worked for me for a brief period of time and he filled out or I gave him to fill out a W-4 form. And when it came back to me, there was the signature of Timothy J. McVeigh. And I'll show that to you in a just a minute.

You also saw from the banker, Ann Brittin, various documents that went into a bank account that was controlled in the name of Tim McVeigh. One of those was a check drawn on that account, made payable to a credit card. And in that check, there is cursive writing of Tim McVeigh on that check. Signed by Tim McVeigh is the word "twenty-five," written out, amount -- and these are all words -- I can hear you listening -- are words that contain letters that you'll find in the word Robert D. Kling: Ks, and so on.

Also, remember the Shawn Rivers lease. We saw that earlier. Mr. McVeigh, eight fingerprints on the document, signed the name Shawn Rivers. This was cursive. For whatever reason, this was cursive.

And R is in Shawn Rivers; an R, like in Robert.

And finally, Ms. Brittin also produced two checks that

were deposited into Tim McVeigh's bank account. You remember those checks, and we'll talk about them in just a moment. They're checks that are made payable to both McVeigh, Tim McVeigh, and his friend David Darlak, who testified in this case, his high school friend who said, We were in a business deal together and checks came to us with both our names. He also said when shown two checks that the signature "David D. Darlak" on the back of those checks, I did not write. David Darlak testified, no reason to disbelieve him, that he didn't write the name "David D. Darlak" on the back of those two checks. Right above that multiple endorsement check is that squiggly line that you've come to recognize to be Tim McVeigh.

Those two checks went into the bank account of Tim McVeigh, the bank account controlled by Tim McVeigh, and Ms. Brittin said no money came out. It was deposited totally to Tim McVeigh's account.

Now, no one -- no one testified that the David D. Darlak signature on the back of those checks was signed by Tim McVeigh. No one said that. You're going to have to make that judgment yourself. And there is a reason no one -- and Jennifer McVeigh gave us the reason -- no one could come in and say, I believe that Tim McVeigh wrote "Robert D. Kling," or I believe that Tim McVeigh wrote "David D. Darlak," because he doesn't write it enough for people to recognize it. She said, I can show you all the printed letters in the world. But when asked, Can you recognize his cursive signature, she said no. This is his sister with whom he corresponded repeatedly.

And so the test that comes to you is a test of first the similarities between those other documents that are linked to Tim McVeigh and then finally compare them, and I'll ask you to do so, with the Robert D. Kling signature on the bomb truck documents.

May I, your Honor?

THE COURT: Yes.

MR. MACKEY: First, let me start with Government's Exhibit --

MR. JONES: Your Honor, may I move?

THE COURT: Yes, you may.

MR. MACKEY: I'll be here just for a moment, your Honor.

THE COURT: All right.

MR. MACKEY: This is an enlargement of the reservation document, and you'll see that someone signed the name "Robert D. Kling." And that's the question that you will be addressing: Is that someone Tim McVeigh?

In the middle, you'll see the three Robert D. Kling signatures on the documents. You recall on Saturday, he had to sign the name Kling when he reserved it; and then twice on Monday when he came to pick it up, the name Robert Kling was signed.

Three examples of the signature Robert D. Kling. Take a moment and orient yourself to the other documents we've already talked about. Start with the two Todd Kriegers. Those writings that were in the letter to Jennifer McVeigh, where McVeigh talks about forging Todd Krieger's signature.

Shawn Rivers' signature that appeared at the bottom of the lease that Helen Mitchell introduced into evidence

THE REASON THAT MICHAEL MITCHELL INTRODUCED INTO EVIDENCE.

The cursive writing of twenty-five -- may I, your Honor?

THE COURT: Yes.

MR. MACKEY: Cursive writing "twenty-five" that comes from one of the checks drawn on the McVeigh account.

The signature "Timothy J. McVeigh" from the W-4 form from his brother-in-law, Bill Davis; and then finally, the two David D. Darlak signatures on the back of checks that have the signature "Tim McVeigh" that went into Tim's bank account.

Look first for similarities between the writings in gray and see if you don't find certain distinctive features, backwards slant, curly cues to start capital letters.

Look at the formation of the D in "Robert D. Kling" with the formation of the Ds in "David Darlak."

Finally, you will see that relying upon those documents, you will find letters with one exception that form the name Robert D. Kling. You'll find R in the word "Shawn Rivers." You'll find O in this "Todd Krieger." There is no B; but B, of course, is formed with the same loop that one would form an L. There is an E in the word "twenty-five." There is the R in this "David Darlak," the T from the word "twenty-five," the D for Robert D. Kling from "David Darlak," the K from "Krieger," the L from "Darlak," the I from "Krieger," the N from "twenty-five," and the G, the last letter, or the next-to-last letter, in Mr. McVeigh's signature. Those are letters formed from these samples that are found commonly to the signature Tim -- excuse me -- Robert Kling.

And if you take, as he we have, each of those letters, showing you the sources, the R, the O, the L for B, E, R, T, K, L, I, N, G, you have a signature reconstructed from those samples of Robert D. Kling. And compare that to the "Robert D. Kling" signed on Saturday, April 15, 1995, at Elliott's Body Shop. You can draw your own conclusions. It's another reason, one of many reasons, to believe that Bob Kling is Tim McVeigh.

But there is more. What's all the fuss about Firestone? You heard a lot of evidence about Firestone. The fact about Firestone help you conclude that Bob Kling is Tim McVeigh.

On Friday morning, April 14, someone, remember, called into Eldon Elliott's using the name Bob Kling. That someone wanted to rent a -- that would carry a thousand pounds. Vickie Beemer remembered getting up from her desk, walking around the counter, looking at the chart on the wall. I've got a customer who wants a truck that will carry 5,000 pounds. What kind of truck is that? The answer was a 20-foot Ryder.

We know from lots of records that that phone call came into Eldon Elliott's Body Shop around 10:00 in the morning, Friday, April 14. And we know from lots of records that that phone call lasted approximately 7 minutes, enough time to get information for a quote and answer the customer's questions. We also know from records in this case that that phone call to Elliott's Body Shop came from a pay phone, not just any pay phone, but a pay phone located at J & K Bus Depot in Junction City.

This is the photograph that Art Wells identified. This shows the proximity between the bus station and the



Firestone store that you can see in the background, estimated to be less than half a block.

Tim McVeigh made that phone call, and we have proven that fact in more than one way.

Where was Tim McVeigh on the morning and at the time of that phone call? He was at the Firestone store, exchanging his car, the Pontiac that had limped in, and driving off later with the Mercury.

Between the time that he arrived around 9:00, according to Mr. Manning's videotaped deposition -- and the records are in evidence -- and later that morning when he left with the Mercury was plenty of time for him to have walked a half block and made not just this one phone call but two phone calls, one to Terry Nichols' house and the second one to Ryder.

When Mr. Manning testified to you by way of the video deposition -- he's a gentleman who had a heart attack and so didn't come personally to the courtroom -- what he said was I do not know precisely -- and those are his words -- precisely when it was that McVeigh left the store, but I do know that I had a conversation and McVeigh said I'll be back shortly and then he was gone.

I have no idea, he said, where he went. Tom Manning didn't say I saw him on the pay phone. What he said in his videotaped deposition was I know Tim McVeigh left that morning while we were working on the car.

The testimony of the defense witness, Art Wells, does not contradict Tom Manning. What Mr. Wells said was that at some point in that morning, I worked on the car in the bay and Tim McVeigh, to the best of his recollection, was standing there.

Art Wells said, I cannot account for where Tim McVeigh was before that time and certainly not after that time and certainly not during the time that he was gone. You'll recall that he took the car away for a moment and gassed it up, plenty of time for Tim McVeigh to have made that phone call.

Who made the call to Kling -- or excuse me, the Kling call to Ryder is itself in part answered circumstantially by who made the first phone call; and the proof is -- Fred Dexter offered it to you -- is there is no doubt that someone using the Bridges phone card from that pay phone dialed first the residence of Terry Nichols and then later the phone call to the Kling (sic). That happened in time, but the record as it relates to Bridges, of course, as was explained, is not available. You have to make that circumstantial conclusion, but those circumstances support it.

One of the circumstances that supports it is the fact that with thousands and thousands and thousands of Spotlight customers, the only -- the only Spotlight customer that ever made a phone call from that J & K bus depot pay phone was Daryl Bridges. Fred Dexter did that research. That's the only time that pay phone was ever used by anybody who had a Spotlight card. And no other phone customer of Spotlight ever called Ryder. Those are circumstances that come together to support that Tim McVeigh was the person who made those calls and that he was the person who called on Friday morning to Eldon Elliott's.

But there is more. On Saturday, April 15, 1995, Tim McVeigh was the only registered guest in Room 25 at the Dreamland. And the phone records from that motel establish that that Saturday evening, twice, not once, but twice, someone from that Room 25 called Hunam Palace, the Chinese restaurant in Junction City. And Mrs. Bai testified -- and who can forgot her? We learned a lot about moo gai pan (sic). She testified twice someone called in to order Chinese, once to place the order and a second time, as I recollect the evidence, to check on that order.

That's a call that she took and that she wrote down in her customary fashion the name of the customer. It's important to get the name right and to get the address right, and she wrote it down: Kling, K-L-I-N-G. She remembered it had a Chinese sounding sound to it; Room 25; Dreamland. Three facts that Mrs. Bai wrote down in her records on that Saturday afternoon.

Now, standing alone, that suggests that Tim McVeigh called in that Chinese order; but to evaluate the evidence, you cannot ignore the testimony of Jeff Davis, the delivery man called by the defense concerning that very same delivery. And his testimony to you was that he made that delivery and the person to whom he handed the bag was not -- was not Tim McVeigh, someone entirely different.

He also told you that he has been working as a delivery man for many years at -- was at that time at the Hunam Palace and that he made thousand upon thousands of deliveries. He also told you during the cross-examination that the first time he was asked about that delivery was when the FBI came out and asked him, Do you recall making a delivery to the Dreamland, and he said yes. And they asked him to describe that person. And he went through physical feature by physical feature all of the things that add up to Tim McVeigh. And then they said, Can you identify him?

And he said, I see too many faces; I cannot positively identify the customer. The general description matched Tim McVeigh, but he said what you would expect a delivery man to say; and that is, I cannot positively identify.

Jeff Davis changed his mind later and he told you about that. He woke up on Sunday, just a couple days later, and saw the newspaper in Junction City. And it had a small photograph of Tim McVeigh. Just his face. Just his face. And based on that alone, Jeff Davis then said and he told The=20 Washington Post, and you as well, that based on that photograph he ruled out, absolutely, positively ruled out Tim McVeigh as the person to whom he had made that delivery, even though -- even though as you know that description given to the police on the first occasion is a description of Tim McVeigh.

Jeff Davis had it right the first time. And when people, as you know, take positions that are hard to retreat from, sometimes it becomes difficult for them. And it is and was the case for Jeff Davis.

What you should believe is what Jeff Davis first told the FBI, and that is I cannot make a positive identification, but I can tell you a general description. 5'11", 6-foot, 6-foot-1, slender bold build, all the of the features that add up to Tim McVeigh

up to Tim McVeigh.

Finally, there is yet other proof from another source entirely different source that Bob Kling is Tim McVeigh. Remember we go back to Herington, the storage shed. Mr. Bodziak from the FBI came in and testified to you about measurements he made of Ryder trucks. And what he showed you in the way of a series of charts was when he got to that crime scene, the storage shed scene a couple days after the bombing he found distinctive tracks in the mud, that trucks that led in only one direction right to Unit No. 2, the Shawn Rivers unit at the Herington. And he described how it may have been another truck, but it clearly fit the measurements of a 20-foot Ryder truck that would back up with just enough clearance to that door, same door where Tim McVeigh had stored the bomb components.

Let me spend just a few minutes talking about the getaway vehicle, and then I will conclude. Because you must answer the question that was posed by the evidence in this case; and that is how did Tim McVeigh get away? How did he get away? We talked earlier about the fact that on the morning of the bombing, he is arrested in that Mercury; and the question is where was that Mercury before he drove off.

Remember, too, the testimony of Mr. Fortier, who said they had already had in mind a plan where Nichols would come down with him prior to the bombing and stage or put away the getaway vehicle. That's one of the plans he shared with Michael Fortier as early as December of 1994. You now know based on the evidence that was produced that's exactly the plan they executed.

First of all, remember that he's arrested in the Mercury, and we know the distance. And remember, too, Eric McGown's testimony that the Mercury was not in at the Dreamland after Easter Sunday. So the question is where is it. And the answer is it had come down that same day on Easter Sunday, to be staged, to be parked downtown in Oklahoma City.

You'll remember the testimony, and let me show you this phone record from Bridges. A phone call a little bit after 3 on Easter Sunday, 1995, the phone call placed from a pay phone just down the road from the Terry Nichols' residence.

In this case, you know who received that phone call, because Marife Nichols testified that after -- as they were closing out their Easter dinner, the phone rang and Terry Nichols spoke to someone. And you also know what happened as a result of that phone call, because within 15 to 20 minutes, as she described, Terry Nichols got up and left the house, drove off in his dark-colored pickup truck with the white camper top. That's what she said. And I didn't see Terry Nichols again, she said, until the next morning; and I went to bed between midnight and 1:00.

So by midafternoon on Easter Sunday, Terry Nichols and his pickup truck are gone. They're no longer in Herington, at least not at the Herington residence.

Where did Terry Nichols go? And the answer is we provided pictures to prove just where he went. He went to downtown Oklahoma City, and he went there for the purpose of showing -- or excuse me -- staging the getaway car.

In this case -- showing you at this time the videotape

that was offered into evidence -- in this case, the Regency Towers videotape camera played an important role. It captured not only the picture of the Ryder truck on the morning of the bombing but also this scene, on Easter Sunday, after 8:00 in the evening on two occasions, in fact, what appears to be a dark-colored pickup truck with a cab level, flush level topper, white or light in color.

Now, Bill Stokes from the FBI makes his living by working on videotapes and making comparisons. He told you most of his business, and thousands that he's done, are from bank robberies and bank surveillance cameras; so he knows what it takes to make measurements of vehicles and people and draw conclusions.

And what he found based on his examination as displayed to you is that the pickup truck of Terry Nichols corresponds by feature and shape and every other respect to the same dark-colored pickup truck with the white, flush, cab-level camper that's on the top of this particular vehicle. And if you listened to and recall the testimony of Floyd Zimms, who drove that route, you will know that if you leave Herington midafternoon on Easter Sunday and driving the speed limit, you will be in front of the Regency Towers just at the same time that this image was captured.

In this case, the defense challenged that and offered evidence that would suggest that Terry Nichols was not in Oklahoma City on Easter evening or Easter Sunday evening of 1995. And to prove that, they offered two stipulations. And you'll see those. It happened this week. They were intended to prove that Terry Nichols was buying diesel fuel in Junction City on that same day in that afternoon; therefore, he can't be in two places at the same time. They contended through the stipulations that Terry Nichols was not in Oklahoma City but that he was buying gas at a Conoco in Junction City.

But Marife Nichols testified, and she said we did buy gas and we did buy at that gas station, but not on Easter Sunday; we bought it the day before. She told you about her travels and why she remembered that. And she said we didn't drive enough after the time we got gas on Saturday that we'd need gas again. That's what she said.

But the other fact that was offered in our rebuttal evidence is the amount of gas that you could put in Terry Nichols' pickup truck is less than what was purchased on Sunday afternoon; so whoever was buying the gas on Easter Sunday afternoon was not putting it in Terry Nichols' pickup truck. It just wouldn't match. It would be on the ground.

Obviously, the plan to stage the getaway car in downtown Oklahoma City had a risk, and that risk is you leave your car parked downtown near what will become the crime scene for people, curious people, to examine. Tim McVeigh was evaluating that risk, and he went to the extent in responding by drafting -- and you saw it in evidence -- a "do not tow" sign that he put on his car. So if someone came up and was looking for some link to this particular vehicle, what they'd see is someone who had left a note: It's not abandoned, do not tow, bad battery.

You know from the testimony of Manning and Wells this

car may have been old, may have looked bad, but it didn't have a bad battery. It would fire up and go. And we know it went some great distance. But that was part of Tim McVeigh's plan, was I'll stage it on Easter Sunday, I'll put a sign in the window that will distract anybody who might be curious, and then it's there waiting for me on Wednesday when I strike.

From all of that evidence, what is clear is that Easter Sunday, Tim McVeigh had staged his getaway, the Mercury, in downtown Oklahoma City; and most likely, most likely, given all the other evidence, in the direction of the YMCA building.

So by Easter Sunday, the getaway car was in place. All the ingredients had been purchased. And the next day on Monday, the Ryder truck was picked up. And the next day on Tuesday, Tim McVeigh left the Dreamland.

In that time, between the time he leave the Dreamland on Tuesday, the 18th, and the time the bomb went off on April 19 in downtown Oklahoma City, he had time, plenty of time, to get those ingredients and to build the bomb with the help of Terry Nichols and to drive to Oklahoma City. He also had time to wash up and change his clothes, if he was so inclined.

The next day was April 19. It was the anniversary of Waco. It was Liberty Day, as Tim McVeigh would describe it, a day that Tim McVeigh had long been waiting for. It takes about five hours to drive from Junction City and that area down to downtown Oklahoma City, maybe longer if you're transporting something as sensitive as was in the back of this particular Ryder.

Minutes before 9:00 -- and you saw in this case the ghostly image of a Ryder truck appears just outside the Regency Towers captured by the video camera. It pauses by the curbside. We may never know why it pulled over. We may never know that. But we know that it vanished and left the scene.

McVeigh was driving that truck, just like Michael Fortier told you was his intent. You can't see it from the video, but you can see it from all of the other evidence in this case.

McVeigh lit the fuse and left the truck, left the truck separating only by a wall of glass that truck and the people inside.

At that point in time, nothing is going to stop this bomb. You cannot turn the hands of time back; and in fact, the hands of time fell to rest that morning at 9:02 a.m.

Over the four short years between that event and prior to that, Tim McVeigh had been at the helm of two weapons of mass destruction. In the Gulf War, he was a good soldier. He was a soldier who manned a Bradley tank, a vehicle -- a vehicle of mass destruction that's built for that reason. It's built to kill other people.

And on the side of that tank is the words, "U.S. Army" and an American flag. Those are words and symbols meant to declare its purpose, its killing power. That was one weapon of mass destruction that Tim McVeigh manned.

The second one was a Ryder truck, a Ryder truck that he delivered to the door of the Murrah Building on April 19, 1995. On the side of that truck was the name "Ryder," were the words "1-800-451-1234" and "1-800-451-1234"

words "18,000 pounds" for its capacity and a 1-800 number. These are words meant to disguise the purpose that was packed in the back of that truck by Tim McVeigh.

That truck crawled to a stop in front of the Murrah Building on that morning, right in front of children and women and men; and then Tim McVeigh ran away.

The law enforcement officers that died that morning were not "treasonous" officials, as Tim McVeigh had declared; "cowardice bastards," as he had described to you.

The credit union employees that disappeared that morning were not tyrants whose blood had to be spilled in order to preserve liberty.

And certainly the 19 children that died that morning were not storm troopers that Tim McVeigh had said must die, innocent storm troopers who must die because of their association with an evil empire.

In fact, the people who Tim McVeigh murdered on April 19, 1995, weren't one thing. They were bosses and secretaries, they were executives and others. They were blacks, they were whites, they were mothers, they were daughters, they were fathers and sons. They were a community. So who are the real patriots and who is the traitor? You met some of the victims and survivors in this case. Think about that. Compare in your mind the dignity that they exhibited, the characteristics and qualities of good people, and contrast that for a moment with what you've come to know about Tim McVeigh, a man who was intent to kill anyone and everyone and then run away.

In his opening statement, Joe Hartzler talked to you about grievances, and he described one grievance that was going on and being settled in a Democratic fashion by Lou Klaver that morning, a dispute over water, in democratic fashion, due process at work.

And the other means of resolving grievances that he told you about was the means that Tim McVeigh employed on April 19, 1995: terror, violence, and murder.

When Tim McVeigh blew up that truck bomb and brought down the Murrah Building, he did more than simply create the emotional wreckage that you exhibited -- or that we saw during the course of this trial. He did more than kill innocent men, women, and children. What he did was he created a new grievance. A new grievance. A grievance against the victims and against the United States of America.

And for myself and each member of this prosecution team, it has been our pleasure to represent those victims and the United States in settling that grievance. We have done so in a way that Tim McVeigh would not choose. We have done so through the due process system; but the process is over now. The process over. Tim McVeigh has received his due process, and it is now time to render judgment. And your job as jurors, your privilege, your duty, as well as your job, is to do justice. And on behalf of the United States, I ask that you return a verdict of guilty as charged against Timothy McVeigh.

Thank you.

THE COURT: Members of the jury, we'll take the noon recess at this time before continuing with argument; and of course, you recognize quite well that fairness requires that

course, you recognize quite well that business requires that you wait until you hear from both sides. And you haven't heard from defense counsel as yet, so what still remains before you can really begin to consider this case will be the arguments from the defense, rebuttal argument from the Government, and then me about the law.

So during this time, just as with the with respect to -- as was true with respect to all other recesses, please

don't talk about the case. Wait until you've heard it all and I tell you that it's time to deliberate.

We'll try to keep this recess to one hour today, so that we can accommodate the time for the other arguments. If that's not enough time, we'll wait for you; but we'll hope to get the rest and repast within the hour. So you're excused now. We'll hope to resume at 1:40. You're excused.

(Jury out at 12:38 p.m.)

THE COURT: We'll recess till --

MR. MENDELOFF: Your Honor, there are defense exhibits that we need to lodge an objection to. I don't know when you -- defense charts. I don't know when you wanted to hear that.

MR. JONES: I don't think we're going to offer what we've talked about.

MR. MENDELOFF: Thank you.

THE COURT: All right. We'll recess till 1:40. If there is still a dispute, I'll take it before we bring the jury in then.

MR. MENDELOFF: Thank you.

(Recess at 12:40 p.m.)

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INDEX

Item	Page
CLOSING ARGUMENT	
By Mr. Mackey	

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REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 29th day of May, 1997.

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Paul Zuckerman

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Kara Spitler