

Thursday, May 29, 1997 (afternoon)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,
Plaintiff,

vs.

TIMOTHY JAMES McVEIGH,
Defendant.

REPORTER'S TRANSCRIPT
(Trial to Jury - Volume 122)

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 1:41 p.m., on the 29th day of May,
1997, in Courtroom C-204, United States Courthouse, Denver,
Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
Produced via Computer by Paul Zuckerman, 1929 Stout Street,
P.O. Box 3563, Denver, Colorado, 80294, (303) 629-9285

APPEARANCES

PATRICK M. RYAN, United States Attorney for the
Western District of Oklahoma, 210 West Park Avenue, Suite 400,
Oklahoma City, Oklahoma, 73102, appearing for the plaintiff.

JOSEPH H. HARTZLER, SEAN CONNELLY, LARRY A. MACKEY,
BETH WILKINSON, SCOTT MENDELOFF, JAMIE ORENSTEIN, AITAN
GOELMAN, and VICKI BEHENNA, Special Attorneys to the U.S.
Attorney General, 1961 Stout Street, Suite 1200, Denver,
Colorado, 80294, appearing for the plaintiff.

STEPHEN JONES, ROBERT NIGH, JR., ROBERT WYATT,
MICHAEL
ROBERTS, RICHARD BURR, AMBER McLAUGHLIN, and ROBERT WARREN,
Attorneys at Law, Jones, Wyatt & Roberts, 999 18th Street,
Suite 2460, Denver, Colorado, 80202; JERALYN MERRITT, 303 East
17th Avenue, Suite 400, Denver, Colorado, 80203; MANDY WELCH,
Attorney at Law, 412 Main, Suite 1150, Houston, Texas, 77002;
CHERYL A. RAMSEY, Attorney at Law, Szlichta and Ramsey, 8 Main
Place, Post Office Box 1206, Stillwater, Oklahoma, 74076, and

CHRISTOPHER L. TRITICO, Attorney at Law, Essmyer, Tritico & Clary, 4300 Scotland, Houston, Texas, 77007, appearing for Defendant McVeigh.

* * * * *

PROCEEDINGS

(Reconvened at 1:41 p.m.)

THE COURT: Be seated, please.

Are we ready for our jury?

MR. HARTZLER: We are.

MR. JONES: Yes, your Honor.

THE COURT: All right.

(Jury in at 1:42 p.m.)

THE COURT: Members of the jury, we'll hear from counsel for the defense.

Mr. Jones.

CLOSING ARGUMENT

MR. JONES: May it please the Court --

THE COURT: Mr. Jones.

MR. JONES: -- Mr. McVeigh, my colleagues on the defense side, Mr. Hartzler, Mr. Mackey, and Mr. Ryan, ladies and gentlemen of the jury, over 75 years ago, the great and famous British barrister, Sir Edward Marshall Hall was privileged to have a biography written of him by a man by the name of Edmond Marjoribanks; and in the second paragraph of the first chapter, Mr. Marjoribanks wrote: Now it is difficult for any man whose life, liberty, and reputation rests upon the decision of 12 strangers, chosen from among the population according to the instructions of the court and the evidence to decide his fate; hence has arisen the honorable profession of the advocate whose responsibility is narrower than a statesman but broader than a physician's.

Our duty as Mr. McVeigh's advocate in this case is to present to you, the jury, all that he might say on his behalf and all of the evidence that he could marshal to meet the challenge of the indictment and the evidence that is brought against him by the Government of the United States. It has been a single privilege, an honor, to be defense counsel in this case. And to those who are responsible for my being here and my colleagues, we are deeply appreciative because we recognize that not only is this a very unusual professional and personal challenge, but it is in reality a moment in history of our country.

In trying to decide how I might present to you in the most effective way possible within the rules permitted to me as a member of the bar and an officer of the court, I tried to think of a theme that I could express to you that I could share with you my view of what has happened here in the last month. And as so often for someone such as myself, I found it in a book. 40 years ago this very month, there was a major literary event in this country. James Gould Cozzens' great novel, By

Love Possessed, was published. And for people of my generation and my mother and father's generation, and I'm sure some but not all of you, that novel remains with us today, though its author has long since been forgotten. The book was an instantaneous best seller. It stayed at the top of the New York Times best seller list for over a year. It was a Reader's Digest condensed book. It won for the author not only the Howell prize but a cover story on Time magazine. And eventually as you might expect, it was made into a movie and then translated into some 14 or 15 languages throughout the world.

The theme of the book was simply this: That at the seat of human judgment, there are always two elements of the conflict. On the one hand is emotion and, on the other hand, logic and the facts. That was the central theme of a novel, and its popularity was because that is the central theme of conflict in our life in the decisions that we are called upon to make.

And that novel foreshadowed, however, many years later what came to be the criminal justice system in this country. For in the same month the book was written, a major trial occurred. Some of you of my generation will remember it. A famous Hollywood actress's boyfriend was killed by her daughter. And in that case, emotion ruled the day. There wasn't any question that she was responsible for her mother's lover's death. But there was the excuse defense, the emotionalism. And over the next 20, 30, and 40 years, it reached such absurd lengths that a former police officer and a member of the San Francisco city commission received a reduced sentence and judgment by claiming that when he killed the mayor of San Francisco and another city commissioner, he had eaten Twinkies; and so the whole criminal justice system, which so many of you, as so many of us in the bar, have criticized, became not a trial in the classical sense, but kind of a continuation of a popular daytime television program, the Oprah Winfrey program. And it finally reached the point that it wasn't what the evidence was; it was how people felt, what their previous injustices were, how they viewed the police or their neighbor or their former husband or wife.

Now in this case, we have arrested that trend, I believe. But as the Government said in its opening, there is still work to be done. This case has probably been tried so differently than what you might have apprehended it would be like that it has reversed the trend at least up to this point and made the criminal justice system what it is supposed to be.

But whether we succeed in that goal in the final analysis does not depend upon his Honor or me or Mr. Mackey or Mr. Hartzler. It ultimately depends on what you do.

Now, during the last four weeks, everyone connected with this case; that is, the Court, counsel, the witnesses, have spoken, and you have remained silent. Now in a few

have spoken, and you have remained silent. Now in a few hours, we will cease speaking, you will retire to the jury deliberation room, and you will come back and speak to us and we will be silent; and so our roles will become exactly reversed and it will be our duty to listen to you.

The reason that I started with the conflict of By Love

Possessed and the conflict between emotion and the facts is because I respectfully submit that the prosecution in this case has based a substantial portion of its presentation, not so much this morning, although there was an element of that, but much through the trial on emotion. And the emotion is a twin emotion. On the one hand, what has been invoked has been sympathy for the victims and, on the other hand, repugnance for

the political beliefs, at least as described by the prosecution, of Mr. McVeigh and where they allegedly led him.

But justice is blind. Justice does not wear a mourning armband. Justice does not show a tear on her face.

A criminal trial is not a therapeutic counseling session. It isn't a closure. It isn't an inquest into history. It isn't the raw material of a book. Its function is very specific and very narrow: Has the Government presented enough evidence to convince 12 people beyond a reasonable doubt that the accused is guilty. That is our only function here today.

I submit, and I'm going -- I don't have enough time, and I would not impose on your time to answer every argument Mr. Maxy made, because I don't think I need to -- or Mr. Mackey. But I'm certainly going to answer what I consider to be the most compelling ones that he may have made. But in order to do that, we must remember that each of you before you were selected for this jury -- and remember that it was a three-part process -- actually a four-part process, because it involved your agreement to serve. The Court, the Government, and myself with Mr. McVeigh -- and the defense made the decision who would sit on this jury. And that decision was influenced by the answers that you gave under oath, the answers

to the Court and to us in voir dire.

Now, let us not be mistaken. Tim McVeigh was convicted in the court of public opinion not only before the first witness had testified, before the first piece of evidence had been introduced, even before his lawyer was appointed or his preliminary hearing or his indictment. He was convicted because the nature of the crime, as severe as it was and the attention focused on it followed by the dramatic arrest and walkout in Noble County Courthouse, convinced people that the right man had been arrested. But it was not permitted to rest there. For weeks and months and now years later, it continues to be recycled.

I told you in the opening that this evidence in many respects would not be what you expected; things that you might have thought would be presented would not; and there would be things presented that you had never heard of. And I think I

was right in that assessment. You may also recall that during the voir dire, Mr. Ryan and Ms. Wilkinson and Mr. Mackey asked you from time to time would you have the fortitude, the courage, the strength to sign a death penalty warrant -- or verdict, rather, if it became appropriate and necessary; and each of you said you could and would.

But the question is, now that the evidence is in and knowing what the court of public opinion is, can you vote a verdict of not guilty if, after hearing all the evidence and the argument and the instructions, that is your opinion? If you believe collectively or individually that Mr. McVeigh is not guilty, can you say that? Because if you cannot, then the justice system as we know it in this country has been corrupted far more than any trial that happened in Los Angeles, California.

If we let sympathy overcome reason, then sympathy becomes to this case what race was to another case. When we had the opening statements, I took six minutes and read to you the names of all of the victims who were the subject of this indictment. I did that because all of us understand the victims' plight. They are not the property of any side to this lawsuit. Their collective loss belongs to the country as well as to themselves. There is nothing inconsistent with being Tim McVeigh's counsel and arguing and advocating his position and not having personally and privately and emotionally sympathy and understanding for these individuals. And they are not litigants or parties to this case. Their interest is served by knowing that there is a fair trial so that they have confidence in the verdict. But that requires zealous advocacy, a testing of the evidence, cross-examination, and fierce and sometimes heated argument and discussion about what these facts mean. Because heat generates light, and it is with the light that we will know what the verdict should be.

Oklahoma is a small state. It has been said -- and just to show you how small it is, we didn't come into the union till two generations after Colorado did. We're the third youngest state in the United States, and Oklahoma City has been described as the largest small town in America. And it's true.

There is no family in Oklahoma that does not know or know of a victim. So when I speak today, I mean no disrespect to them, but I say this: The testimony that the Government produced was 137 witnesses, I believe. But truly, the substantive testimony insofar as relates to Mr. McVeigh was approximately the same number of witnesses we presented: 25 to 30. Because there is no dispute that the Murrah Building blew up, there is no dispute it was in Oklahoma City, there is no dispute that the Ryder truck here carried the bomb, and there certainly is no dispute that these victims died as a result of

this explosion.

All of that is not in dispute. And testimony to establish that point only establishes the commission of a crime, which we have never challenged. It does not establish who committed the crime.

The Government called a large number of witnesses, as is necessary, for chain of custody and laying foundations, and that's appropriate. But when we come down to what we are really talking about, the witnesses that the Government relies upon with respect to this defendant, there are no more than 20 or 30. And a number of those witnesses are in reality our strongest witnesses because the defense case isn't 25 or 27 witnesses any more than the Government's case is 130. The trial is a whole cloth. Each witness is subject to direct examination and cross-examination, redirect, and recross. I can argue what an exhibit means, Mr. Mackey can argue what it means, and you decide what it means.

So in reality, there is a blending of the prosecution's case. They may make a point with a witness that I have put on the stand, and I may make a point, or at least attempt to make one, with one that they called. And in this respect, it may be said that the four strongest witnesses to establish that Mr. McVeigh is not guilty are FBI agents, and they are Mr. Hupp, Mr. Burmeister, Dr. Whitehurst, and the artist, Mr. Rozycki. They are at the foundation of the defense of this case.

So when we talk about it in those terms, the Government's case more likely was closer to the length of ours, three and a half days and about five and a half days for them. The rest was essentially matters that were not in controversy.

When I began the opening, I think that I talked to you in terms of the Government's case as a table and there were so many legs supporting the table, or categories, if you want to use that expression. Those eight legs or categories are what I want to talk with you about today. And so that you will understand how we are proceeding, I am going to address first the question of Michael and Lori Fortier, because that clearly is one of the eight legs. Mr. Nigh will discuss with you the motive, The Turner Diaries, Armed and Dangerous, and so forth. And Mr. Tritico will address all of the forensic evidence, and then I will come back in a condensed form and discuss briefly the other five legs. That is the way that we intend to proceed.

So let me begin with a discussion of Mr. and Mrs. Fortier. You will recall that when Mr. Hartzler spoke to you and made his opening statement, he told you that our evidence is not dependent upon any one witness; it is certainly not dependent on Michael Fortier. Well, although he didn't specifically include Lori Fortier in that, I think he would concede he meant the same thing. So let's examine first the importance or lack thereof of Michael and Lori Fortier and what

their case means with respect to Mr. McVeigh.

And I must begin with an apology. Yesterday it was necessary, in my judgment, to play for you, briefly, four or five tapes of conversations either on the telephone or in Mr. and Mrs. Fortier's house. Those conversations were appalling in their vulgarity and insensitivity. And for that, I apologize. But it was necessary for me to do so because what

we basically have here with the Fortiers is the prosecutorial equivalent of Eliza Doolittle being made over into the Henry Higgins of the FBI and "My Fair Lady" has become "My Fair Witness."

If Mr. and Mrs. Fortier are not so important to the Government's case, then one must ask one's self, why did it take 200 hours or thereabouts to prepare them, why the countless and endless meetings, why the complete transformation of their personality, and most importantly, why make the deal made with them if they aren't important? I mean if they're not important, why do any of this? Certainly why let Lori Fortier walk away with nothing and Michael make the deal that he did?

The answer is there. To ask the question is to answer

it. They needed them. Because without them, then what we have

is a series of isolated incidents. Michael and Lori Fortier served the function of Tarzan and Jane in the old Tarzan movies, where you've got a clump of trees here and a clump of trees there and a clump of trees over there, and Tarzan and Jane swing from one tree to the next, and it's only by their swinging and maneuvering that the trees are connected.

This is their significance.

So in reality, how honest is it to say they're not important to our case? Of course they're important to the case. They are critical to it. Now, the Government's position

is that much of what Michael and Lori Fortier says is corroborated. Well, I suppose in a kind of a backhanded sense, that's true. But let's examine carefully here the story that they first told and then why they changed and then the story that they later told.

Now, this morning Mr. Mackey told you, Well, we don't choose our witnesses. Well, of course they choose their witnesses. How many thousands of people did they interview in this case? They chose who to put on the stand. Of course they chose them. They chose this person over that person. So to say, Well, they're Tim McVeigh's friends and we didn't choose them, is to beg the point.

Well, there isn't any evidence that Tim McVeigh knew the Fortiers used drugs, much less sold them. There isn't any evidence that Tim McVeigh knew about the way in which they conducted their affairs; and as Mr. Hartzler pointed out yesterday, certainly Mr. Fortier on special occasions was capable of cleaning himself up. And clearly testifying in a case where his sentence depends upon it in part is a special

case where his sentence depends upon it in part is a special occasion for this gentleman.

The question, though, is a little more complicated than that. Because you see, we don't have the usual friend of the defendant who's turned and is now testifying against him. I agree that that's not unusual. Cases are made like that every day in the country with the appropriate risks that are associated with them, which the Court will instruct you. This is a different circumstance, though. This is a case of an individual who didn't just insist that he didn't know anything about it; he went public that his friend was not guilty. How many other times in all of the reading and newspapers that you follow and television programs can you even think of another case where the friend of a defendant calls a press conference and announces publicly that he's not the face of terror, that

he's my friend and hang tough? This is not a man that was cowed. This was a man that was determined to go out and defend

Tim McVeigh. Now he says, of course, he lied. Well, it is certainly easier to lie to strangers, such as a jury in this case, than it is to lie to one's mother, father, one's brother or sisters or lifelong friends and associates, to say nothing of the FBI.

But within the context of those tape recordings which he says he knew was there -- and probably in one sense he did -- but if he was lying, he was reckless to the utmost degree. So if we look at the totality of what he says -- and let's just leave aside for a moment the issue of corroboration.

Let's examine what he did. First we know -- Mrs. Fortier -- that early on while they were there in their house -- and this has been introduced into evidence, and you saw it -- Mrs. Fortier prepares a press statement, actually two of them, and she does the first one and then revises it. And this is the second one, as I recall: "Judge not for yee" (sic) "shall be judged."

Now, the Fortiers are not just defending the criminal justice system and saying, Well, just give Mr. McVeigh the benefit of the doubt, we'll find out in court whether he did anything wrong. They're going far beyond that and telling you that they don't recall anything. Yes, I tried to look back -- or words to that effect -- and I can't say to myself that there's anything that told me yes, he might do this.

And then this is followed -- the next one -- and a typewritten version is prepared. And this is in evidence, and I'm not going to take your time now to read it to you. You can see it yourself; but first it goes through several drafts, and then they write a two-page version and then call a press conference. This is unprecedented behavior by someone that is claiming that during all of this period of time, they were lying.

Now, the argument may be made, well, of course they had to do this because, you see, if Tim McVeigh was thought to be guilty, then it would incriminate us. Well, which is it? They either were involved in the bombing or they weren't. You

mean to tell me that in order to hide the crime of possession of stolen property -- which incidentally, they left in their house -- they went out and went to these lengths to call attention to themselves, knowing that at any moment there could

be a search warrant obtained against their house and this so-called stolen property would be found?

The guns weren't stolen, they didn't believe they were

stolen. That's why they kept them there. When they thought there was going to be a search, what did they get rid of over the back fence, videotapes? Perhaps a marijuana pipe, we argued, but they denied it. And then they took down to their brother's house some explosives and instruments to make a pipe bomb. And I suppose there's a violation of the federal tax laws, making an explosive device without paying a tax on it.

But what did they leave? They leave these guns. So they went to this length to avoid a tax prosecution? To avoid having "Waco Day 51" tape in their apartment? Of course not. They went to this length because they, both of them, shared the

same political beliefs of Tim McVeigh, a suspicion, dislike, perhaps if you want to say hatred, of certain branches of federal government for certain events that had occurred. We're not here today to judge the appropriateness of that belief.

But isn't it clear that they shared the same or nearly

the same -- Miss Fortier's favorite word was "somewhat." But somewhat they shared the belief of Tim McVeigh. And so like any member of a minority group of political viewpoint, when the

group or a member is threatened, the others come to its aid. You have seen that in all the fringe groups, and that's what they did. Their friend was in trouble, they perceived that he had been arrested for the political beliefs, and so they came to his defense.

Now, perhaps I might show more self-restraint, you might show more self-restraint; but in their community and with the beliefs that they had, Tim McVeigh was being persecuted by the FBI just like they were being persecuted. His life was being disrupted and so was Terry's and so was theirs. And so they went out and did what they had done before: They defended

themselves, and that's what they were doing. And they did not for two or three days, as they told Judge Russell. They did it for over a month.

And then something happened. Now, what happened was Terry Nichols was arrested on May the 10th. But in the meantime, something else had happened. Mrs. Fortier, despite the fact they're writing press releases and rewriting them and holding press conference, she just wasn't interested in what appeared in the press, just totally oblivious to it except in one or two instances.

Now, use your common sense. There's nothing in these instructions the Judge is going to give you that says you

can't

use your common sense. Your logic tells you that they were reading that newspaper every day they could get their hands on it, and they were watching television and hearing from their friends and listening to the radio because this was the number one story in the world on April the 19th, down through May of 1995; and as Mr. Fortier acknowledged, he was the key man.

But the reason that Mrs. Fortier had to say, No, I didn't really read them that much, and finally Mr. Fortier came

around and said, particularly when it's on the tapes, that he knows about Time magazine, knows about The Arizona Republic, he knows about CNN and he's got his friends, Lonnie and Glenn and his brother John calling him and telling him that they've seen him. And you can hear the excitement in their voice. They know a celebrity.

But the reason they didn't want to admit reading it is

because then, if I said, Well, did you read the story about how

the FBI thought it was carried in a Ryder truck; and then, Well, did you read the story the next day about they thought this Ryder truck was rented in Michigan; and then, Did you read

the story that there was a false driver's license that might have been used; and then, Did you read the story there was ammonium nitrate, they could say, no, I didn't read it. Of course they read it.

And when it dawned on them like the great French play, "No Exit," that there was no exit for them, they had to come up with a plan.

Now, these are not foolish people. They're very smart people. And this was the plan: Again, use your common sense. Everything about Terry Nichols applies at least to Michael if not Lori. Both of them knew Tim McVeigh, both of them served in the military with him at the same time, both of them shared the same political beliefs, both of them had similar type devices and stuff in their house, both of them had the same kind of books, and they were all linked together with Tim McVeigh. So first Terry Nichols is held as a material witness, and then on May the 10th, he's arrested and charged as an aider and abettor in the case.

Now, they knew by then -- because they told you, they had seen the Attorney General and the president of the United States, and they knew that a death penalty was going to be sought in this case. So here they are, broke, unemployed, no money in the bank, no prospects, not even the money to hire a lawyer; and they know that the vice is closing in on them. They think their phones are bugged. You can hear their desperation about the media, and they got to find a way out. And this between the time, as you can clearly tell from the tapes Michael is at least some of the time in some kind of

apes, Michael is, at least some of the time, in some kind of drug stupor, if not something else.

Now, you have read the paper, and you followed it on television and you were far less involved in the case than the two of them were. And then the media begins to talk to them about, well, appearing on this program or buying the photographs; and you remember what Mr. Fortier said: "I can tell a fable"; "I have found my career"; "a cool million"; "I'm going to keep quiet till this is over with and tell my story"; "There will be book and movie rights"; and, "Let's sell the photograph, Mother, for \$50,000, we'll split it."

Now, those are not casual conversations. This is coming from a man and a woman who, as you heard from Debbie Brown, just a few months before wanted to buy her tanning salon but couldn't raise \$35,000 on their own for a down payment and weren't willing to put up her parents' house for the loan. So to say that money wasn't important to them, when they were unemployed, the world at their door, no visible means of support, and they were talking about money, is to ask us to believe that what they said was not what they intended.

Now, in the early conversations -- and certainly we can't play all of them -- but in the early conversations, there's kind of a jocular reference to this. You know, almost too good to be true, and then Michael's voice takes on that hard edge. And he has that conversation with Lonnie, I believe it is, and they're talking about, "Well, you're the key man." And I says, "I'm the key man." Almost like Saul on the road to Damascus, the light is on: I'm the key man. There is money to be made in this.

But of course there's a problem. And the problem is he can't talk to the media, other than just the little bit about CNN. And you notice how many times there there were things he didn't want to talk about, because he knows there's an ongoing investigation, he knows Terry is being held as a material witness. And then just two days later Terry is arrested. So he has to find a way out.

So he leaves a message with the FBI one early morning that he's interested in talking to them about a proffer. Now, he hasn't said anything that implicates himself or Tim McVeigh, he's just kind of out scouting as to what he can do. This is a man that still thinks he can have it his way. So they get subpoenaed to come to Oklahoma City, and they meet in a motel and they call some FBI agents. Mr. Zimms and another gentleman come out to see them.

And Mr. Fortier excuses himself from Mrs. Fortier. Now, that's kind of an interesting development, isn't it, because remember, I trust Lori, I tell Lori everything. Tim McVeigh wrote me, according Mr. Fortier, and said, Don't tell your wife; but I tell my wife everything. But, boy, the door

closes behind him on this one. And Lori stays in the hotel room while Michael goes out, and what does he say? He doesn't say, We can give you Tim McVeigh; he says, I can give you Tim McVeigh. But I want immunity from prosecution. Now, even if he intended it to apply to both of them, what he wanted was I'll give you Tim McVeigh, but I don't want to be prosecuted. For nothing. Period. Nothing.

Well, the agents told him, Well, we don't have any authority to make that kind of promise or commitment. Would you like to correct your statements? I mean after all, that's why you called us out here, Michael. Would you like to correct your statements?

And then -- now they're back inside. Mr. Fortier turns to Mrs. Fortier and says: You correct yours first. Greater love hath no man than he lay down his wife for his life. That is precisely what he was willing to do. But Lori -- remember, these are not stupid people -- says, No, you correct yours first.

And so he begins, quote, to correct his. But according to him, he is still lying. So he feels his way as he is engaged in this maneuver, and his wife has the good sense to keep her mouth shut. Chivalry died that afternoon in the Fortier home. That's for sure. Their lawyer, or at least her lawyer, shows up and tells her not to talk anymore, which is certainly appropriate advice in the circumstances; but she already knew that. And then supposedly because he has this great feeling for the people of Oklahoma, he starts cooperating.

Well, if you take all of these things that he said, 99 percent of them were already known to the FBI; or if they weren't known to the FBI, they were certainly known to the press, because they were in the public domain. But nevertheless, he did serve a function of tying them up. But those things that he says that aren't in the public press, such as, Well, now, you know Tim McVeigh wrote me a letter, said he wanted to take direct action. Well, do you have the letter? Well, no, I don't have the letter. And I wrote him back. Well, did you make a copy of that? And I agree it's not likely somebody would make a copy of a letter, but some people do. No, I don't have that.

Well, my name's Lori Fortier and I made a driver's license for him. I typed it on this typewriter, but I threw away the ribbon. And Michael says, Well, I ordered an ID kit, 'course I ordered it in the name of Tim Tuttle because Tim wanted it, when what the evidence really suggests is that he was getting it for himself. Well, where's the rest of the ID kit? Well, I don't have that. All we've got is the order form that went in. So who knows what Michael did with it.

But my point is simply this: If you say that George Washington sat in that chair and there's the chair, it doesn't prove that George Washington sat in it at all. For any of

this

to have any believability, you have to first believe Michael and Lori Fortier.

Now, according to them, their parents believed them, their friends believed them; didn't have any trouble lying to them. Or were they telling the truth now (sic) and lying now?

Where did they get the benefit? In my neighborhood, as Mr. Mackey would say, you ask who benefits. Well, who benefited? Well, Michael has his tail in a crack, as we used to say in Oklahoma, but at the time that wasn't what he was aiming for. What he was aiming for was a complete walk-away, so that he didn't have to worry about it, he didn't have to worry about Tim McVeigh, and he could go out and hit the

talk-show circuit, make that cool mill and tell that story. And remember, if they didn't treat him the right way, he'd just get up and walk off the set.

So unlike the usual friend of a defendant that's kind of scared and cowed, Michael wasn't so much scared as he was just simply trying to make the best deal that he could. And there is a dramatic difference between the two.

This is a man who according to him doesn't mind dealing in stolen guns but won't drive into the desert; a man who's perfectly willing to trade somebody else's property but yet says that he didn't do the things attributed to him.

But he slipped up. You know, like the drunk driver who says, Honest, Officer, I just had two beers, Michael just uses methamphetamines once a week, just kind of occasional recreation, maybe sometimes just once a month. Well, now, that clearly is a lie. You heard the testimony of Debbie Brown, and

you know from your own life experiences and what you know as adult men and women, that no drunk just had two beers and nobody using speed or marijuana in their years as long as they have just uses it once a month.

So although he claims he stopped lying two years ago, he was lying in this courtroom. And even when Mr. Hartzler asked him, Now, what are your offenses, what have you done wrong, Michael? Well, I used drugs, I possessed them and I sold some and I had these guns and I broke into this National Guard armory, and all this kind of petty stuff. But he had forgotten that long before this, he was committing ATF offenses, he was going down and buying guns and signing his name repeatedly to statements that he said he understood that said I've never used drugs before.

Now, when you add up all of Michael Fortier and Lori Fortier -- not small number, but principally Michael's criminal

offenses, to plead guilty to no more than 23 years was Christmas in August. But he's not even facing the 23 years, because under the terms of his agreement, it can be reduced, or

at least the Government can move for a reduction. And so what we have here --

I don't need this one

I don't need this one.

MR. TRITICO: Yeah.

MR. JONES: Let's get the one behind it. Yeah.

This was introduced into evidence. And I've just highlighted certain portions here. This was the plea agreement

which Mr. Mackey told you -- and I appreciate his professional candor -- this was a contract, this was a deal. And like any deal, it was bargained for and there was some consideration. And so what's the consideration?

Well, Mr. Fortier understands that he could be sentenced to a total of 23 years in prison. Well, if I were facing all the offenses that he was facing, I would think that was a pretty good deal.

The parties agree to seek a continuance of Mr. Fortier's sentencing until he has completed his cooperation

and rendered his testimony. What that simply means is we got him. He has to deliver for us before we deliver for him.

Wouldn't it have been better if he had already been sentenced? Then you would have a position to know that he had no motive to lie; he had already been sentenced, so what he said wouldn't affect his sentence. But it's just the opposite.

The Government in this remarkable candor clearly says, We're not going to deliver till you deliver. Well -- you might

say, Well, that seems only fair and natural, they don't want to buy, as we used to say, a pig in a poke. Well, he's already delivered: He testified in front of the grand jury, he wrote these statements, he took them all these places, he took them up to Kansas and Oklahoma City and Arizona and explained all this and spent dozens of hours with the FBI, so he has

delivered.

So why are they still holding the Sword of Damocles over his head? Maybe because they don't trust him; and maybe you shouldn't trust him, either. Because they want to be sure he delivers. See, they're not willing to believe him until after he has completed his testimony. So why should you believe him? If they don't want to give him the benefit of the bargain yet, why should you?

If the Government determines in its sole discretion -

-

not the Court, not the court down in Oklahoma City, not Stephen

Jones, but these ladies and gentlemen over here at this table and their superiors, presumably -- that Mr. Fortier has rendered substantial assistance in the investigation and prosecution -- that's lawyers' fancy words for testifying -- involved in criminal activities, then it will file a motion which will so advise the judge -- and they can ask for a reduction of his sentencing guidelines. He has to completely fulfill all of his obligations, and the United States agrees, except as provided below, to bring no additional criminal charges against him.

It would be difficult to imagine a more extravagant plea bargain. I've been practicing law for 30 years; I'd love to get a deal like that for some client of mine sometime. This is surely one of the most extravagant agreements ever made.

Mr. Fortier fully complies with this agreement and fully cooperates, then not even the State of Oklahoma will prosecute him.

Now, the question is, of course, did he live up to it.

And the answer is no. He lied in front of Judge Russell.

He wrote out factual statement -- factual statement; not my memory, but factual -- in support of plea petition.

"When the FBI agents questioned me later about two days after the bombing, and during the next three days, I lied about my knowledge and concealed information."

Well, if he's telling the truth about what he knew, he didn't lie during the next three days, he lied for an additional 27 days that we know about, and maybe beyond that. Because when he started talking to the prosecutors, they weren't writing up 302's then.

So the question to ask yourself is, Well, after he lied to Judge Russell, was the agreement declared null and void? Of course it wasn't declared null and void. The Government knew that that wasn't a full and complete and candid declaration of what he had done. They knew that then. They knew that when they put him on the stand, and they know it now.

But you see, it's somehow or the other sounds better if you say, Well, they came out to see me right after the explosion and, honest to goodness, I just lied to them for two or three days and I didn't mean to.

It's a little harder to get a jury to accept that you lied for 30 days. But if he's telling the truth, in whole or part, about what he knew, then clearly he was lying more than three days. So the agreement wasn't revoked. So in addition to that, he has an even double incentive to cooperate with them

because he's already misrepresented it to Judge Russell. And one of these days, there will be an accounting in front of Judge Russell. But of course you'll be back home, the case will be over with, and you can't come back in and say, Well, gosh, I didn't know Judge Russell was going to do this or that.

You have to make your mind up based upon what you know today.

But there is a chronology . . . and all of this was testified to, and a lot of it's exhibits introduced, in which we just take Michael Fortier's testimony over a two- or three-year period; and way back long before Oklahoma City, in July of 1993, he begins to make false statements on his form for firearm transaction records. Not once, but several times.

Again on April the 18th.

And then on April the 21st, according to him, he told the FBI that he didn't know anything that would indicate Mr. McVeigh was guilty.

He goes on down the, 22d, the 23d, the 24th, and then

after a few days later, he starts talking about the talk shows:

I found my career, I can tell a fable.

And they start questioning him, the press, and here's the CNN interview. Everybody should be supportive of Mr. McVeigh -- or him -- because he's an innocent man.

And he goes on down on the 30th: I was thinking of one cool million. And then on May the 8th, The less I say right now, the bigger the price is going to be later.

And then two days later, Mr. Nichols is arrested; and then he goes on down and on August the 10th he completes his statement.

So here's what happened -- and I apologize that I've taken so much time as I have -- Tim McVeigh was his friend; he didn't know anything about Oklahoma City; he read the newspapers, he knew the heat was on, this was a terrible crime, worldwide attention; and he saw an opportunity, an opportunity to live on Easy Street; but first he had to square it away with

the FBI, and he knew they were interested in Tim McVeigh. You know, when he was there in Oklahoma City, he didn't say I can give you Terry Nichols. He said, I can give you Tim McVeigh. I can give you Tim McVeigh. And then proceeded to regurgitate over several months what had already been in the media.

And then says to you, Well, golly I didn't know till just now the FBI found that key in the lobby -- or in the alley. And the Government says, Well, that corroborates his story. Well, which story? Michael Fortier's various statements, because they're built on a house of cards, have covered virtually every possibility. Terry Nichols wasn't a member of the conspiracy, he wanted out; well, Tim said he was in too deep, so he could stay in. Well, Tim was going to drive the truck into the basement, commit a suicide bomb. Well, Terry was going to bring the car down with Tim on Sunday. Well, no, maybe Tim was going to bring the car down. I mean, how many other possibilities are there? As long as you've got a 360-degree circle with an arrow, you can say any part of his story is corroborated because he's covered every possibility that there is.

Now, there are, however, two or three things about what he told you that you have a measuring stick. The robbery.

Now, Mr. Mackey said, Well, Mr. Jones will probably say -- or at least he suggested by inference -- we didn't call Roger Moore. Well, the reason we didn't call Roger Moore is because this is a murder prosecution, not an armed robbery prosecution.

Well, let's think about that for a minute. What's this corroboration? I mean, easily an hour was spent telling you how much Michael Fortier had been corroborated. Well, here's the biggest corroboration of all, the man who was robbed. I mean, how many times has he been robbed? You think he's forgotten that somebody came up in camouflage fatigues, a ski mask on, held a shotgun on him, and robbed him of everything -

-
or at least a number of things that were valuable in his house?

So why didn't Roger Moore testify? Why didn't he?

Well, I'm not on the prosecution, team. Well, Steve Jones could have called him. Well, sure, I could have called him, I suppose. Except even by Michael Fortier's testimony, Tim McVeigh wasn't there. And the Court, I believe, will tell that you I don't have to prove anything. It's the Government that has to corroborate Mr. Fortier, and that's the single most important piece of corroborative evidence there is, and it was not called.

Instead, the strong suggestion is left that after Tim got these ten rifles or so from the death of his grandfather and his estate was closed out and started going on the gun-show

circuit that what we have here is an attempt for Tim to aid Michael, who's down on his back with no job, and say, Well, if you'll go to the gun show circuits -- and I'll tell you how to do it -- you can sell this; we have to give Terry some money, and you can make some money. And this is a lot easier than what you're doing out there.

And, you know, Michael found out it was. He started going to these gun shows on the weekends with this so-called stolen property from a gun dealer in Arkansas, and said, Well, I didn't think he would show up in Nevada. Well, how did he know? I mean, Tahoe is a pretty prominent place, Las Vegas is a pretty prominent place. He didn't know what Roger Moore's schedule was. And it would be easy to know whether these guns are stolen or not. Presumably a gun dealer has a record of what he's got, a list or an inventory. But Roger Moore wasn't called.

So I submit to you there was no robbery. Now, I don't know what Roger Moore may have said. But there wasn't any robbery. If there was a robbery, you wouldn't have to depend upon third- and secondhand hearsay statements through Michael Fortier to establish it.

And I'm still at a loss to understand how one man can take a stock shotgun and hold up another man and tie him up with duct tape and put something over his eyes where he can't see and then untie him and ask him to carry the stolen property out to his van and then come back and tie him up. I don't think that passes common sense.

But there are two things that Mr. Mackey said that are perhaps a little bit more serious, and certainly a little more consistent with human experience. The first one was the disguise of Tim McVeigh as the biker. Well, I just simply asked Mr. Fortier, Had Tim McVeigh ever been to Sturgis, South Dakota? It wasn't a disguise. He was a biker. He went to Sturgis. He told him about sitting at the same table with Peter Fonda. Now, he may have said that to Jennifer. She says he did. I wasn't there. She says that. and he may have said

HE SAID. I WASN'T THERE. SHE SAYS THAT, AND HE MAY HAVE SAID
it. But I mean he didn't have to go to Sturgis to effect the
disguise; he went to Sturgis, because as all of you know, in
South Dakota, that's where they have the big motorcycle races.

And then there's Lori Fortier and the iron, and I
would agree that that kind of sounds like human experience.
But the question is was she describing Tim McVeigh using a
false identification, or was she describing something that she
did for her husband. Because the simple truth of the matter
is
the driver's license has never shown up. It is not an exhibit
in this case.

So with respect to the Fortiers, this is my bottom
line: Why not do what Mr. Hartzler recommended? They're not
important to the case. They're not believable. Put
everything
they said aside. Forget them. That would be consistent with
what I believe a reasonable person would do under the Court's
instructions. Because I think that the judge might charge you
that in weighing reasonable doubt, you'll do it on the basis
of
what kind of doubt would you have in something important in
your life, what would cause you to hesitate before you made a
decision on anything important to you.

Well, let's think about that for a moment. Suppose a
month from now you pick up the newspaper or you learn that
Michael Fortier is looking for a job. Would you hire him?
Lori Fortier wants a baby-sitting job. Would you hire her to
look after your children? Or you're driving down the road,
maybe up to Cheyenne, and you see their car off to the side
and
they've got the hood up and they've got car trouble. Would
you
stop and help them? Or suppose you've got an extra bedroom to
rent or garage apartment and they show up and you are asked to
rent it to them.

Knowing them as you do now, I respectfully submit you
wouldn't give them employment, you wouldn't loan them money,
you wouldn't buy anything from them, you wouldn't extend them
credit, you wouldn't invite them in your house, you wouldn't
want to be associated with them, you would ignore them. And
that's really -- some of them are very important things, some
of them are just kind of routine, ordinary things. So why not
apply the same standard here, particularly since Mr. Hartzler
suggested it, and just ignore them with respect to this case.

Now, I have asked Mr. Nigh to speak with you about
the
next leg, the so-called motive or political viewpoint. And
then Mr. Tritico will address with you the forensics, and then
I will come back with the other. And at the conclusion of it,
I think you will see that Mr. and Mrs. Fortier are not
corroborating; they simply, after the items appeared in the
press, regurgitated them back to the FBI.

THE COURT: Mr. Nigh.

CLOSING ARGUMENT

MR. NIGH: Thank you, your Honor.

May it please the Court, ladies and gentlemen.

Beginning where Mr. Jones left off and with what some of Mr. Mackey has already said to you this morning, I think that it's important to recognize that some of the things described by Mr. Mackey and the Government are precisely the things that you heard from the witness stand. The problem with that is that the evidence that came from the witness stand in the spring of 1997 was dramatically different from what these witnesses said to the FBI in the spring of 1995.

Mr. Mackey suggested to you in reference to Jeff Davis that what you should do is to believe what Jeff Davis first told the FBI when they interviewed him in 1995. And I would suggest to you that that's the rule that we ought to apply in reference to the Government's witnesses as well.

We like to think that federal law enforcement officials operate on the highest standards possible and that they do things right. We like to believe that the criminal justice system is designed to ascertain the truth and that the Department of Justice actually seeks justice.

But I would submit to you, ladies and gentlemen, and that in this case the evidence demonstrates strongly that what law enforcement did was terribly, terribly wrong. Instead of objectively investigating the case, the federal law enforcement officials involved decided the case. And then attempted to jam the evidence and the witnesses to fit the predecision.

It was not a search for the truth. It was a desperate attempt to hammer the square memories of the witnesses into the image and into the likeness of Tim McVeigh.

If you want to start at the beginning in terms of the most important witnesses to the Government's case, let's start with the very unambiguous and clear statements that Eldon Elliott made to the FBI, to Agents Crabtree and the visual information specialist Vince Rozycki when they came to visit him just days after the event. In those few days, what Mr. Elliott told to the FBI was that Robert Kling was my height, meaning Eldon Elliott's height, 5' 10" tall; that he was wearing camouflage, and that he had acne.

Now, if you apply the Government's rule of let's believe what the witnesses tell the FBI when they're first interviewed, then that's the description of Robert Kling.

But in the spring of 1997, Eldon Elliott's description of Robert Kling has dramatically changed. During the course of that intervening two years, Eldon Elliott begins to recall all of a sudden that Robert Kling wasn't the same height as Eldon Elliott. Now, all of a sudden he was slumped over that counter, and therefore he must have been much closer to Mr. McVeigh's height.

But it doesn't stop there. If you turn next to the purchase of the Mercury Marquis and the testimony of Tom Manning -- that occurred in the video deposition -- Mr. Manning

stated during that video deposition that over the course of a year and a half, he had spoken to the FBI on eight separate occasions. And not during one of those statements to the FBI did he ever say that Tim McVeigh left the Firestone dealership during the course of the morning on April 14 of 1995. Not once.

All of a sudden, a year and a half later, a year and a half after the event that he was supposed to remember so clearly, he said, Oh, now I remember, he was gone for a little bit, a few minutes, said I'll be right back. But the problem is that when he said that, he said it happened at the time that the car was being serviced. It happened when the road work was being performed on the car.

And the reason that you know that it couldn't have happened is because of the testimony of Art Wells. Now, Mr. Wells cannot account for Mr. McVeigh's presence during the entire course of the morning of April 14. But he can account for Mr. McVeigh's presence during the time that Mr. Manning suddenly said that Mr. McVeigh left. So you know that he didn't leave.

Then let's turn for a moment, if we may, to the Dreamland Motel and the testimony from Eric McGown concerning the events of the spring of 1995 and the events involving the Ryder truck at the Dreamland Motel. If we use the Government's rule about let's believe what the witnesses first say to the FBI, then you have to believe Eric McGown's statements to the FBI that the Ryder truck was there on Sunday, instead of the transfigured testimony of Eric McGown from the witness stand, that you know, I never really was sure that it was Sunday, it could have been Monday.

Well, the reason, ladies and gentlemen, that Eric McGown is not sure and it could have been Monday is because if it wasn't Monday and it occurred on Easter Sunday of 1995, then it wasn't the truck that carried the bomb to Oklahoma City. And it doesn't fit with the Government's theory. So he had to be uncertain about the day at the time he provided the testimony, although he wasn't uncertain when he first spoke to the FBI.

You know it was Sunday -- and Mr. Jones will deal with this in more detail -- because of the testimony of Herta King and Renda Truong. But if you turn the clock back even before that, to the fall of 1994 and the Topeka drag race, the Sears Craftsman National Drag Race held during the weekend in October in Topeka, Kansas, and the testimony of Glynn Tipton. Now, you recall Mr. Tipton said that an individual came up to him and attempted to buy hydrazine, individual identified himself as John. Let's use the Government's rule. What did Mr. Tipton first tell the FBI about what John looked like? Mr. Tipton said that John was 5' 8" tall and scraggly.

From Mr. Tipton's statement in 1995 concerning John

FROM MR. TIPTON'S STATEMENT IN 1995 CONCERNING JOHN
being 5' 8" tall, approximately my height, Mr. Tipton's
testimony from the witness stand in the spring of 1997, John
has grown to the height of Tim McVeigh, and Mr. Tipton is
90 percent sure that it was him.

Ladies and gentlemen, it is those things which cause
me to say that something is terribly, terribly wrong. The
descriptions of ordinary people have been hammered by the
investigation from encounters with 5' 10" tall Robert Kling
with acne in camouflage to 6' 2" Tim McVeigh in blue jeans;
from a Ryder truck on Sunday, April 16, 1995, at the Dreamland
Motel to a Ryder truck that it must have been on Monday,
April 17, 1995, so that it could be the bomb truck; from the
testimony of Tom Manning -- the statements of Tom Manning
eight

separate times that he never left or omitting any reference to
him ever leaving to now I recall that he left. And of course
then you have the testimony of Michael and Lori Fortier, which
Mr. Jones has already dealt with. From Mr. McVeigh is an
innocent man to Mr. McVeigh told me about this thing.

Mr. Jones will deal with each of those evolutions
perhaps in more detail.

But beyond that, I want to turn to the very beginning
of the case in terms of the Government's proof and the
political literature and the books that the Government has
proven that Mr. McVeigh at least possessed. And we can talk
also about the literature that was found in Mr. McVeigh's car.

The Government started with the premise that there
was
some significance to the fact that the literature was found in
Mr. McVeigh's car on April the 19th of 1995. Well, the
literature itself tells you that April the 19th is Liberty Day
and that there were a lot of people that thought of April 19
as
Liberty Day.

But more importantly, the testimony of Jennifer
McVeigh demonstrates that this was not unusual on April 19 or
any of the other 364 days of the year for Mr. McVeigh to have
that kind of political literature. He gave it to her, he gave
it to her friends, he gave it to her and asked her to mail it
to other people. There is no significance whatsoever to the
fact that he had it in his car on that day.

In a bit, the Government's theory in reference to the
literature evolves yet today, and Mr. McVeigh's statements.
You'll recall that Jennifer McVeigh provided testimony about
Mr. McVeigh saying something was going to happen in the month
of the bull. The Government's theory at the time that that
evidence was presented that something big was the bombing.
Had
to be referred to the bombing. But after it gets pointed out
that the month of the bull doesn't begin until April 20 and
not
on April 19, then the something big evolves into the revolution
that is going to occur after the bombing.

It is true that certainly Mr. McVeigh had in his car
a
clipping from The Turner Diaries. And while I would not or

might not defend The Turner Diaries as a piece of classic literature, I will defend forever Mr. McVeigh's right to possess it.

The content of The Turner Diaries does include a description of the bombing of FBI headquarters in Washington, D.C., in order to destroy a bank of computers. And that the reason for the bombing is detailed at page 80 of the book, if you care to look at it when you have the evidence before you.

The passage that Mr. McVeigh had in his car has a reference to the value of our attacks today. And the attacks referenced are described on page 60. If I can -- let's bring this closer.

This is page 60, Chapter 9, if you care to refer to it when you get the book in front of you. And the date described is November 9 of 1991. And that's the fictional account that Earl Turner is providing of the events of what was supposed to have happened on November the 9th, 1991.

And the attacks referenced are three separate spread-out-all-over-the-place attacks. The first one is an attack on the Capitol in Washington, D.C., through mortar. Now, it's not a truck bomb, it's a mortar attack.

The second one is an attack on the city council in Los Angeles through the use of hand grenades.

And the third attack is the downing of an airliner in New York through a missile. None of it, none of the attacks had anything to do with a truck bomb or the FBI headquarters; and that's the passage that was found in Mr. McVeigh's car on April the 19th of 1995.

Don't need that one.

If you look at the -- there are two versions of The Turner Diaries in evidence. One is the Government's version. They're essentially identical, except the one that the defense submitted into evidence has on the cover page the amount of copies that have been sold as of the spring of 1995, and the number is in excess of 200,000. If The Turner Diaries is a blueprint for the bombing of the Murrah Building, there are 200,000 plus or there were 200,000 plus such blueprints running around the country at the time that the bombing occurred.

The next item of evidence in reference to blueprints would be the book Homemade C-4, which the Government through the gentleman from Paladin Press was able to demonstrate that Mr. McVeigh ordered back in 1992 and 1993. And the Government suggests to you that Homemade C-4 is the way that you can determine how to build a truck bomb to destroy the Murrah Building.

I would suggest to you, ladies and gentlemen, that if you look at Homemade C-4 and you look at it, you will find that

Homemade C-4 is no more the recipe for a truck bomb than you can use a can of coffee to feed an army. This is the book Homemade C-4 which you have in evidence. And this is the recipe that is described within the book for how to make this substance.

Start by taking a one-pound coffee can or its

equivalent from a freshly opened bag of ammonium nitrate. The coffee can will hold 1 1/2 to 2 pounds of prilled ammonium nitrate. And it talks about the height relative to the diameter. If you read the entire book, you will not find anything more than a reference to 1 pound or 1-pound coffee can

amounts of ammonium nitrate. But it gets better than that.

Not only does the book talk about incredibly small amounts of this homemade C-4, it talks about it in a way that you could not possibly use to build a truck bomb. This is on page 19 of the book. Dry the prill in an oven, set at a low temperature, not to exceed 150 degrees for at least three hours. But don't let the prill melt; ammonium nitrate vapors are toxic. So it is essential that the temperature stays low and the room is well ventilated. Then it goes on to tell you how you go on to do this to make about this much homemade C-4.

The author candidly states in the book that although he's been doing this for month, he still doesn't have it right and what he's doing is blowing up holes in the back of his yard. There is not an oven large enough anywhere that I know of to cook 2,000 pounds of ammonium nitrate in this way. It also talks about how you have to grind it up and make sure that

it's finely ground in order to do this properly.

If you look at the book, ladies and gentlemen, it is a book that was sold to survivalists. Over 30,000 copies were sold. That was from the testimony of Dana Roger, the man from Paladin Press, and it was sold at gun shows. It is not a recipe for a truck bomb.

Now, I want to turn to the literature that was found in Tim's car and the literature that he distributed to his family and friends. The Government asserts that the literature supports the proposition that Mr. McVeigh was outraged over the federal government's actions at Waco. I would agree it supports that proposition: He was. He believed that the Branch Davidians did not commit suicide. He believed that the federal government had used military force against some persons that could only be considered innocent.

But the documents that were in Mr. McVeigh's car prove that readers of publications such as the Wall Street Journal believed the same thing. One of the items found in Mr. McVeigh's car was a comparison of the episode at Mt. Carmel to the Warsaw Ghetto in 1943. And it was a letter to the editor which appeared at page A13 of the Monday, March 15, 1993, edition of the Wall Street Journal. And it said that the things that occurred at Waco and at Mt. Carmel were very similar to what a group of Nazis had done to the Jewish community in the Warsaw Ghetto in 1943. This is not Mr. McVeigh's handwriting. Somebody else believed this as well. The bottom of the same document has a quote -- sorry --

nas a quote from Thomas Jefferson and some other speakers that are not identified.

This literature was found in Tim McVeigh's car as well, and it was found in the Rose Woods box or the box that Jennifer McVeigh had given to Rose Woods. It starts with a quote from Patrick Henry. "Many cried peace, peace, but there is no peace"; and it ends with the famous line that we all learned in grade school. "I know" what course -- "not what course others may take, but as for me, give me liberty or give me death."

It also has a quote from Alexander Solzhenitsyn's Gulag Archipelago, and it ends with a quote from Winston Churchill. Again, this is not Mr. McVeigh's handwriting; this is a Xerox copy. There are other people who possessed the same kind of literature.

Let's go ahead and do the next one.

Perhaps the most important and also perhaps the most overlooked piece of literature that was taken from Mr. McVeigh's car was a quote about how to deal with gun control and what to do about it. And it talks about how to take action. And so that I don't want to -- I want to make sure that you all understand. The highlighting that appears on this is mine. It didn't appear on the document that was found in Mr. McVeigh's car. So I don't want to mislead you in that regard.

But the part that I have highlighted says that I would rather fight with pencil lead than bullet lead. We can win the war in the voting booth. If we had to fight in the streets, I would not be so sure. Stamps are cheaper than bullets and can be more effective. It was political thought. And it was political thought about taking nonviolent action, and it was found right along with the rest of the documents in Mr. McVeigh's car.

The bottom line in reference to these types of items of evidence, ladies and gentlemen, is that if possession of these kinds of political beliefs was motive for the Murrah Building bombing, it was a motive that was not unique to Tim McVeigh. Mr. McVeigh is entitled to his views about the Government just as every other American is entitled to possess, read and discuss words like these from the Founding Fathers.

In reference to this case, ladies and gentlemen, what has been described as motive means nothing. The Government has indicated that this is a murder case. And in an ordinary murder case, you can think of motive in compelling terms. The defendant had the motive to commit the crime. But when you think of it in those compelling terms, it is a motive that is unique to the defendant. He committed the crime because someone had wronged his wife, or he committed the crime because he had been cheated in a business deal, or he committed the crime because the victim of the crime had beat him up in a fight in the past. Those types of motive are unique to the

right in the past. Those types of motive are unique to the defendant on trial.

And the motives that have been attributed to Mr. McVeigh are in no way unique. If you say that it is motive, then you have to do a value judgment about how much political literature you have to have before you can call it motive. Can you start with quotes from the Founding Fathers and include The Turner Diaries? Or do you move the scale back and say that anybody with political views just a little right of center had the motive? I submit to you, ladies and gentlemen, that in the context of this case, this political literature and the word "motive" mean nothing.

Thank you.

MR. TRITICO: Would you like me to begin, or take a break now?

THE COURT: I think we'll take the break now. It's a convenient time.

Members of the jury will again remember that the case is not given to you as yet.

Court is not in recess.

Members of the jury, the case is not given to you as yet. We have additional comments from counsel and instructions that I will give you with respect to the law, so please once again during this time relax, take advantage of the rest stop, and do not discuss the case even among yourselves. You're excused now, 20 minutes.

(Jury out at 3:08 p.m.)

THE COURT: We'll be in recess, 20 minutes.

(Recess at 3:09 p.m.)

(Reconvened at 3:28 p.m.)

THE COURT: Be seated, please.

(Jury in at 3:28 p.m.)

THE COURT: Mr. Tritico.

MR. TRITICO: Thank you.

CLOSING ARGUMENT

MR. TRITICO: May it please the Court.

THE COURT: Counsel.

MR. TRITICO: Several months ago, my four colleagues sitting behind me here and I decided that one of us had to return to school to learn chemistry. Upon taking an election and a vote of 4 to 1, I was elected to return to school and learn chemistry in preparation for this case. It's a job that I accepted willingly and one that I thoroughly enjoyed in learning.

During the last month or so that we have put on the evidence in this case, I'd like to thank all of you for the attention that I know you paid while we went through the trying chemistry evidence in this case.

On my schooling with Dr. John Lloyd and the others who assisted me, I found that the education that I was getting was more like a Stephen King novel than it was a chemistry class because of the way the FBI lab operates and what we know now about the way the FBI lab operates.

This is a lab that's more like a ship without a

rudder, without a sail, and without a captain. This is a ship adrift in the ocean, but this ship is making judgment calls that affect the rest of people's lives.

You have to back up to the beginning of this case to understand the fallacy of the FBI lab. You actually have to back up before the beginning of this case to understand the fallacy of the FBI lab.

Ladies and gentlemen, Dr. Fred Whitehurst came here under subpoena, of course, and talked to you about the lab that he has made his career, talked to you about the things that he did that he saw at this lab that has probably cost him his career. He talked to you about the problem of contamination, about the problem of the unit chiefs in this lab that are not qualified to do the job they're doing. He talked to you about Roger Martz.

Roger Martz was the chief of the Chemistry and Toxicology Unit in this lab at the time that this case was being investigated.

Ladies and gentlemen, did Roger Martz testify in this case? Did Roger Martz take that witness stand and talk to you at all about the testing that he did in this case?

Ladies and gentlemen, you have to ask yourself, you have to ask these prosecutors right here, Why didn't Roger Martz testify? Why is Roger Martz the former chief of the Chemistry and Toxicology Unit? Why didn't Roger Martz come and tell you about the testing he did on the clothing prior to the time that Steve Burmeister tested it? Why didn't Dave Williams testify in this case on behalf of the prosecution?

Dave Williams was the chief of the Explosives Unit prior to the time -- during the time that this case was being investigated. Why didn't he take the stand? Why didn't the Government call him? Why did I have to call him and elicit testimony from him that he's not qualified to write reports and render opinions in areas other than explosives analysis? Why didn't the Government give you that information? Why is Dave Williams no longer the chief of the Explosives Unit at the FBI lab?

Then we go to April 19, 1995, the day of the explosion in Oklahoma City. Dave Williams went to Oklahoma City; Steven Burmeister went to Oklahoma City; and Mr. Kelly, Mr. Ron Kelly, went to Oklahoma City.

Mr. Kelly is the man that the Government purports -- the man that took that stand and told you that he found the critical piece of evidence that the Government alleges in this case, Q507, in the parking lot.

Ladies and gentlemen, analyze the testimony of Ron Kelly. Think about it, on cross-examination what he told you. First he told you, I found Q507 in the parking lot. And on cross-examination, he said Steven Burmeister was right there

with him when he found Q507. What did Special Agent Burmeister tell you? I wasn't there. I wasn't there when he found it.

What did he tell you about taking notes? I don't take contemporaneous notes about the activities that I'm doing when I'm conducting an investigation.

This, my friends, was the most important investigation in FBI history. Nobody at the FBI lab took contemporaneous notes of the actions that they were taking in Oklahoma City in the day of and after the bombing.

But wait a minute. Ron Kelly did take notes. Do you recall when he pulled the diary out of his pocket, after I asked him several times, Do you take notes? Do you have a contemporaneous memorandum of the things that you did, the activities that you took when you were there in Oklahoma City, so that this jury can know what you did? Do you have some documentation to show that you found Q507 in the parking lot? He pulls the diary out of his pocket: These aren't notes; this

is a diary, so that I can report back to my boss what I did.

Ladies and gentlemen, that's notes.

Then he told you, I've got a map that tells me where I found Q507. He knows where he found Q507, because on the map are the numbers identified in the pictures taken by the photographer that he had with him. Do you recall that Frame No. 4 was purportedly a picture of Item No. 6, which Mr. Mills numbered Q507? Do you recall Frame No. 4?

That's Frame No. 4.

Now, either Q507 miraculously changed from a large piece of metal to a small piece of wood -- and given the story that the Government has given you about Q507, I wouldn't doubt that that's their story, too; however, that is not a picture of

Q507. How many hours do you think it took Mr. Kelly and others

with the FBI to search through the literally thousands of photographs to find one that happened to include Q507?

That's the photograph that Ron Kelly testified he had taken of Q507. Examine it, ladies and gentlemen, closely. When you look at it, you see that it is actually a picture of that large piece of metal. They just happened to find one that

had Q507 in it. Why is it that they didn't have a picture of Q507 square in the middle, like this one? Why is it that Ron Kelly didn't have the photographer take a picture like this of Q507?

Ladies and gentlemen, Ron Kelly did not find Q507 in the parking lot on April 20, 1995. My friends, Q507 was found by a citizen. I do not doubt that Ron Kelly took possession of

Q507. I do doubt that he took it from the parking lot, as he alleged.

How do we know that? Frederic Whitehurst, a member of

01
the lab for 11 years, the most experienced forensic examiner
in
the FBI lab, was asked by Dave Williams, the principal
examiner
in this case, the principal examiner who wasn't called to
testify, however, but the principal examiner, to do paint
analysis on Q507 so that they could tie it to a Ryder truck.
Frederic Whitehurst said, I've got a problem with the
protocols
for the paint analysis section, because they haven't been
validated.

And what did Dave Williams tell him? What did Fred
Whitehurst take that witness stand against his colleagues to
tell you? Dave Williams said, Don't worry about it. That
piece of evidence was found by a citizen, and we have no chain
of custody.

Now, Dave Williams denied that. Steve Burmeister was
called back in rebuttal to allege to you that Fred Whitehurst
may have been confused about another piece of evidence. How
many items of evidence did Steven Burmeister show Fred
Whitehurst with crystals on it? One. If you'll recall, Fred
Whitehurst did not know that it was Q507. He only knew the
only information he had was that it was the piece of evidence
that Special Agent Burmeister showed him with crystals on it.
It was Q507 that Dave Williams was talking about.

Now, let's leave behind for a moment that Q507 may
have been found by a citizen and that there is no chain of
custody. Let's discuss for a minute the amazing
characteristics of Q507, this piece of evidence that started
out a half inch thick on a box, on a Ryder truck, a half inch
of solid piece of plywood that's glued together.
Additionally,
it's got two layers of glue in it and poured with a solid
sheet
of gel coat. If you recall the testimony of Mr. Anderson
early
in the case about the construction of the Morgan box, it's got
rivets all the way around the outside and three rows of rivets
down the middle of the sheet.

Somehow, some way, magically, at the time of this
explosion, an explosion that you know from the evidence, that
you heard from Steven Burmeister and Linda Jones, the experts
called by the Government to testify in this case, that at the
time of an explosion, if the blast wave is 5,000 feet per
second, so we can use a number, it moves away 90 degrees in
every direction at the same speed from the center of the
explosion -- somehow, some way, magically, these crystals that
evaporate at about 200 degrees -- ammonium nitrate -- excuse
me -- vaporizes at about 200 degrees -- made it through the
heat, waited until somehow Q507 was sheared into about
10 percent of its original piece, moving away at 5,000 feet
per
second; these crystals, these magical crystals, waited until it
was sheared away, picked up speed faster than the blast wave,
caught Q507, and embedded themselves on the interior side of a
piece of wood moving away at 5,000 feet per second. Magic.

- - - - -
Magic.

More like smoke and mirrors, ladies and gentlemen.

Q507 then on its magical journey travels 184 feet

into

the parking lot, where the Government claims they found it.

In

between the time that the Government found it, or the citizen found it, and Q507 was analyzed, a torrential downpour occurred in Oklahoma City on April 19, a downpour so heavy, so strong, that Special Agent Burmeister's plane had to land in Little Rock, it couldn't land in Oklahoma City; a torrential downpour so heavy and strong that the evidence in this case -- that the evidence has shown that the wind was blowing 30 to 40 miles per

hour, but not around Q507. It just laid there in the parking lot, didn't get blown, and obviously didn't get wet because crystals of ammonium nitrate -- the hygroscopic crystals of ammonium nitrate that soak up water and melt in water and evaporate away made it. They lasted through the storm, and they made it through the blast. Magic.

Ladies and gentlemen, it is more logical that the crystals that were found on Q507 made their way onto Q507 after the blast. I don't know where they came from. They may have come from the ammonium-nitrate-based firefighting tools that were used by the firefighters in Oklahoma City. As Steven Burmeister testified, ammonium nitrate and nitrate ions can naturally bond together and form a crystal. That may have happened. I do not know.

But it is not my burden, it is not Timothy McVeigh's burden, to prove anything. The Government has the burden of proof in this case and in every case, and they always will. They have not proven to you the origin of the crystals on Q507, although they have tried. Although they have made a valiant effort to prove to you that these crystals were a result of ammonium nitrate prills, they have not done that.

And let's talk about the final failing with the prills

of -- the crystals of ammonium nitrate that Steven Burmeister found on Q507. He gets it to the lab. Here they are. The testimony in this courtroom was they were embedded. You know now after Dr. John Lloyd had to endure that cross-examination alleging that he was making up that Steven Burmeister said it was a glaze -- you know now by the evidence in this case that that's what he wrote in 1995: Not embedded, glazed.

What you know now is Steven Burmeister did in fact -- and I believe it that he did pull a crystal off of Q507 and drop it in the magic juice and it turned purple or blue or whatever color it turns.

Now, we've got a receipt that shows that the purchase of ammonium nitrate in Kansas was ICI Joplin prills manufactured in 1994. So what are we going to do? Steven Burmeister is going to prove to you that these crystals originated as ICI Joplin prills; so he takes Q507 to ICI to be analyzed. The magic crystals, the crystals that so magically appeared, have so magically disappeared. They're gone.

ICI doesn't get to test them. Dr. John Lloyd doesn't get to test them. Linda Jones doesn't get to test them.

There

is only one person on the face of the earth that got an opportunity to test the crystals of ammonium nitrate on Q507: Special Agent Steven Burmeister.

It doesn't matter, though. What did he tell you about

the loss of the ammonium and nitrate crystals? What did he tell you about losing somehow the most important piece of forensic evidence in this case, the only piece of forensic evidence that they could bring you from Oklahoma City? What did he tell you about losing it? It didn't matter; I was through testing it.

Is that sound forensic science? Is that the type of science that you would expect from an objective forensic scientist? It's more like the type of science that you would expect from a special agent of the Federal Bureau of Investigation who had long before the testing made up his mind about the facts of this case.

He took no effort to preserve those crystals, but he did test them. And when he tested them, he found substances consistent with the coating of ammonium nitrate prills, aluminium and sulfur.

So we've got that evidence. Let's go to ICI. Let's test the prills from Joplin in 1994 and let's find out what the coating is on them.

What did he tell you? Talc. And what you found from the evidence, what you know from that witness stand from Steven Burmeister, is that a component part of talc is magnesium. Do you recall the testimony as the last witness in the case, the last piece of evidence that you heard from the witness stand, Steven Burmeister telling you about the crystals and the testing on Q507 that he found no magnesium?

Ladies and gentlemen, if the aluminum and the sulfur are the coating of the prill, he would have found magnesium, also.

I do not know where the crystals on Q507 originated from. I do not know how the crystals on Q507 got glazed over the surface of Q507, but we do know from the evidence in this case that those crystals did not originate from ammonium nitrate prills manufactured by ICI Joplin in 1994.

Now, the lab went on to test some additional evidence:

the clothes, Mr. McVeigh's two T-shirts, and his pants. They took an interesting route to the lab. They were seized in Noble County. They were not evidence. They were clothes. They were Mr. McVeigh's clothes, a man arrested for carrying a weapon; so they were thrown in a paper bag and left alone in the room upstairs where the attorneys meet with the clients and

where the trustees sometime hang out.

I do not allege and I do not stand before you and state that anybody in Noble County intentionally contaminated those clothes with PETN. I only tell you that somehow, PETN got on the clothes. You may have noticed by now, you may have

got on the clothes. You may have noticed by now, you may have wondered throughout the course of this trial, what home does PETN have in this case? It's been found in three places: Mr. McVeigh's inside T-shirt, Mr. McVeigh's outside T-shirt, and the pockets of Mr. McVeigh's blue jeans.

The Government didn't bring you any PETN from Oklahoma City. The Government didn't bring you any PETN from any of the storage units that were searched by the FBI lab. The Government didn't bring you any PETN from Mr. McVeigh's car.

Now, Steven Burmeister took that witness stand and he told you that he had enough PETN on his hands -- and he's right-handed. That's important: We've got more in the right pocket. But we've got to ask a question about that -- and I digress for a moment if I may. This lab does no quantitative analysis. You heard that more than once in this case. How does Steven Burmeister know there is more PETN in the right pocket than the left? How does Steven Burmeister know how much

PETN was on any item he checked in this case? He didn't try to find out. He doesn't want to find out.

But that's okay. We've got more PETN in the right pocket, because he's right-handed. He saw him writing here at the counsel table and used that against him and said that's consistent with him having more PETN in the right pocket. If that's the case, if he had more PETN on his right hand than his

left, where is the PETN from Mr. McVeigh's steering wheel? The

sticky substance, as Ms. Wilkinson proved up, that would have transferred when he grabbed his steering wheel to drive a car: Where is it? There is not any.

Where is the PETN that would have been on the gear shift knob when he shifted the car into drive or reverse or neutral or low? There isn't any.

Where is the PETN that would have been on the door handle when he opened the door? There isn't any.

And finally, and most importantly, because they can say all day that it doesn't matter that it wasn't on his car, it certainly should have been on his fingerprint card when the Noble County Jail took his fingerprints. There was no PETN, no

ammonium nitrate, no residue of any kind on Mr. McVeigh's fingerprint card taken before he had an opportunity to take a shower at the Noble County Jail.

My friends, if Tim McVeigh had cut det cord and got it all over his shirts and on his hands, it would have been somewhere else other than his clothes.

Do you recall Dr. John Lloyd testifying about the testing done by this lab, by the FBI lab, the Federal Bureau of Investigation, on the fingernail scrapings taken from Tim McVeigh at the Noble County Jail? No PETN. They took a hair sample from Tim McVeigh at the Noble County Jail tested by

Steven Burmeister and the crack scientists at the FBI lab. No PETN.

PETN does not seem to have a home in this case, but it does; and we know now where it does. You found out -- and I'd like to thank Ms. Wilkinson for recalling Steven Burmeister and allowing me the opportunity to clear up something that I had been trying to do the whole trial. And the last witness in this case, Steven Burmeister, testified and he told you that he knew -- he already knew that the bullets that Tim McVeigh was carrying in his pockets and in the clip on his gun were manufactured with PETN. That's why Tim McVeigh had PETN in his pockets. That's why Tim McVeigh had PETN on his T-shirts. If you will recall, Charlie Hanger found Tim McVeigh wearing a handgun with a shoulder holster that would have rubbed on the shirts. When you fire a weapon, it leaves a residue. That residue in this case was nitroglycerine and PETN.

Steven Burmeister told you that nitroglycerin is -- evaporates very rapidly. It's not inconsistent that that shirt only had the sticky substance PETN left on it.

And finally, with respect to the PETN, where is the testing on Mr. McVeigh's knife? How many times in this case have we heard -- and today in Mr. Mackey's closing argument did you hear that you have to cut the det cord with a knife? When you cut the det cord, the PETN spills out and gets all over you.

Where is the forensic testing on Mr. McVeigh's knife? If Mr. McVeigh had cut det cord containing PETN enough to spill out on his clothes, his shirt, drop into his pants pockets, it would have been on his knife.

If PETN was on Mr. McVeigh's knife, Mr. Burmeister would have told you about it.

There is no PETN on the shoes.

How about ammonium nitrate, ladies and gentlemen? Now, we've discussed the magic of Q507 and the crystals glazed upon it. Where is the rest of it?

The Government's theory in this case is that Timothy McVeigh participated in pouring 4,000 pounds of ammonium nitrate into barrels, barrels with holes in them about that big. Where is the ammonium nitrate on Tim McVeigh? There is no ammonium nitrate in his fingernail scrapings. There is no ammonium nitrate in his hair sample. There is no ammonium nitrate on either shirt. There is no ammonium nitrate on his pants. There is no ammonium nitrate on his shoes. There is no ammonium nitrate in his car. There is no ammonium nitrate in any of the storage sheds.

That's okay. He showered at the Noble County Jail, if you will recall the testimony; so if I understand the theory that the Government is asking you to buy into in this case, it is that Tim McVeigh poured 4,000 pounds of ammonium nitrate

into barrels with holes about that big, covered with P -- with ammonium nitrate. Do you recall the testimony of Mr. Rydlund that it's dusty; that you can't breathe it or you might get sick? Do you recall the testimony of Mr. Rydlund that too much

exposure to ammonium nitrate will cause a skin rash? Do you recall that Tim McVeigh had no rash when he was arrested?

Do you recall the bag, the empty bag of ammonium nitrate that the Government introduced about the third day of trial in this case? They offered it to show you what the bag looked like and that it says "Explosives" on it. I offer it, ladies and gentlemen, for the ammonium nitrate stuck on the bottom of the bag of the Government's exhibit.

I offer it, ladies and gentlemen, to show you that these prills get everywhere. I offer it, ladies and gentlemen, to show you that Timothy McVeigh, had he poured 4,000 pounds of ammonium nitrate into barrels, would be covered in ammonium nitrate. I offer it, ladies and gentlemen, so that when you analyze the size of the prill on the bottom of the bag, you will know that surely one or more of them should have gotten lodged in his boots.

But that's okay. Timothy McVeigh showered at the Noble County Jail. It doesn't matter that we found no ammonium nitrate, because he showered. It is the theory of this case that he poured the 4,000 pounds of ammonium nitrate into the barrels, said, My gosh, I'm covered in ammonium nitrate, I'm going to go home, shower, change clothes, come back, cut the det cord, get PETN all over me, not change, and go deliver the bomb.

Ladies and gentlemen, we must use our common sense when we analyze evidence. We must use our common sense when we analyze the testimony of the experts called by the Government in a case this serious. And this is not logical.

The FBI lab, as I said earlier, is a ship without a rudder. It's adrift without a sail and a captain.

The clothes in this case were brought in in a cardboard box checked in by Mr. Mills; and he took them and put them on the floor, a floor that you know now has never been tested for contamination. It doesn't matter. We're not contaminated. We know we're not contaminated because we say so.

That's not enough. That doesn't cut it. This is a criminal prosecution. The FBI lab has a higher burden than just to say, We're not contaminated; than just to say, regardless of the fact that Dr. Fred Whitehurst, after eleven years of faithful service, has found contamination in this lab, We're not contaminated.

Compare and contrast this lab with Linda Jones', the other Government expert, the Government expert called in in place of Dave Williams to testify in this case. What does her lab do? How does her lab protect from contamination? The

first thing that lab did, the DERA in London -- the first thing they did was say, We know that any trace analysis facility in explosives residue is going to get contaminated. We understand that. We appreciate that, and now let's work within it. Now let's do something about it, understanding that there is a problem, a problem that we will never be able to do away with.

So what did they do? They said 10 nanograms, which as I recall -- and I'm sorry my chemistry class was not that good -- I can't recall how small; but as I recall, it's about a spec of dust. 10 nanograms of contamination is all we will stand, and we will test this lab every week. And if we get more than 10 nanograms, we will stop in that area and we will clean.

If we get test results within 10 nanograms -- in other words, when I run my questioned sample through my GC/Chem and my IMS and my FTIR and all the other acronyms that I've forgotten, if I get less than 10 nanograms on my quantitative analysis, I'm going to report it. I'm going to tell the prosecutor in that case that the results I got could be a part of random contamination.

We don't do that at the FBI. We don't want to do that at the FBI, because Special Agent Burmeister is just that: He is a special agent. A professional forensic scientist would take the effort, the time, and the energy to do the quantitative analysis necessary so that juries like yourself will know for sure if the information and the evidence that you're getting is clean and clear of contamination.

But we don't want to know that. We don't want to take the time and the effort and the energy to do the quantitative analysis because it's too hard. It takes too much time. We're busy.

Are you going to rely on that? You can't. You can't.

The lab has an obligation to you as jurors to give you professional and objective information. They did not do that.

Linda Jones' lab restricts the visitors who can enter the trace analysis area. Not our lab. Let's take the military in from all over the world.

Linda Jones' lab makes you wash your hands before you can come into the locked door. Not our lab. Come on in, boys. We don't care if you just came from the bomb range. We're not going to test you. Doesn't matter anyway. We're not contaminated.

Linda Jones' lab makes you put on gloves and Tyvex suits and cover your shoes. Not our lab. Come on in, boys. Check it out. Touch whatever you want. walk across the carpet

CHECK IT OUT. TOUCH WHATEVER YOU WANT, WALK ACROSS THE CARPET
we've never shampooed.

Ladies and gentlemen, that's not a professional
forensic lab. Linda Jones' lab is. I applaud the efforts
that
she's taken and her lab has taken to ensure the integrity of
the results.

It is unfortunate that in this country the Federal
Bureau of Investigation, the group that claims to have the
finest forensic lab in the world, is so shabbily maintained
and
so shabbily managed.

We brought Dr. Lloyd in from London, someone who
knows
how a lab should operate, someone who knows how a lab should
work, to review the 5,000 pages of notes produced by the
Government in this case. What did he tell you? He told you
that with respect to the shirts and the clothes -- I mean the
pants, he might have tested them just to see; but the route
they took, the way they were maintained, the way they were
handled by Roger Martz and Brett Mills taken through the lab
without proper forensic trace analysis testing, he would not
even have reported the results. That's professionalism. That
is a forensic scientist who understands his obligation and his
duty is to produce reliable and objective forensic results.

What did Linda Jones tell you about Q507? She
certainly would have liked to have known that Brett -- that
Roger Martz had tested Q507. She certainly would have liked
to
have known the results of the testing by Roger Martz.

Wouldn't
you like to know the testing by Roger Martz, the results of
the
forensic testing performed in this case by the former chief of
the Chemistry/Toxicology Unit? Wouldn't you like to know
that?

It is a shame that the Government did not call the former
chief
of the Chemistry/Toxicology Unit to testify in this case.

Sure, I could have called him. But why? I don't
have
a burden. It's their burden to prove that the testing they
did
in this case is fair, is reliable, and is objective. It seems
reasonable to conclude that they felt they could prove that
easier without the former chief of the Chemistry/Toxicology
Unit, Roger Martz.

William Bodziak came to testify in this trial about
some tire marks, tire tracks that he looked at in Herington,
Kansas. What did he tell you? He took some pictures, he did
some measurements, and he went home. He can't tell you -- he
can't tell you that the tire marks that he saw in Herington,
Kansas, came from a Ryder truck, and he can't tell you that
because he never really did anything. He never really tried
to
find out if it was a Ryder truck. Don't you know that if this
very experienced tire tread analysis guy, author of books, had

gotten a mold sufficient to prove that the tires that left those tracks were from a Ryder truck, he'd have showed you? Don't you know that if he had made one effort to determine how many vehicles on the road have the same axle width as those 20-foot Ryder trucks, he'd have told you?

But what you do know is he never even asked. He never called Ford Motor Company, the same company that bought a Ryder truck for the Government in this case, cut it up into parts, mounted it onto dollies, and brought it to Denver for them -- never called them. Don't you know that that company who did all of that for this case would have found out for Roger -- for William Bodziak how many vehicles they've put on the road with axle widths the same? He never checked with Budget. They rent trucks. He never checked with Penske. They rent yellow trucks. He never checked with -- I'm sorry -- I've forgotten the other one, but he never checked with anybody -- anybody -- to find out how many are on the road with that axle width.

Now, Mr. Mackey said a little while ago about the storage sheds and the lack of ammonium nitrate that if you will recall, the person from the -- from the ammonium nitrate sales said they were on a pallet wrapped in plastic and that's why there is no ammonium nitrate prills on the bottom of the bag or poured out of the broken bags in the storage sheds in Kansas.

Did William Bodziak tell you, did he testify, about the tracks that most certainly would have been left by the large vehicle that would have had to pick up a 2,000-pound pallet of ammonium nitrate and put it in the back of a Ryder truck? No, he didn't.

Now, assuming that somebody picked up that 2,000-pound pallet of ammonium nitrate all by himself and put it in there, in that truck, without breaking open the plastic, I guess that makes sense; but it doesn't make sense, ladies and gentlemen, because there is no Hercules in this case. Something had to pick that pallet up, or somebody had to break that plastic open and move those bags. If they moved the bags, the ammonium nitrate would have fallen off onto the floor and they'd have found it; but they didn't.

Now, I guess they can come back in a minute and say these guys are so smart that they swept out the storage units, cleaned it all up, did some forensic testing to make sure that there was no PETN, EGDN or any other type of explosive residue left before they shut the door and drove off.

Logic, ladies and gentlemen. It doesn't make sense. It's not right.

William Bodziak didn't tell you about Tim McVeigh's car, did he? You know he looked. You know he tried. You know they looked everywhere that they could to find a tire track that matched Tim McVeigh's Mercury Marquis. There is no

evidence that Tim McVeigh left a tire track in Oklahoma City; in Herington, Kansas, or Junction City, Kansas, any of the other storage sheds, or anywhere.

There is no evidence offered to you by William Bodziak

that Terry Nichols' truck left a tire track in Oklahoma City; Herington, Kansas; Junction City, Kansas, or anywhere else.

How about the place where Terry Nichols lived on the Donahue farm? Don't you know that William Bodziak tried to find a track at the Donahue farm to link Tim McVeigh as to having been there? He must not have found one, because he didn't tell you about it.

Mr. Cadigan: Special Agent Cadigan came and testified

to you about some tests he did on the lock that was seized at some time by Sheriff Davies. He did some testing. I have to give him that. He did a little research. I'll have to give him that. But do you recall the picture -- do you recall the best picture that he brought for you to look at?

Do you recall the inconsistencies in the best picture that he brought for you to look at of the testing that he did on the tool mark and the lock?

Now, I think it's fair to discuss for just a moment -

-
if I don't step on Mr. Jones and his close -- but I think it's fair to discuss for just a moment Sheriff Davies and what he did and what he didn't do. Sheriff Davies, the sheriff of Marion County, went out to the site of this burglary and he saw

some tire tracks. He didn't even do as much as Mr. Bodziak did. He just looked at them, didn't try to measure them. He didn't go around to the back side of the Marion County quarry, where we know that there is open access, where he thought the burglar had entered. He drove around there, but he drove right

over any tire tracks that were there. He made no effort. He did not try to get any evidence in the back of the Marion County quarry.

He went back around. He took the -- he didn't take the lock that day because he didn't know about it, but he picked up some other evidence, may have taken a photograph or two, and left. He didn't talk to one of the suspects that he had.

Now, to be fair to Sheriff Davies, he may have been able to exclude the employees who were disgruntled by their prior employment problems. There is no excuse. He could not exclude the person who had threatened to blow up a hospital in his county. There is no excuse for not trying to interview that person. There is no excuse for not checking into the background of that individual. There is no excuse for taking the evidence, putting it in a locker where you can't find it later, and doing nothing else, especially when you have an eyewitness, especially when you have a person who told you that he saw a vehicle with lights so bright they appeared to be the type of lights on the top of a roll bar. There is no excuse for not taking the time, the minimal amount of time, to find out if the person who threatened to blow up the hospital drove

out if the person who threatened to blow up the hospital drove a vehicle with a roll bar and lights.

That roll bar and those lights are a little important in this case, ladies and gentlemen. Do you recall the photograph of Terry Nichols' truck? There is no roll bar and there is no lights.

Do you recall the photograph of Timothy McVeigh's Mercury Marquis? There is no roll bar and there is no lights.

Now we get back to the tool marks. The FBI shows up to Sheriff Davies and says, We understand that the quarry was burglarized; give us the evidence.

Well, give me a little while, I lost it; but when I find it, you can have it.

And you know that when the FBI looked at his report and found that he did not write a supplement about the day he went back, October 5, 1994, and seized the lock, don't you know

their hearts fell out? You haven't documented, sir, Sheriff Davies, the fact that you seized this lock. How do we know that you did? What are we going to do about this?

That's okay. I'll write a supplement today. And you know that's what happened because it's dated the day the FBI came to interview him.

I don't know when he seized that lock, but now we know it was sometime between October 3, 1994, and April 21, 1995.

Well, they take the lock, they give it to Mr. Cadigan to do some testing. Why do you suppose Mr. Cadigan had to do three test impressions before he got this one that he was happy with? Is it because the other two didn't match up? We will never know, because Mr. Cadigan did not bring the photographs of the other test impressions for you to look at. We will never know why he felt the need to take three test impressions; but what we do know is even with the inconsistencies in this photograph, this was the best one. What we do know is that the

lock that he examined had two holes in it, this deep one and what he called a shallow impression.

The shallow impression was the impression that he could not match up with either of the drill bits that he felt made that hole. The shallow impression was the one that he couldn't match up to any drill bit relevant to this case. The shallow impression is an oddity, is it not? The shallow impression leads you to believe, must make you wonder, how did Mr. Cadigan get where he is in this case? How long did it take

him to do this work that doesn't match? Why didn't Mr. Cadigan

find out if there were other bits that could have matched this -- this piece of evidence?

What you do know about drill bits, I didn't know; but I found out in this case that they're made on a tool and die. They make millions at a time, and they're all made the same. They come off that machine, that computer-operated machine, exactly the same, as if they were cloned.

Now, Mr. Cadigan told you that they're ground, and that gives them the individual characteristics that we need to

look for in a drill bit. They're all ground on the same grinder. He made no effort -- he made no effort to exclude any other drill.

Ladies and gentlemen, the actions of the FBI lab in this case constitute the rush to judgment that Mr. Nigh was talking to you about a moment ago. They made up their minds on April 19 that this was an ammonium nitrate and fuel oil bomb, yet they have no fuel oil to show you, they have no nitromethane to show you, and they have no forensic evidence to show you that it was. But they decided that before they did the testing; and you know that they did, because if you will recall the memorandum that Dr. Whitehurst wrote though Steven Burmeister on May 8, 1995, when he told him he could look for ammonium nitrate prills in the building, that was before he had tested Q507. They decided early on what they were going to do, and they made the evidence fit their theory.

The lab is adrift without a rudder and without a sail.

Can you imagine going to the doctor feeling that you have a heart problem and he does a blood test and says, You've got some cholesterol, but I didn't find out how much. I'm not really sure if my machine was clean. Let's go ahead and open you up and do a bypass. Would you hesitate for just a moment before you let the doctor cut you open with that advice? I suggest that you would.

Thank you.

THE COURT: Mr. Jones.

MR. JONES: Thank you, your Honor.

CLOSING ARGUMENT

MR. JONES: Ladies and gentlemen of the jury, Mr. Mackey invited me to evaluate with you my view of the Daryl Bridges Spotlight debit card and suggested that I had not met Mr. Dexter. Actually, I'm quite well acquainted with him and his work; but the reason that I say that it's not very helpful in this case is for the reason that I gave you when I first spoke with you, and that is we don't know who used the card.

Now, clearly, we know when the card was used by some people, at least by a process of elimination. But when you look at these debit card records and you remember the testimony, there is a suggestion that there are at least two other people that used the debit card or at least know its number, because you'll recall the coupon book was found at James Nichols' house in Michigan; and you will recall that there are a large number of telephone calls -- and you will see them -- to the Philippines.

Now, clearly some of those calls could have been made by Mr. Nichols to his wife during her visit to the Philippines; but what about the calls to the Philippines that are not made while she is there, while she's in the United States? Well,

presumably she's making them. But it doesn't make any difference whether there are any calls to anyplace, because you know from your own experience the degree of ease with which people can get access to a telephone debit card or credit card.

All you have to do is have the number and you can get the number by legal means, or illegal means.

Terry Nichols had a former wife and a son who lived in Las Vegas. He has a present wife who lived here and traveled to the Philippines. He had a brother in Kansas -- in Michigan.

Any of these people in the logical and ordinary course of their lives, given their closeness and traveling, would have had access to these cards.

The card was obtained itself long before the Government alleges the conspiracy commenced in the fall of 1994. This card was obtained way back in 1993. So clearly, it wasn't obtained to assist in the conspiracy; and yes, the Government can show numerous phone calls to all kinds of companies which may or may not sell nitromethane or may or may not sell ammonium nitrate; and how absurd to suggest that you might call a hobby shop to buy nitromethane to go in a bomb. Those of us that have model railroads or have been in hobby shops or fly planes know the quantity of nitromethane that's sold in hobby shops.

Many of these people who received the phone calls -- in fact, most of them -- did not testify, so presumably they have no memory of it. And had there been a completed transaction, you would have seen that.

So in the final analysis, while the calls have some utility, they by no means go beyond suspicion and conjecture. But there is one thing insofar as my client is concerned that the Government itself proved. You will remember that according to the Government's evidence -- and I believe it's in a letter -- Mr. McVeigh told his sister to use quarters; and the Fortiers testified that Mr. McVeigh told them to use quarters.

So the suggestion that I put to you is -- is that whoever is using this card -- and while I'm perfectly willing to concede that perhaps you might agree that Mr. McVeigh used it -- there is an abundance of evidence that others used it or could have used it and that Mr. McVeigh, when he was talking with people on how to make phone calls and get in touch with them, suggested they carry a roll of quarters. But I don't mean to neglect the Spotlight debit card in its entirety, because I think it does have some possible relevance.

But I want to move instead to the heart of darkness, to the events in Junction City, Kansas, because the key to this case is in Junction City.

Timothy McVeigh arrived in Junction City on Friday. He took his old car that he had gotten after this accident,

which Mr. Fortier is mistaken about. It didn't happen in Kansas. You know it happened in Michigan. And he went in to Tom Manning. And Tom Manning had an old roachmobile or clunker or junker sitting there that he had paid somebody for, and he sold it to Tim McVeigh. You heard his deposition. This is a car that when he sold it to him, he also had to sell him several cans of transmission fluid.

I thought he testified, or I remember that the fuel gauge was on empty permanently, but you'll remember that. If I'm mistaken, please overlook it.

This is a car that either had 97,000 miles on it or 197-, or 297-, depending on how many times the odometer had turned over.

Now, Mr. Manning called it a roachmobile. That's a pretty accurate description; but there is two things to remember about this car and this transaction.

You see, if the Government's theory was that, well, we've got a half a dozen people or more than that building a bomb and Tim McVeigh is one of the conspirators and his role is not big but he was involved, he did some things, that would be one thing. You might be able to square the car with that theory.

But that isn't the Government's theory. Their theory is Tim McVeigh and Terry Nichols alone, and mostly Tim McVeigh.

Well, I presume there is a reason why they chose that theory, and I presume it's because they didn't have evidence that Tim McVeigh was with a whole bunch of other people. They only had evidence of Tim McVeigh and Terry Nichols, so let's ride that horse.

Tim McVeigh has left Kingman and has come to Kansas, to Junction City, close by where his friend Terry Nichols lives, a man he was in the service with, a man that he's visiting his house, so naturally his fingerprints are going to be there, and a man that he has some shared political philosophies with, but also a man that he hadn't seen for several months. And he comes into town and the car that he got before to replace his little, old car -- you remember that that's the car that carried a thousand pounds of explosives. And you saw the picture of that car. And that car could carry a thousand pounds of explosives in the same way that the weight limit on Terry Nichols' truck could carry 2,000 pounds of ammonium nitrate.

But the car gives out. Now, you know, if you're planning to blow up a building and April 19 is the important day and you've got all this work done, that's just mighty inconvenient and poor planning. I mean after all, you've spent according to the Government \$5,000, or close to it, on just getting this stuff ready, and you've driven back and forth across the country, you've incurred this robbery in Arkansas, you've been out there in Arizona, and so you're getting all your ducks in a row to commit this monstrous claim of revolutionary violence. and your car gives out.

revolutionary violence, and your car gives out.

So you go in to somebody that you know and you buy a car. Now, presumably, you want to get away from this bomb that's going to go off, that's going to kill all these people, so you want a car that will get you away from it; and so your escape vehicle, the car that's going to get to Oklahoma City and then get back someplace -- and according to Michael Fortier, perhaps as far as the desert -- has 97,000, 197-, 297-, poor transmission, perhaps a broken fuel gauge, not very dependable transportation for a getaway car.

Now -- but there is something else that happens while he's there; and that, according to the Government, is a phone call is placed to Elliott's Body Shop. Now, Mr. Nigh has already told you and you've heard through cross-examination that Mr. Manning was interviewed eleven times, eight times by the Government, twice by us, and once by Mr. Terry Nichols' lawyers' investigator; and he never mentioned that Tim McVeigh left.

Well, he said, Well, I wasn't asked. Well, what kind of answer is that? Here the FBI is in Junction City, there are 100-some-odd people dead in Oklahoma City, you've got all of this grief and destruction, and he's playing cat and mouse? I'm not going to answer the question or give you any information until you ask me the specific question? That's absurd.

The reason that Tim McVeigh didn't leave and he didn't remember it is because he didn't leave. And as Mr. Nigh showed you, the time that Mr. Manning says that he left when they were working on the car, the man working on the car said Tim McVeigh was right there.

And Mr. Mackey's sleight of hand that the call to Elliott's was made about 10:00 -- if these records that Mr. Dexter put together are correct, it wasn't made about 10:00; it was made at 9:53.

Now, Vicki Beemer thinks it came in at 10:30, but let's go with Mr. Dexter. Let's say it came in at 9:53. But Mr. Manning told you Mr. McVeigh was gone 10 to 15 minutes, and he said he couldn't give an exact time; but that's the Government's problem, not mine. But when asked what's the best he could estimate when he returned, he said 10:15 to 10:20. That would have meant that Mr. McVeigh did not leave, assuming he ever left, until after the phone call was made.

You say, well, it's approximate. Of course it's approximate. I understand that. But for 11 interviews, it didn't even exist.

And then there is the whole issue about whose call is this? Well, the computer had a glitch; but nevertheless, we think it was charged to the Daryl Bridges debit card, because just a few minutes before, a phone call was made to Terry Nichols' house which was charged to the Daryl Bridges' debit card.

All right. Let's accept that for a moment. What they are asking you to do is convict a man of mass murder, of more murders than committed by John Graham, Ted Bundy, Charles Whitten from the University of Texas tower, and Richard Speck in Chicago, in part on the testimony of somebody that's not precise about the time. And the best that he can give under oath has the man leaving after the call is completed, after saying 11 times and not mentioning that he left at all.

I don't think that's what the Court means when it talks about reasonable doubt in the instructions.

But let's go on. Tim McVeigh gets in the Mercury and leaves, and he goes down and checks into the Dreamland Motel. And what does he do there? He registers under his own name. And what does he put down as his address? James Nichols' farm in Michigan.

Now, this is a man clever enough, smart enough, intelligent enough, to somehow or the other take a book that talks about putting ammonium nitrate in a coffee can and putting it in the oven and extrapolate from that this deadly terrorist device but isn't smart enough to have made arrangement to use somebody's name other than his own.

And clearly, Mr. McVeigh knows how to use an alias. There isn't any dispute about that. I concede that. He's used every alias you can think of; so why didn't he use an alias when he was checking into the motel; or if he wanted to use his own name, why involve James Nichols? It doesn't make sense.

And then we have this telephone call to the Chinese restaurant. Now we get closer to the heart of darkness. First, there is a trip that somebody makes to Elliott's on Saturday morning, a trip that when Mr. Elliott was first interviewed by the FBI, he didn't even mention, although that was clearly his longest contact with Kling. And I'm not going to repeat what Mr. Nigh said about the descriptions and how they evolved. I want to concentrate on common sense.

Kling pays for the Ryder truck. He comes again on Monday, and clearly, there are two of them. Clearly, there are, unless these three people are so mistaken that there was one of them and they have confused a transaction at 4:30 on Monday with a transaction at 4:30 on Tuesday, in which case no credibility can be given to their testimony. None. If you are mistaken about the number of people present, how can you rely on a description of somebody that you claim was there? It's kind of like Eric McGown, you know: Eric McGown, whose hobby is cars, is quite positive that Mr. McVeigh's vehicle wasn't there after Easter Sunday, but he can't tell you when this big Ryder truck was there.

But let's go back to Elliott's. Kling comes on Saturday morning. Now, if Kling is Tim McVeigh, he goes back to the motel; and before the sun has set, he picks up the phone and calls the Chinese restaurant and orders Chinese food in the

name of Kling.

Why would he do that? Why go to the trouble of having an alias? How can you register and be McVeigh, go up the hill, use Kling as the alias, come back down the hill, and bring Kling home to you? If you're going to do that, why use Kling at all? Why not be McVeigh in the motel, McVeigh at Elliott's, and McVeigh at the Hunam Palace?

Well, of course, if it's McVeigh, you wouldn't do that. If it's the bomber, you wouldn't do that, because you don't want people to know who you are. You use an alias so that people will not know who you are.

Tim McVeigh didn't make the call to Hunam's; and how do you know that? You know that because, first of all, it defies logic; but there is another clue. We have Jeff Davis. Now, despite all the efforts and the numerous interviews with Jeff Davis, Jeff Davis simply will not say the man was McVeigh, but he will give a description close to McVeigh. Not exact, but close. A description at Elliott's that is not exact but close. And when Jeff Davis pulls up there on only his second run of the evening to a motel that he only makes about one call a month, Mr. McVeigh's car is not there. The door is open, and he is greeted at the door.

Mr. McVeigh's car is not there. It is not Tim McVeigh. The door is open, and the man's name is Kling.

On Sunday, Terry Nichols, according to the Government, receives a phone call shortly after 3:00. I do not know, because the evidence does not show, whether this call is malignant or benign. The Government's theory is that the call is malignant; that Nichols is to leave his house, meet McVeigh, drive McVeigh's car to Oklahoma City, and then Nichols will pick him up and bring him back. That was the testimony of Larry Mackey. Unfortunately, that's not the evidence from the witness stand.

There is no evidence who made the call, only that if the card is right, that it came in Herington.

Well, why would McVeigh drive to Herington and then drive back to Junction City? Because clearly, he was in Junction City. Nancy Kindle's testimony is uncontradicted. She saw him for Easter lunch, he spelled his name, she got a table for him, she thought he was with two other people, and she saw him again, because he was kind of cute, at 4:30 in the afternoon. There is no reason to drive back.

And you cannot get from Junction City to Oklahoma City, according to the FBI, unless it takes five hours; and if he was there at 4:30, he couldn't be in Oklahoma City at 8:20.

It's also entirely possible that Terry Nichols wasn't in Oklahoma City. After all, what is the proof? The proof is that there is an automobile -- and I can't remember whether it resembles one of 25 000 or one of 71 000 -- that happened to

RESEMBLES ONE OF 25,000 OF ONE OF 71,000 THAT HAPPENED TO
be

photographed going by the Regency Tower -- I think it's at
8:20

on Sunday afternoon. That's no evidence that that's Terry
Nichols' car. They don't even know it's the same color. They
only know it's dark.

This is speculation and inference piled upon
inference
and trying to put an 11-1/2-size foot in an 8-1/2-size shoe.

There is the question of the storage -- not storage
unit, I'll get to that in a minute -- the fuel.

Marife says, Well, we went into town Saturday
afternoon and we bought this fuel. And the inference is that
Marife is right because, first of all, it doesn't hold that
much fuel as was bought on Sunday. And why would you buy fuel
again on Sunday?

Well, with all due respect to Ms. Nichols, there are
two other people that tell a different story. And you know,
I'm kind of curious as to why it was necessary to use milk
cartons or whatever was used to pour this gasoline into this
truck in order to make this demonstration and fill it with 10
gallons and drive supposedly 5 miles to a gas station. I mean
what kind of scientific measurement is that? These figures
are

close enough for a tank on empty. Fuel expands and contracts.
Let's be serious here. We've all had experience with trying
to

fill our tank. They're almost precisely on point. But more
importantly, we're talking about a small town where a customer
trades regularly and a woman is pretty sure -- and then she
says, No, I'm positive; I saw him there on Easter Sunday at
5:00, or thereabouts.

Well, I wish she were here, but she gave birth and
she

couldn't; but you have the stipulation of what she would
testify to, and then you have the other stipulation of
testimony, and then you have Marife.

Well, clearly one of them is mistaken; but how
certain
are you which one? You cannot be certain. And that is the
reason we say that there is a reasonable doubt in this case as
to Mr. McVeigh's guilt.

But let's go back for a moment. Let's go now to
Monday, the crucial event. There are three people at
Elliott's
when Kling arrives. One did not recall or remember who it
was.

And you know that's probably the most honest testimony, really,
when you think about it. That's probably pretty accurate.

The second one wasn't called by the Government,
although that's the person they used to make the sketch from;
and then we have Mr. Elliott.

But something else happened, and that's the taxi ride
up to the McDonald's. There again, we have conjecture upon
conjecture. Because Mr. McVeigh's car was not at the
Dreamland, we say, the Government says, Then he had to take a

taxi. Well, it would seem to me easy enough to call a taxi driver. You know, that's kind of like that receipt. That 2,000-pound transaction according to -- I believe it was Mr. Mendeloff that introduced that -- was the largest single transaction in that co-op. I don't doubt it. That's what the records say. In fact, there were two of them within three weeks.

Well, if it was so large and so unusual -- and of course, it is large and it is unusual -- then where is the salesman that handled that transaction? Well, the Government didn't call him.

Where is the salesman that handled the one in mid-October? The Government didn't call him.

Instead, they called the finance manager or comptroller, whatever the gentleman's title was, simply to introduce the records.

Well, I remember my largest client. I don't have any trouble remembering him. In 30 years, if it was 15 years ago, surely, I can remember him. I can remember what he looks like and what I did for him.

The natural inference is that Mr. Fortier, notwithstanding and the fingerprints -- which incidentally are found on the back of the receipt as though somebody might have been, you know, rumbling around in a desk. Remember Michael Fortier said one time he saw Tim McVeigh kind of rummaging through his desk? The clear inference is that that person also cannot identify Tim McVeigh as the person that purchased the ammonium nitrate with whoever was there, which presumably was Terry Nichols because the receipt is at his house.

And so it's the same thing with the taxi driver.

Now,

I recognize that taxi drivers don't remember every fare, but we're not talking about coming back to some taxi driver six months later. You know, Mr. Tipton, when they went to him six months later -- well, actually longer than that. It was after he met with Mr. Mendeloff he became 90 percent certain. But here's a taxi driver who presumably is somewhat on notice about

who his passengers are, if for no other reason to be sure that somebody is not going to knock him over the head, and they don't call him.

And the natural inference for that is he can't put Tim

McVeigh in his taxicab. They said Mr. Jones didn't call him. Of course I didn't. I don't know who was in the taxicab. I don't know who it was.

There is a pay phone near the Dreamland. Well, how many pay phones are there near the Dreamland? And again, if it's Mr. McVeigh, it's kind of like, Well, the reason he didn't

shoot Charlie Hanger is because there is a video on his car. Well, where is the proof that Tim McVeigh knew there was a video on Mr. Hanger's car. There isn't any, except Mr. Mackey's testimony. That's pure conjecture.

Everything in Junction City is conjecture; but this,

there can be no dispute about: Tim McVeigh was in McDonald's. You saw him. I saw him. And as Mr. Mackey said, I'm the one that pointed it out. You're sure that's McVeigh? Yes.

Now, Elliott's up the road; and I suspect you can make it in 20 minutes, if you walk, kind of going uphill. And I imagine if you kind of walk briskly or moderately, you can make it -- in a light rain; when you show up and you're wet -- but nobody remembers it that you were wet. But back in the beginning, before Mr. McVeigh was arrested and before the court of public opinion and Time magazine and everybody else pronounced him guilty, the transaction was remembered slightly, but importantly, differently.

First of all, when they got the phone call at Elliott's, they weren't supposed to talk to anybody. Now, that stands to reason. They were to wait for Mr. Crabtree. So naturally what they did was talk among themselves.

And therein was the confusion. By the time Scott Crabtree got there, the identification of Mr. Kling, Bob Kling, or Robert Kling, or the customer, was already a Typhoid Mary.

No matter how you change it, explain it, shape it, the description has evolved overtime until it is Tim McVeigh.

Why -- and I hope Mr. Mendeloff is not going to answer this question when I don't have the chance to reply, since we've had a four-week trial -- why, if Mr. Elliott was so sure, was he not taken to the lineup in Oklahoma City? None of those witnesses testified in this case, so it must not have been a very productive lineup. Were they concerned that having arrested an individual, the Attorney General of the United States having announced the person had been arrested, Time magazine and Newsweek and The New York Times already at press, that Mr. Elliott would say, like Jeff Davis, Well, it looks like him but it's not him?

No. 54 days passed, 54 days before Mr. Elliott was asked to make his identification. And you know, that's another thing. I think it was the Government that brought out that he had seen Mr. McVeigh on television on the Noble County walk-out. And did he pick up the phone call -- phone and call the FBI and say, Boy, that's him? No, sir.

When Mr. Tipton became aware that Mr. McVeigh was a suspect and been arrested, did he pick up the phone and call the FBI and say, That's him? No, sir. No, ma'am.

And the reason they didn't is they were not positive. No more mind games of 90 percent certain or 8 out of 10. If you, if any one of you, had had a business arrangement, an inquiry about something that was suspicious involving a major crime and the person that you believed you had dealt with was shown walking out of a courthouse surrounded by FBI agents,

you would have picked up the phone and called the FBI. And so would Eldon Elliott, this good small town businessman. And so would Mr. Tipton. But they didn't. And the reason they didn't is because they were not positive. They were not sure. They were not certain.

So who was at Elliott's? Well, there are two possibilities aside from the one the Government gives you. The first and probably most logical explanation is simply that they have confused Hertig and Bunting with whoever was there on Monday, who could or could not have resembled Tim McVeigh. And the reason I say it could be Hertig and Bunting is there is an amazing resemblance between the circumstances of that and the one on Monday, although they're not perfect. There is no evidence Kessinger was in the room on Tuesday. Doesn't mean he wasn't, but this is no evidence of that. Eldon Elliott says the place was crowded, and it's quite clear that it wasn't crowded on Monday but it was crowded on Tuesday. I believe Ms. Beemer thought that John Doe 2 smoked, and Bunting smokes. But on the other hand, Vicki Beemer says that she knows Michael

Hertig and it's not Michael Hertig. And she says that's not the cap. And you know, you have to give some credit to that.

But let's remember that the person that they relied upon was not Vicki Beemer; it was Tom Kessinger. That's who drew the sketch or helped him draw the sketch. And the description he gave of the acne-faced individual is clearly not

Tim McVeigh. And no matter what they may have measured out at Englewood, we know that when Mr. McVeigh checked into the Noble County Jail by Trooper Hanger that on the mark he was 6' 4" -- and sure, allowing an inch or so for the camera angle; but he's still a tall individual.

So it may simply be that there is no known description of Kling and that Kessinger infected the process for some reason or other and the FBI has found or learned something about him or no longer accepts his credibility or whatever the reason may be, but he did talk to Beemer and Elliott, and the Government did rely upon his sketch.

Mr. Elliott was so confused that he couldn't remember whether the man had a beard or not. But with that sketch, they went around town and they found the Dreamland Motel, where Mr. McVeigh was registered. And clearly, Mr. McVeigh bears some resemblance to the sketch. I don't dispute that.

But I suspect a lot of other young military men in Fort Riley match that sketch; and clearly, in at least three areas, Sergeant Hertig matches it.

And also, it's clear that Todd Bunting bears some resemblance to John Doe 2. So what are we left with? They were right about McVeigh but wrong about Doe 2? Or were they

... ..
wrong about both?

Again, you cannot have safety in it. It is not the type of thing you would rely upon in your ordinary affairs. There is even confusion over what he was wearing.

Well, Mr. Elliott said that possibly he had fatigues. I don't know how many times the Government can use the adjective "possibly" and still maintain they've proven a case beyond a reasonable doubt. To me, that's a contradiction in terms, "possibly" and "proved beyond a reasonable doubt."

But what would be your experience? If 75 percent of your customers are military -- and let's accept that figure, and let's further accept the implication there that they wear camouflage fatigues -- then wouldn't you more likely remember the military customer that wasn't in camouflage fatigues? That's what you would remember, the person that came in and said he was military and wasn't dressed in camouflage fatigues.

And clearly, clearly, Mr. McVeigh in that photograph is not in military uniform of any type.

So if it's him, not only does he have to hustle up that hill but somewhere along the road he has to step behind a bush and pick up and change clothes; and since he doesn't know the McDonald's video camera is running, according to the Government, why would he change clothes to begin with?

Mr. Nigh was closer on the point: They made a rush to judgment. It looked good when they got him; but the more they looked at it, the more they interviewed, it didn't come together. The phone records didn't come together, the identification didn't come together, the science didn't come together, the known facts didn't fit the theory.

Clearly, they fit them in part. Of course they did.

And then there is the key. Now, the more logical explanation is that Michael Fortier just simply lied and he knew the key had been found there and he made up a story that he parked the car there. I've always been amazed at how well Mr. Fortier can remember everything in this 200 hours of preparation that he had and conversations and interviews but somehow or the other can't remember how to get into downtown Oklahoma City off I-35. Maybe that's because you can't do it. Maybe it's because he didn't go into downtown Oklahoma City.

Well, the more logical explanation, aside from he made it up, is simply that in the force of the explosion, the key is blown and it lands there.

The Government may say that we're putting the FBI on trial. We're not doing that. Long before we ever cross-examined the first FBI witness, Mr. Hartzler himself said none of the people who have been criticized for their work at the FBI Laboratory will be witnesses in this case. They brought that issue up first, not me, although that is kind of interesting: Why wouldn't they call them? What were they criticized for? What was messed up so badly that they

couldn't
be called?

But it's a fair question to ask.

And then we come to Daina Bradley; and Mr. Mackey asked to you listen carefully to how I discuss the credibility of Daina Bradley and to compare Daina Bradley to Eldon Elliott.

I'll be happy to do that.

Of course Daina Bradley went through a traumatic experience. And I can assure you that if there is -- and your common sense tells you that if there is one thing that no victim wants to do in this case and no one from Oklahoma City wants to do, it's testify for the defense. I mean, just to contemplate that is mind-boggling. But before she testified for the defense, when she was being interviewed by the FBI on several occasions, once I think by us and once by a television station in Oklahoma City -- let's just talk about her FBI statements. They were consistent.

The fact that this lady has had a terrible life does not mean that her memory is fallible. After all, when they first interviewed her, her story was consistent. It was only after we subpoenaed her that it began to modify itself.

I wasn't in her hospital room when the FBI interviewed her. I don't know any reason she would have to lie. So was she just honestly mistaken? Well, why?

But you know, it is curious that her description of the man that got out of the Ryder truck pretty much matches the description of the second person in Junction City.

It is clearly something to be weighed carefully, because there is no other witness that the Government can call from Oklahoma City. There is no witness that saw Tim McVeigh in a Ryder truck other than Eric McGown; and although he now says he wasn't sure whether it was Sunday or Monday, for two years, he was sure it was Sunday.

There is no witness that saw Tim McVeigh building a bomb; and as Mr. Tritico said, how can one person build a bomb?

Well, sure, Linda Jones is right: I suppose one person could do it. After all, if you put an infinite number of monkeys at an infinite number of typewriters, one of them will type out the complete works of William Shakespeare eventually.

But how reasonable is it? I mean, if this is all stored in these units -- and I recognize they're in sacks.

But there is no fingerprints of Tim McVeigh in these units. There is no explosive residue in these units. And all of this stuff that I guess the Government is trying to claim that Mr. Nichols -- and I suppose Mr. McVeigh -- stole from the quarry, they find at Terry Nichols' house.

And as far as Mr. McVeigh selling these blasting caps,

I think they were -- Kevin Nicholas said that. I don't deny that. But it's a long way from selling blasting caps without a

license, or even nighttime burglary, to mass murder.

So if all of this stuff from the quarry was placed in these storage sheds, these people are so clever that they can disguise that and yet walk up to Elliott's without a disguise and call a Chinese restaurant and use their name? And where did they build this bomb? Where did McVeigh wash up? He checked out of the motel on Tuesday morning, and there is no evidence he was at Terry Nichols' house.

And Mr. Tritico, I think, has outlined to you our position on that. Where did he do this? Where can I park a Ryder truck and build a bomb? You can't do it in these storage sheds. It's toxic. Linda Jones told you that.

There is no evidence of a house or barn or a field anywhere in the Junction -- anywhere in the United States. There is no one that saw him build it. There is no one that saw him drive it to Oklahoma City, and there is no one that saw him in Oklahoma City. And I assure you if there were, the Government would have them on the stand.

The closest that can be said is Charlie Hanger. Mr. Hanger said -- and he's a good professional highway patrolman and certainly known to Ms. Ramsey and myself -- that if you left the Murrah Building at 9:02 and you drove at the top of the speed limit, you would be right there where I stopped him. Now, I don't doubt that. I haven't checked it myself, but if that's what Charlie says, I'll accept his word.

Except, of course, according to the Government's theory, that's not quite what happened. Mr. McVeigh has to park this truck, somehow or the other detonate this bomb; and if it's something that he lights and is supposed to burn through -- and you heard the testimony about how the cord has got to be straight -- where is the car? They have a sign, "Do not tow." They've turned Oklahoma City up fair thee well to try to find that car.

And this is not a car that you forget. Look at that primer spot. This is an old clunker that in the circumstances of this case, particularly as Mr. Mackey said, you got everybody going to the Murrah Building and one person heading away. If any witness had seen that car, he or she would have testified.

So if you accept Charlie -- or Mr. Hanger's explanation of the time, there isn't enough time, because if it's Mr. McVeigh, he has to get from the truck to wherever the car is. And we don't know where the car is. Michael Fortier didn't know. He just had one of several stories that he spun out.

The more logical explanation is to rely on our common sense, instead of this convicted felon with an excuse to lie, who according to him has already lied; that it isn't there.

So Mr. Hanger takes him into custody to go down to the jail; and the rest of it, you know.

Well, clearly, someone bombed the Murrah Building.

And the last part that Mr. Mackey brought to you was the handwriting. Well, I appreciate being reminded about what I said in my opening statement. So turnaround is fair play

I said in my opening statement, so courtroom is full play. I'll remind Mr. Mackey what Mr. Hartzler said. Mr. Hartzler told you that with the assistance of a document examiner who will testify for you, you will look closely at those Ryder rental documents and together in the courtroom we will compare the documents and other documents.

Well, I didn't hear the document examiner. There wasn't a document examiner. There wasn't even anybody to authenticate "David Darlak."

Mr. Mackey has many talents. I admire and respect him. I don't think he's a document examiner. And I can't cross-examine his closing argument.

Now, I could put all these charts up here that we've made and impress, and we could have a battle of the artists. I'm not interested in that. If you want to compare, first thing you ask yourself is, Well, where was that document examiner? But go ahead, if you want to do that in the jury room. Just get those documents out. And you'll notice that the person that signed "Robert D. Kling" wasn't even consistent in the way he signed it. Within those letters, there are important differences; and we know, or at least believe, that one person signed all three of those.

And then don't just look at the letters they point out. Look at the dissimilarities. Look at the way that Tim McVeigh (sic) wrote on the line and another time it wasn't written on the line and one time how there is a curlicue up here and there is not down here.

Handwriting is not fingerprints, ladies and gentlemen. They are not. You know that and I know that.

This hocus-pocus about document examiners: That is art, and it's not a science. It's something we lawyers like to stand up and talk about in closing. It's like beauty in the eye of the beholder. Those of you that see the similarities will see them; those of you that see the dissimilarities will see them.

But the Government failed on that promise. They did not bring you the document examiner from the FBI, and I dare say that you can imagine why.

So two years after accepting the defense of Mr. McVeigh's case, I conclude my responsibility and pass it to you. But, of course, the Government has the last say, and I will sit down so they can say it.

I will not be able to answer their arguments. I hope and expect them to be fair and not take advantage of that; but if they do, then I'll have to ask you to be the advocate for me for their period of time and think what my response would be.

Tomorrow, I believe, the Court will charge you and you will hear the instructions.

Someone blew up the Murrah Building. But more likely than not, several people were involved. They had skill and training, and they didn't get it out of some book that talks about mixing it in an oven.

Dr. Jordan told you about the heroic efforts -- and they were that -- of the Oklahoma State Medical Examiner's office to recover and identify all of those killed. I do not think as many years as Dr. Jordan and I have battled each other across the hills of north, central, and western Oklahoma that I've ever been more proud of the work that he did than in this case. It is a tribute to Oklahoma and the people that helped him. And Dr. Marshall, who undoubtedly as Dr. Jordan acknowledges has to be one of the world's most highly regarded forensic's pathologists and certainly a man with unhappy experience on autopsy victims of ammonium nitrate bombs, recognized that work.

But as Dr. Jordan said and acknowledged, we have eight people whose legs were lost -- left legs were lost in the explosion. And we have to exclude Ms. Bradley's, of course, because that's a surgical amputation. But we have nine left legs. Mr. Ryan said, Well, you buried somebody without a leg. Yes, but it was a right leg. You can rest assured that Dr. Clyde Snow and Dr. Jordan know the difference between a left leg and right leg.

Well, we think it might be a woman. It's a small-bodied person. Well, that's based upon those charts that anthropologists use; and it looks like there is no hair on the leg. Of course, it's entirely possible it was blasted off; but

I know and I suspect you know military people that shave legs, too, because of the uniforms they wear. But that's an undisputed fact in this case. There is a ninth left leg. If the Government could identify that leg, they would have.

And in the United States of America in Oklahoma City, young women do just -- just do not disappear without somebody asking for them. And Dr. Marshall is right: The longer time passes, the more likely that we know the real reason no one has stepped forward to identify the person.

I believe the evidence suggests in this case that the bomber of the Murrah Building died. That's certainly the experience with other terrorists. It isn't unique here. If there were more than one of them in Junction City, then they are still at large. But after all of the resources that you know the Federal Government has committed to this case, they cannot prove Mr. McVeigh guilty beyond a reasonable doubt.

And Mr. Mackey is right: I said the evidence would show he is innocent. And I have tried to outline to you today with my colleagues why I believe the evidence shows he is innocent.

I know the Government's theory and I know the facts that they have presented to you through their witnesses; but I believe the evidence will show that we have met each one of those facts and that in the final analysis, our interpretation is more consistent with logic and common sense and the ultimate truth.

And now, as I said, we will be silent and we will

listen to you.

One time I heard someone say that communism fell not because of brilliant leadership but because of a Moscow-trained lawyer, a Polish priest, a shipyard electrician, and a retired Hollywood actor. And so it was. And ultimately, justice will be done in this case by the men and women from ordinary lives who have been summoned here and empowered to make the decision.

Thank you.

THE COURT: Members of the jury, we have an opportunity for the Government to present rebuttal argument.

I would like with your indulgence to complete the arguments and go forward with that, even though we're past 5:00. Fairness suggests that we get all of the arguments in in one day.

If any of you would like, we could take a short recess now and come back, or go forward. Would you like to have a short recess?

JUROR: Yes.

THE COURT: All right. That's fine. We'll take about a 10-minute recess and then resume.

Now, members of the jury, during the time of this recess, of course, I must caution you, you haven't heard it all. Mostly, you haven't heard the Government's rebuttal of these arguments, but you haven't heard me about the law. And we'll do that tomorrow. But I'd like to finish the arguments this afternoon, so we'll take 10 minutes. Don't talk about the case. You're excused.

(Jury out at 5:12 p.m.)

THE COURT: We'll take a 10-minute recess.

(Recess at 5:12 p.m.)

(Reconvened at 5:22 p.m.)

THE COURT: Be seated, please.

(Jury in at 5:22 p.m.)

THE COURT: Mr. Mendeloff, your rebuttal.

CLOSING ARGUMENT

MR. MENDELOFF: Your Honor, Counsel, ladies and gentlemen. You've been sitting here all day long, listening to lawyers talk. It's the worst torture I can imagine. And not only that, but it's 5:25 and I'm sure you're all hungry and you want to go have dinner, so I'm going to try to keep this as brief as I can and still address the points that I think we need to visit with.

The hallmark of our case -- the hallmark of the Government's case here is the breadth, its depth, that it comes from lots of different sources, lots of different interconnected proof: Eyewitnesses, witnesses from the lab, people who know Tim McVeigh, people who don't know Tim McVeigh, people from Junction City, people from other parts of the country, Charlie Hanger, the Fortiers, witnesses from everywhere. They all have one thing in common: They have evidence against Tim McVeigh. Nobody, none of these people in

evidence against Tim McVeigh. Nobody, none of these people in large part, except for Michael and Lori Fortier -- most of these people don't know each other. They have common purpose here, common impact on this case, and that is the strength of this case.

The case makes sense as a unified whole, and that evidence establishes that the man sitting across the courtroom, that fresh-faced, young man over there, a mass murderer, killed 168 men, women, and children and tried to kill more, with a bomb that he let loose in the middle of the day in a busy downtown city.

You heard Mr. Jones when he stood up at the beginning of the statements and tell you that he's an advocate, and he is; his job is to try to take the position of his client and make points where he can. And one thing I ask you to look at: Notice the kinds of points that he was trying to make, that the whole defense team was trying to make throughout this trial. Those points were focused on individual, narrow pieces of evidence. Never did you hear any evidence that went to the broad case, the broader proposition here. That broader proposition has been proved not by one witness here, not by one witness there, not by four or five witnesses, as Mr. Jones said. That's wrong. I take exception with that. Our evidence was proved by witnesses from all over, by phone records that aren't witnesses, that aren't -- don't have any questions of credibility, by forensic proof.

And you'll see, as I go through the evidence -- or the points that I want to make with you today -- and I will try to not make the same points that have been made already, but different ones and different glosses as quickly as I can so you can go have dinner. The points that I'm going to make -- the point I'm going to make is that that evidence fits together and one reinforces the other to show you that this isn't susceptible to challenge at this point here or at this point here.

Let's start with the Noble County Courthouse -- the Noble County arrest, excuse me, out on the freeway. Where did that happen? Just at the point where you'd expect Mr. McVeigh to have been if he left Oklahoma City right at the point of the bombing, which is what the evidence showed he did. Location, that's Point No. 1.

But it goes beyond that, Point No. 2. What did he have in his clothing? The bomb residue that you heard about. I'll get into that in a minute.

But Point No. 3, what was in his car? Was it a coincidence that the man with the bomb residue on his clothing had hate literature in his car?

Let me ask you to discuss with me for a minute the bomb residue in the clothing. We've heard lots and lots of evidence -- lots and lots of arguments, excuse me, about

contamination, contamination of the Noble County Jail, maybe a lawyer put it into the clothing, maybe an inmate put it into the clothing, maybe it was contaminated when it was laid on the freezer, on and on and on. Then maybe it was contaminated when it was sent over to the FBI lab. There's contamination there, we hear. Contamination here, contamination there. The problem with this problem, with all those arguments with contamination, is that there's no evidence that this clothing was at all contaminated, ever. You heard no proof in this case that there was any effect on the clothing that is involved in this case. In fact, Dr. Whitehurst testified -- the man who testified for the defense, the man who they put a lot of credence in -- he testified that he knew of no indication that there was any contamination of this clothing.

Now, to give you an idea of where we're going and what I'm talking about, what did we see? What were the kinds of arguments we saw about contamination? They changed as the question changed, the different -- the focus on the question changed. First the argument was, Well, maybe there was contamination in the jail. But then of course we heard there was never any high-explosive case in the jail. There is no evidence that there was any high explosives in the jail or that anybody in the jail had anything to do with high explosives. The best they could do was that railroad torpedo case, and we've heard that a railroad torpedo is more like a firecracker.

Then we get to the FBI lab. The first argument is maybe the box, the box was the source of contamination. The problem with that is that it was sealed. And as you heard Steve Burmeister testify, he tested the box, so that couldn't be the source of contamination, and on and on and on.

We heard the argument about the rug, the rug in the Chemistry and Toxicology Unit. Maybe that was the source of the contamination. And that was a doozie, supposedly this contamination left the rug, flew through the air, over the paint files, and into the screwed-top test tube that Mr. Burmeister said he had the materials in. Is that credible?

Is that reasonable? What that is is an attempt to try to deflect your attention from what the evidence shows.

The evidence shows that Mr. McVeigh's clothing was contaminated with -- excuse me, Mr. McVeigh's clothing was filled with bomb residue. When the contamination argument doesn't work, then we hear about the bullets in his pocket. Maybe if it's not contamination, maybe it's the bullets in his pocket. Again, maybe it was the bullets in his pockets. Again, is there any evidence that the bullets in his pocket were the source of any kind of PETN in this case?

You saw that the defense had tremendous resources going for them. They had great lawyers. They had experts galore. Anything they needed to prove this case, they had it

at their fingertips. Did you hear any evidence from the expert from the defense that the bullets in Mr. McVeigh's pocket had leaking PETN or had PETN on the outside of them? What does that tell you about whether or not those bullets could possibly have been the source of the PETN here? If that was there, you know you would have heard about it.

And let's examine this from a slightly different perspective: Common sense. Mr. Tritico said in his statements to you somehow the PETN got on Mr. McVeigh's clothes. I agree, it did. Somehow it got on his clothes. And the most reasonable explanation for you is that this man, who was arrested just at the point where he would have been if he had bombed this building and left, this man who was arrested with this hate literature in his car, got PETN on his clothing when he made the bomb.

Now, why isn't it on his hands, his shoes? You heard Dr. Lloyd, the defense expert, say that it would be removed from his hands by simply washing his hands and wouldn't be on his shoes if there was a change in shoes. And it doesn't always get on everything. This isn't like a lie-detector test.

Now, let me make my first point about how this meshes with other evidence, 'cause right now we're talking about -- simply about what's at Noble County. We have PETN on Mr. McVeigh's clothing, but there's other evidence that you saw that fits perfectly with that, that has nothing to do with the FBI lab that supposedly has a rudder missing.

It has nothing to do with that, and that evidence you heard was from Greg Pfaff, Mr. McVeigh's former acquaintance. Remember he testified that Mr. McVeigh called him in the fall of 1994 several times, and of course the Bridges' records bear that out. They show there were calls to Mr. Pfaff's home and his Brooklyn Deli, which is in Virginia. I can't explain that, can't explain the name, but Mr. Pfaff probably could have. We didn't ask him. But Mr. Pfaff told you that Mr. McVeigh was contacting him because he really needed det cord bad.

Remember that testimony? He needed det cord really badly. And what is det cord? Let's make this clear. The evidence was that det cord's not some sort of fuse. Det cord's a serious, high explosive like dynamite and TNT. It's in the form of a cord, but it explodes.

And you heard Mr. Pfaff tell you -- and he was in the gun business for a long time -- that the purpose for det cord is to set off a series of different charges all at once. For example, if you set your bomb up with a series of different barrels filled with ammonium nitrate, a Tovex booster and a blasting cap, and you want to set it off all at once, you need that det cord that explodes and sets the whole thing off.

Mr. Pfaff told you Mr. McVeigh needed det cord so bad

that he was willing to drive across the country to get it.

And

is it any coincidence that when Mr. McVeigh was arrested on the

day of the bombing, he's got residue from that very substance, PETN, det cord, the same thing that Mr. Pfaff told you Mr. McVeigh was looking for? One example of where the case is intersected, has different levels, different items of proof from different people, unrelated that all fit together.

By the way, the reason I'm turning the pages and not going as quickly as the others is because I didn't know what I was going to have to respond until Mr. Jones and his team just talked, so I apologize for that delay.

At Noble County, we didn't just have Mr. McVeigh arrested with the bomb residue on his clothing and in exactly the place he would have been if he had bombed the building.

We

also had the hate literature in his car. You heard Mr. Nigh talk about that at some length. He told you, Well, Mr.

McVeigh

had some of these things in his car, but he also had a lot of other things that were just general political literature.

I ask you to focus on what was highlighted in the literature in Mr. McVeigh's car, what had highlighting on it. You heard Jennifer McVeigh testify Timothy McVeigh had a practice of highlighting things that he thought was important. If that wasn't enough, Jennifer McVeigh put into evidence a letter which she received from her brother in which he specifically says that. If you look at the things that are highlighted in those letters -- and you'll have to look at the photographs rather than the letters, because as you remember Mr. Hupp testifying to, when the letters were fingerprinted, the highlighting went off. But we have the photographs, so you can look at those. The highlighting shows that the things that

Mr. McVeigh was interested in were all the virulent, violent, hateful rhetoric in those documents.

Now, I was very interested to see that Mr. Nigh shows you one document that was out of that car. That was the document that Mr. Jones related to you in opening statement, "Better to fight with pencil lead than bullet lead." You all remember that. And of course Mr. Nigh told you, This highlighting wasn't on the original document. This highlighting was something Mr. Nigh put on for purposes of demonstrating that to you, and that's fine. But there's something I want to show you.

I want to show you the actual record, the actual document that that comes from, the pencil lead/bullet lead document. And you can decide for yourselves whether or not that pencil lead reference was something Mr. McVeigh cared about at all.

This is the document, Government Exhibit 454. I'm showing you the back side of that document. And that's where the pencil lead/bullet lead reference is. Now, let me show you

the other side of the document. "When the government fears

the pencil side of the document. When the government fears the people, there's liberty. When the people fear the government, there is tyranny." And Mr. McVeigh writes on that side of the document, not on the pencil lead side, "Maybe now," with a comma after the word "now," emphasizing the word "now," after the bombing, after I've done this act, "Maybe now there will be liberty"; in other words, maybe now the government will fear the people, now that I've killed 168 people.

Mr. Nigh told you that Mr. McVeigh cut that -- tried to give you an explanation for Mr. McVeigh cutting the page out of The Turner Diaries. And he said, Well, that's only one part of a larger page where there's a reference to mortar attacks on the Capitol and downing an airliner. Well, I ask you, would this man have any problem with taking a reference out of this novel out of context when he's perfectly willing to -- when he's perfectly willing to take the words of Thomas Jefferson out of context? You ask yourselves whether if Thomas Jefferson was here with us, he would approve of a member of our society blowing up a building and killing 168 people because he was mad about Waco.

Of course our evidence does not begin or end with the evidence at the Noble County arrest. Before -- before the Noble County arrest ever happened, the weekend before, as you know, the Ryder truck that was used in this bombing was rented at Elliott's Body Shop in Junction City. The proof was that the man arrested at Noble County 75 minutes after the bombing, 78 miles away, with residue on his clothing, with a T-shirt spouting that kind of hate, hateful feeling, with an envelope full of antigovernment literature and references to current-day media attacks, was arrested, just happened to be present in the city in which the Ryder truck was rented, and he just didn't happen to be present in the city. You know that from the McDonald's video that he was present a mile away from the place in which the truck was rented. And of course the Government has proved what the insidious purpose Mr. McVeigh had for that visit to Junction City was.

And that brings me to the second segment of the proof, the Junction City proof. And this proof as well comes in a host of different sources. It isn't just Eldon Elliott and Vicki Beemer, and it's a lot of different groups; and I'll explore that with you in the next few minutes. Starting with Eldon Elliott, you heard that he saw Mr. McVeigh with no distractions on the 15th of April and again on the 17th of April. He focused his attention on Mr. McVeigh's face just as Dr. Wells testified was the way in which you get the best possible memory of something, without any customers there or any other employees, without any phone calls or the press of other business.

We heard from the defense that supposedly Mr. Elliott originally said -- or supposedly Mr. Elliott said that the man had acne and camouflage clothing, but that is not my recollection of Mr. Elliott's testimony.

Now, of course the defense can't just sit back and accept this kind of devastating proof. They have to try to attack it; they're advocates. They have to try to show you some reason why maybe you shouldn't believe Eldon Elliott; because if you believe him, what's left? So we heard about 54 days -- it's 54 days between the time Eldon Elliott was originally interviewed -- excuse me, originally saw Mr. McVeigh at his body shop and when he ultimately identified him for the FBI. But of course you heard Agent Hersley tell you that Mr. Elliott said that he identified the man in fact the day he walked out of Noble County Jail on TV, and there is no evidence one way or the other -- Mr. Jones said, Well, there is no proof that he called, and there is no proof that he didn't call and contact the FBI that day; but the proof that you do know -- do have is that when he saw him on television that day, he immediately recognized him.

You also have proof that when he underwent the photo spread examination, that examination was handled exactly the way the defense expert Gary Wells said it should have been handled. He was told there may or may not be the person he was looking for in this photo spread. He looked at it. He immediately identified the person. He showed confidence in his identification, and there was no comment made afterward. And the person he identified, of course, was Tim McVeigh.

So what is the response? Well, we hear about Hertig and Bunting as the explanation for why it is that you can't rely on Eldon Elliott. Mr. Jones points to surface parallels between the two, the two rental experiences. One, they both had two men. One had a hat, and one had dark-blond hair with light-brown -- dark-blond/light-brown hair, military-style haircut. But that's as far as the proof and the evidence -- the effort beyond this point is like trying to pound a square peg into a round hole. You can hammer and hammer and hammer, but it doesn't fit.

Why doesn't it fit? Because Eldon Elliott -- there is no evidence that Eldon Elliott was at all confused about who he saw. There's no evidence Eldon Elliott thought he saw Hertig. There's no evidence at all that Eldon Elliott described somebody who looked like Todd Bunting. In fact, the evidence was that Eldon Elliott and Vicki Beemer couldn't describe the second person. That doesn't suggest any kind of confusion by them.

If Tom Kessinger, the person who is the source of the sketch, is confused with who the second person was, that has nothing to do with whether the man who testified and identified

Eldon -- excuse me -- identified Tim McVeigh as the person who rented that truck was inaccurate or at all mixed up.

And I ask you to look at the two men. Look at Tim McVeigh and Michael Hertig. And you have to look at Michael Hertig from the perspective not of his testimony here, but the way he looked then. Mustache; different haircut; his eyes, nose, head shape, lips, all did not look like Mike Hertig.

And

by the way, the sketch, you'll make your own assessment, and obviously that's your job as the jury; but I ask you to look at

the sketch and tell -- ask yourselves whether that looks like a

man with a mustache to you.

Beyond that, there was no evidence -- and getting back

to whether Eldon Elliott was at all confused, there was no evidence that he was at all confused between the two transactions. First of all, he didn't even handle the Hertig transaction. And secondly in terms of the details of the two transactions, they were very different. Mr. Hertig was going to Georgia, he took insurance, he had 12 furniture pads and he was scheduled to pick up his truck at 8 in the morning. And you heard Mr. Elliott testify that the person he dealt with on that Saturday was going to Omaha. He said he was going to Omaha, Iowa, and back to Omaha, very, very different from the Hertig transaction. And of course this is one that Mr.

Elliott

handled himself.

Mr. Elliott told you another detail which is unique to

this transaction. He told you that the renter, Mr. McVeigh, told him because -- he doesn't need insurance because he's used

to driving those big deuce-and-a-half trucks, 5 ton truck -- excuse me -- 5,000-pound trucks, at Fort Riley. He also remembered a specific aspect of the transaction. That had to do with whether or not the man wanted to take insurance. You remember on Saturday -- he tried to get the man to buy insurance, tried to get Mr. McVeigh to buy insurance, and Mr. McVeigh said he didn't really want it but he'd think about it. And the following Monday, Mr. Elliott recalled that Mr. McVeigh said, yes -- no, I don't want to buy insurance. And of course you heard Mr. Hertig testify that never happened with him. No evidence to suggest any confusion whatsoever.

Vicki Beemer's testimony in this area -- although she couldn't remember what Kling looked like, her testimony is very

illustrative. What did she tell you? She knows Michael Hertig, and she told you that the person who rented the truck on Monday -- doesn't remember his face, but what she can tell you is he's about Mr. McVeigh's height, he's got Mr. McVeigh's hair color, and he's not Mike Hertig.

Now, we heard references regarding the height of the renter, and I was astounded to hear Mr. Jones tell you that the

photograph from Noble County Jail showed Mr. McVeigh to be

photograph from Noble County Jail showed Mr. McVeigh to be 6' 4". First of all, you look at the photo and you decide. I don't think it shows him to be that. Secondly, you heard the testimony of the woman in Noble County Jail testify to -- the woman in Noble County Jail testify to the circumstances surrounding the way she took that photograph. Mr. McVeigh was standing 2 1/2 feet in front of her. She's a smaller woman. What does that tell you about the camera angle?

Beyond that astounding -- I was astounded by this argument, but Mr. Ippolito testified for you that he measured Mr. McVeigh in jail. He's 6' 1/2" tall. This is not a point worth arguing. So you have to ask yourselves, why are we hearing about this? Why is the defense stretching like this? They have to. They have to struggle with this proof because if they can't try to do something with it, the case is over.

We heard about the clothing. Mr. Jones said that Mr. McVeigh -- excuse me, Mr. Elliott testified that it was possible that the person who rented the truck on Monday was wearing camouflage. Well, I think if you remember Mr. Elliott's testimony, he said that what he really said was that the man who came in on Monday may have been wearing camouflage, and the way that came up was -- and the agent corroborated this -- Mr. Elliott didn't remember what the man was wearing and the agent was pressing him. Well, could he have been wearing fatigues? And Mr. Elliott's testimony was, that, Well, yeah, 75 percent of our customers wear fatigues, so I guess it's possible. And then when he was reinterviewed the next day, he once again reiterated that he does not remember what the man was wearing.

Why are we hearing about this? Well, of course because the McDonald's shows that Mr. McVeigh is a mile away right before this rental. We have -- the defense has to try to turn that -- try to make something good out of that, so they're going to use it affirmatively to say, well, that's our best piece of evidence. Even though it puts Mr. McVeigh right there, at the time of the rental, they're going to try to say that's our best piece of evidence because it shows he's in different clothing. The problem is the witnesses at Elliott's never said the man was wearing fatigues; so it doesn't help them, it hurts them.

Now, throughout the closing arguments, we heard this constant refrain, why didn't the Government call Tom Kessinger, why didn't the Government call Roger Moore, why didn't the Government call the taxi driver? And you know, ladies and gentlemen, that based on your jury service, that the defense has subpoena power. And you also know that they've lots of resources. They can interview whoever they want. They get government reports as part of discovery. You've seen that in this case. If they wanted to call any of these people -- they don't have the burden of proof here, make no mistake about that. But if they wanted to call any of these people as their witnesses, they sure could have. And you can infer that if they didn't, it's because they didn't have anything to say

that

was going to help them.

Now, beyond the Elliott's witnesses, what other proof do we hear that in fact Tim McVeigh was Robert Kling? You heard a lot obviously. You've heard a lot of arguments. I'm not going to rehash them. You saw Larry Mackey's presentation regarding the handwriting. Startling. I won't reiterate that. You heard proof regarding the Firestone events on Friday. And that evidence established during the trial that Mr. McVeigh left the Firestone in about the time the phone call was made across the street, first one call to Nichols and then another call to the Elliott's Body Shop.

And we heard the defense try to poke holes into that, and it didn't work very well. And the reason it didn't work very well is because we heard basically two arguments. First of all, we heard some claim that Mr. Manning had somehow been manipulated, that he said after a number of interviews, Oh, Mr. McVeigh left -- pardon me -- Mr. McVeigh left the premises for a while. Remember Mr. Manning's testimony? He was the man

on videotape, and he said that the reason that he said that when he did is that nobody had asked him.

But I want you to focus on one part of that testimony.

See if you can remember it. It was distinctive. He was being crossed by Mr. Nigh, and Mr. Elliott -- excuse me -- Mr. Manning said, Excuse me, can I say something?

And Mr. Nigh said, Sure.

And then Mr. Manning said, I distinctly remember him leaving the premises.

Is that the kind of behavior of somebody who's being manipulated, or is that the kind of truthful answer that you get from a witness who's just telling you what happened? And what else did Mr. Manning say? He said that Mr. McVeigh left the premises after the car was being serviced. Car was being serviced and Mr. McVeigh left.

What did Art Wells tell you? The same thing -- he didn't tell you he left, but he told you something that was not

at all inconsistent with that. He didn't tell you that Mr. McVeigh was standing at that car throughout the time it was being serviced. That was the point of the cross-examination. He said that he was working on the car and after he had been working on the car, Mr. McVeigh showed up. Obviously if Mr. McVeigh left when the car went over to be serviced, he would have 10 minutes to walk the half a block it took to get over to the phone booth to make the call.

Now, the next point that Mr. Jones made was that some -- the argument that Mr. Manning's estimate of the time that Mr. McVeigh left was off. You remember Mr. Manning -- he told you that -- Mr. Manning testified that Mr. McVeigh was gone for 10 or 15 minutes and that Mr. Manning said he couldn't

remember when it was exactly that Mr. McVeigh returned. And then when pressed, he said, Well, my best estimate is about

10:15 or 10:20, meaning that he was off by about 10 minutes from the time that the phone call was made, or 15 minutes, 15 minutes after a break of almost a year and a half.

Does this argument sound like the one that they were making regarding Eldon Elliott and Vicki Beemer? Witnesses give estimates of the timing of events two years ago, they're 10 minutes off, and the response is, Aha? This is another example, is what I told you at the beginning of my statements here an effort to poke little holes all over but not really get to the point of the evidence, not really undermining the proof in this case.

Now, I wanted to show you something about the Manning call.

MR. MENDELOFF: Is this all right, your Honor?

THE COURT: Yes.

MR. MENDELOFF: Separate and apart from anything any witness has to say about these events, you have documents, documents alone which closely tie Mr. McVeigh to this call. Forget about any witness. You've got the Firestone work order from that day showing that Mr. McVeigh showed up at that Firestone station at 9:00 in the morning. There's the Firestone in the photograph.

Across the street is another -- this photograph is in evidence -- across the street another document. J & K Bus Depot. What do the Bridges records show you? They showed you that at 9:51 there's a call from that bus depot to Terry Nichols and then another call to the Ryder dealership, and the Bob Kling quote was created. And you heard of course Vicki Beemer testify it was around 10:00, and you saw the phone-record proof from the Ryder dealership that showed that there was only one call that came in the whole day which could have been the quote call. That was the call that came in at the same time that Mr. McVeigh was missing.

Now, in addition to the Manning proof, there's still other proof, of course, that connects Tim McVeigh to this bombing -- excuse me, to the rental of this truck. And what I'm referring to now is the Hunam Chinese food order, of course the Kling order to Mr. McVeigh's room. You saw that the -- you heard that the Dreamland records show that there were two calls from Mr. McVeigh's room, Room 25, to the Hunam Palace; and you heard Miss Bai testify that the food was delivered to Room 25.

Now, we heard argument about Jeff Davis's testimony that the person that was in the room didn't look to him like it was Tim McVeigh. Well, the defense argued in their closing statements that we're asking you to disregard Jeff Davis simply because his first memory was the best memory. That is not right. That is not the reason we're asking you to disregard Jeff Davis or asking you to view his testimony with great skepticism.

The argument is much deeper than that. Look at Mr. Davis's testimony. Look at the context of what he had to say. Let's start with that. He told you -- the witness admitted that in April of 1955 he was delivering up to 50

admitted that in April of '95, he was delivering up to 50 Chinese food orders a day, that he does not have a good memory for customers' faces and only recalled about ten repeat customers' faces, and those are the best tippers; that many of his customers were military; that he delivered to the Dreamland at least 50 times before this; and that he attached at the time

absolutely no significance to the Kling delivery to Room 25, at the time that he dropped it off.

So what's our starting point with Jeff Davis? Our starting point is, by his own admission, he saw loads and loads of military-looking customers every week, he didn't pay much attention to their faces, he had no reason to focus on the guy in Room 25, and that the Dreamland deliveries were not unique.

Taking his statement of how much -- how many people he delivers a day -- and let's just assume 30 instead of 50 -- that means he would have seen 180 customers between the time of his delivery to the Dreamland and the time he was first interviewed. What happened when he was first interviewed? He said candidly, I can't remember the customer's face. He gave the description, which even Mr. Jones admits fits his client: White male, 28 years old, 6 feet tall, short sandy hair, clean-cut, no mustache. He said that the man -- you remember when he testified -- he said that the things that he was most certain about was the height and the build.

But what caused him to change his story? When he saw a mug shot in the newspaper. No indication of height there, no indication of build. What's his motivation? You'll have to decide that for yourselves during your deliberations. One example may be something that came out in his testimony, that he has been very available to the media and upset when the media doesn't pay attention to him.

Does this man somehow develop the ability to reach back in his memory, a memory that he admits isn't good, to customers and remember what he said he'd forgotten or never seen? What does the defense expert, Dr. Wells, tell you about this kind of interaction? The time they saw each other was very brief, the man was not paying attention, he had a lot of orders to go.

But let's take a step back. This is the important point about the testimony of Jeff Davis. I'm going to ask you to take a step back, and I'm going to point something out to you, ask you as I'm pointing this out whether or not Davis's testimony makes any sense at all, whether it's reasonable, whether it comports with common sense. We know at the time Davis made that delivery, we know for sure, that he delivered to Room 25 and that the person in Room 25, the guest, was Tim McVeigh.

For Davis's story to be credible, somebody else named Kling, the bomber, had to have snuck into Mr. McVeigh's room -

-
and we know burglars always sneak into hotel rooms and order

Chinese food, happens all the time. They sneak in. Bombers are going to go in there -- I'm a bomber and I want to order that Chinese food, and so I'm going to go in and order that Chinese food, but this was an audacious bomber, because for this to work, wasn't only sneaking into the room, once he snuck into the room, he had so much nerve that he stayed there, called Dreamland back for the second call to complain, Where's my food? And it didn't even end there because this bomber, who snuck into Mr. McVeigh's room, then had the nerve to stand at the open doorway and collect his Chinese food and then, to top it off, give Mr. Davis a nice tip. Is that credible? Does that make any sense at all? Or is it much more reasonable to believe that Mr. Davis was telling the truth early on when he said that he just didn't remember the face of the man who received that Chinese food that day?

We heard testimony regarding Dreamland witnesses, Herta King, and the like. Eric McGown was the only witness to see two things: To see a Ryder truck and to see Tim McVeigh in the Ryder truck. Notice that none of the defense witnesses who were called could put Mr. McVeigh in that Ryder truck. What does that mean? We don't know whether that Ryder truck on Sunday was McVeigh's Ryder truck or some other truck. In fact Herta King testified that the truck she saw she thought was smaller than the big truck.

And not only that, but if you look at the other defense witnesses, the testimony of the Ryder witnesses conflicted a bit with the testimony of the Mercury witnesses. You heard the Whites testify that they were there that morning until about 10:30, no Ryder trucks that they saw. By noon there's two Ryder trucks there. You have to sneak that Ryder truck in. Of course it's got to be Mr. McVeigh's. The problem is that Miss King says it's not the big truck.

You heard testimony that the bridge was out right near the Dreamland at that time, and there was a lot of construction vehicles and lots of trucks around. And it's just as likely that this truck was not at all related to this case; but the key point is McVeigh and Ryder together.

And by the way, exactly what is the defense point about this? If their assertion is that it was Mr. McVeigh that had a Ryder truck there Sunday, where exactly did that truck come from?

I'm going to ask you to go way back in your memories to toward the beginning of the case when Andy Anderson testified, the man from Ryder. And he told you that he checked the national record base for Ryder trucks in the name of McVeigh, Tuttle, and all his other aliases for April of '95, and no rental. What's more reasonable, that Mr. McVeigh just

materialized this truck with no rental record or that there was more than one truck or that these two defense witnesses, Miss Truong and Miss King, who go to the Dreamland all the time, those people are there day in and day out -- in fact, Miss Truong lived there for a while -- that they were mistaken about when they saw a Ryder truck there and it was another truck. And even if you ignore the Dreamland evidence that we presented, does that mean that Mr. McVeigh didn't rent the truck on Monday?

Now, the next defense that I need to address is "the bomber's not that stupid" defense. And "the bomber's not that stupid" defense goes something like this: Would I -- if I was going to commit this bombing, would I check into the Dreamland with my own name and order Chinese food in the name of the alias? Would I drive without tags down the freeway? Would I not shoot the trooper when he came up to me? Would I not order bomb books -- or would I order bomb books in my own name? Would I not wear a disguise at Elliott's? Would I carry incriminating literature in my car? Would I save an ammonium nitrate receipt that reflected the purchase of 2,000 pounds of ammonium nitrate? Would I leave the lock on the ANFO trailer when I did a burglary? Would I rent lockers in phony names? Would I give the Nichols address when I rented one of those lockers?

The only thing that distinguishes this case from any other trial and this jury, yourselves, from any other jury is the monstrosity and inhumanity of the actual crime, but what we have here is a crime. Your job is to decide whether or not the Government's proved that this defendant committed this crime. No more, no less.

And the monstrosity of the crime to one side, Tim McVeigh and Terry Nichols like all -- are not any different than any other defendants who find themselves in a criminal court. They make mistakes, and that's why they get caught. And this argument is completely circular, the argument that this defense team makes: The argument that, well, if I had done this crime, I wouldn't have made this mistake. Any defendant in any case could make the same argument about all the evidence against him. It proves absolutely nothing.

Now, let me show you another chart regarding that Hunam purchase.

Just like the Manning evidence, the Hunam evidence is also susceptible to being established in large part through documents. Forget about witnesses. The connection of Tim McVeigh to this evidence can be proved through documents. You have Tim McVeigh checking into the Dreamland, Room 25. There's

a call from Room 25 -- this is the Dreamland record that's in evidence -- to the Hunam for delivery in the name Kling. Documents, not witnesses.

What does all this evidence show you, all this evidence regarding Tim McVeigh and Kling? What it shows you

15

that you have three different categories, three different lines of proof, all independent of one another, different arrows with different evidence behind it, all pointing to the same thing: That Tim McVeigh is Robert Kling.

You have the witness testimony, Eldon Elliott and Lori

Fortier: Eldon Elliott of course identifying him, Lori Fortier

telling you about the lamination that she handled with her iron. You've got the McVeigh Firestone evidence which is one line of proof, and it doesn't depend on any of the historical witnesses. And you've got the Dreamland evidence, and that doesn't depend on any of the others. But what do they all show? Is it coincidence that all these lines of proof are going to the same central point?

And there was other evidence as well, of course, that I don't see beyond the Elliott's evidence. We have the McDonald's video that put Mr. McVeigh within a mile of the Dreamland; and right after, we've got the evidence of the double truck -- double wheel tracks that just happened to be the same width as a Ryder truck and just happened to be in front of Shed No. 2.

What else do we have? Something I want to show you, and this is in Government Exhibit 555. When Mr. McVeigh was in Arizona, before he ever left to come to Kansas, you heard from Mr. Hofer that he stayed at his motel, the Imperial Motel. And what is the reason we put that little man up on the stand to testify about Mr. McVeigh's presence there? The reason is that

at the time Mr. McVeigh was staying at that motel, there was a Bridges call from there, from the motel in Arizona. And where was it to? It was to a Ryder rental outfit, another Ryder call, from before Mr. McVeigh ever got to Junction City, another call to a Ryder. You ask yourselves whether or not there's some specter or ghost out there that's Robert Kling or whether or not this is just another item of proof to show you who Robert Kling is.

Separate from the Junction City proof, you heard evidence from the fall of 1994. You heard evidence from people who Mr. McVeigh contacted who he knew back then. Greg Pfaff, Dave Darlak, Glynn Tipton, all people who identified Tim McVeigh as the person that was contacting them. Pfaff said he wanted det cord. At the same time, David Darlak saying my friend, not known to be in racing, is calling me up and wanting racing fuel.

Tipton testified that McVeigh walked up to him -- a man he was 90 percent sure was McVeigh walked up to him at that racetrack. And what did Mr. Tipton say about the height? I think we heard an incorrect statement during the defense argument. The testimony regarding the height was Mr. Tipton, when he first was talking to the agent, thought the man was

when he first was talking to the agent, thought the man was 5' 8", and then he remembered during that first interview that he was standing on a step and the person he was talking to wasn't. And in that first interview with the agent, he testified that the man he was talking to was about 6 feet tall.

What else did he tell you? He told you something that was extremely telling and established beyond any question that Mr. Tipton was thinking about Tim McVeigh. He told you that the man he saw had a scraggly beard. And at the time Mr. Tipton said this, the only thing that was public was Mr. McVeigh's walk-out video at Noble County, showing him as he is today. How did Mr. Tipton know that in fact Mr. McVeigh did sport a beard that day, if he didn't really see him? But you saw Government Exhibit 52, the photograph of Mr. McVeigh with the beard. Conclusive proof that Mr. Tipton knew what he was talking about, wasn't manipulated by any kind of questioning. In fact when Mr. Tipton testified about that, he told you -- I think his words were, My testimony is my own.

We have, from an entirely separate group of people in an entirely separate place, evidence that's completely consistent with the evidence outside Noble County and the evidence that we see at Junction City the weekend before the bombing.

When Mr. Jones ended his comments to you by talking about this extra leg -- I'm not going to spend a lot of time on it -- but the extra leg theory turns on -- and I apologize to Dr. Marshall -- but a rather bizarre theory he has about the ability of a piece of a body to survive when the rest of the body is completely disintegrated. And of course the only time in all his years he's ever seen that had to do with a body part that you recall what it is that's slightly different than an entire human leg. Dr. Marshall didn't even examine the leg in this case and he didn't know that in fact the leg in question was in perfectly good shape; it had been severed, but it was in good shape. It has not been mangled. It did not -- did not appear to have been subjected to that kind of trauma.

And what is the explanation for this leg? Well, we know that the leg that was -- this leg resulted from a leg that was -- from a course of events, and I'll try to go through them with you quickly because I know you're really -- I'm trying your patience now 'cause the dinner hour is past.

There was a leg that was found in the Murrah Building after the building was imploded, an extra leg. That leg was tested, and the FBI was able to determine from footprints that it belonged to a woman who was already buried in New Orleans. And then the testimony went that they took the leg to the body, removed the body from the grave, and found another leg in that casket. The problem was -- so they replaced the leg and sent

the body to rest again.

The problem was that the leg that was in the casket had been so severely embalmed that there was no ability to get any DNA, and it had been so decayed that there was no ability to get any footprint or fingerprint off it. It was a left leg.

The question was how do we find out whose leg this is.

The medical examiner's office was able to trace and find out that there was one casket that was put in the ground missing a leg. Now, this casket was missing a right leg. It had a left leg. But the nature of this crime is -- and I know it's hard to hear, but the nature of the crime is that this bomb created an effect -- a meat-grinder effect in that building. There were body parts everywhere.

The medical examiner's office did do a magnificent job. Is it more reasonable to believe that in a casket somewhere there are two right legs as opposed to a right and a left and that's why there's a mismatch here, or is it -- is Dr. Marshall's wacky theory about the whole body disintegrating

except for an entire leg which is left intact more reasonable?

Now, we heard argument about the defense eyewitnesses and the Government's eyewitnesses, and there's one point I want

to make, and I'll move on from here. But the point I want to make about the eyewitnesses is this. Look at the Government's eyewitnesses. Eldon Elliott, Glynn Tipton, Tim Donahue, Marion Ogden, what do they all have in common, all of them? They're all corroborated by independent proof. There's independent evidence to show the things that those people are all saying.

And let's juxtapose that against the defense witnesses, the defense eyewitnesses. Absolutely no corroboration for any of them. And we saw what happens when there's no corroboration. We saw the evidence in Jamie Carroll. She thinks she saw Terry Nichols at that Conoco station. But you heard the evidence that the man that was in that Conoco station couldn't have been Terry Nichols because the truck that he filled up had a tank bigger than Terry Nichols' truck, he bought more fuel than could possibly fit in there; so she was obviously mistaken, and that's what happens when there's no corroboration.

And similarly, you heard arguments about why the Government didn't call anybody from Oklahoma City, and that's your answer. Not results, but corroboration. We wanted to present to you a case in which the witnesses are proved by this interlocking, overlapping approach that I've told you about today.

Now, as to whether or not residue was found, I'm going to spend about a minute on this. We heard a lot about it from Mr. Tritico; but frankly, the evidence in this case answered all the things -- points he tried to make. He tried to make them during the trial, and they didn't fare very well, if you remember what the evidence was as opposed to the arguments. The evidence was that you wouldn't expect that -- even

Dr. Lloyd said that there wouldn't be any PETN or residue of high explosives found at the bomb scene in a bomb of this size.

There was a dispute about prills and whether or not prills would be found there. Dr. Lloyd was the lone voice in the wilderness on that one. But you heard testimony about the prills at the scene from Government witnesses and people who have nothing to do with the Government. Linda Jones and Steven

Burmeister told you that based on their experience, they don't see prills at the scenes of these big bombings. And who else told you that? Paul Rydlund told you that, and one other guy told you that, a guy who really knows, maybe better than all these people. Bud Radtke, the blaster from the quarry, said it's not his experience -- and he's blasting little holes, not big bombs -- it's not his experience that he has a problem with prills. He doesn't see them left over.

Let me turn to the Fortiers' testimony, and I'm not going to spend a lot of time with this at all. I'm going to give you -- I'm going to handle this in two different parts so that we can finish and you can go eat dinner. The first part of the argument that I want to make to you, presentation I want to make to you, is this: The proof that Michael and Lori Fortier gave you in almost whole part was established independently with other evidence in this case. For example, look at the argument I've given you today up till this point. I've mentioned Lori Fortier one time, I think. Twice. Once in

relation to the lamination and once in relation to the fact that she knows her husband, and that's it. The evidence I've presented to this point in my presentation today has not relied

on the Fortiers. The case does not rely on the Fortiers.

What

the Fortiers do is provide a narrative of what happened on the inside, but it does not depend on them. And you can go through

huge parts of their testimony, and you will see that it is established by independent evidence that has nothing to do with them.

One example is Michael Fortier's testimony that Mr. McVeigh told him that he and Nichols burglarized a quarry near Nichols' home, had trouble with a barrier covering the lock, drove two vehicles bearing explosives to Kingman, and almost had an accident.

Marion Ogden testified that in fact Mr. McVeigh was in the vicinity at the time.

Bud Radtke told you about the quarry burglary.

Jodie Carlson -- excuse me -- Jim Cadigan told you that Mr. Nichols' drill matched that lock.

Jennifer McVeigh told you about the fact -- the time that her brother recounted to her that he was driving along with another vehicle -- one I submit that Terry Nichols was in -- and they almost got in an accident and they had a

in -- and they almost got in an accident and they had a thousand pounds of explosives -- Mr. McVeigh had a thousand pounds of explosives in the vehicle.

Finally, you heard testimony from Jodie Carlson, the woman at the storage rental place out in Arizona, who said that me Mr. McVeigh rented that storage shed on October 5, so you've got Marion Ogden putting Mr. McVeigh in Kansas at the end of the month and, lo and behold, Mr. McVeigh's renting a shed in Arizona on October 4.

The evidence fits together without even Mr. Fortier telling you, but he told you that that's what Mr. McVeigh told him.

You heard a series of arguments from Mr. Jones at the beginning of his comments today regarding the credibility of the Fortiers. Mr. Mackey in his comments to you told you about -- referred you to a number of the aspects of their testimony which on their own smack of credibility. Who would make up getting on the floor with soup cans? Who would make up asking to borrow your iron and saying, No, I want to do it, myself. I don't want you to ruin my iron.

And remember, most chillingly probably, Michael Fortier's testimony about his visit with Tim McVeigh to downtown Oklahoma City. Remember that testimony in which Mr. Fortier said, Why are you going to do this? There's innocent secretaries in that building. And Mr. McVeigh's response was, Well, unfortunately, the innocent people need to die because they're like the storm troopers in "Star Wars." All the storm troopers may not have been bad, but they were guilty by association. Would this "Star Wars" storm trooper analogy be something that anybody would make up?

But the testimony of the Fortiers needs to be analyzed beyond just this point, because there's other aspects to this that I want to bring out. First of all, there's many aspects of the Fortiers' testimony that reflect a lack of an attempt by the Fortiers to stretch what they had to say. Michael Fortier, for example, told you what he saw and didn't elaborate on it, didn't try to make it better than it was. He told you, for example, that the time he went to Storage Unit E10 in Arizona with Mr. McVeigh -- remember that? And he told you that he saw that one box that had the Tovex sausages in it, one box. He said that there was a blanket over some other stuff there and he doesn't know what it was. He said he saw one box. If he wanted to lie, if he wanted to sell his soul, wouldn't he be telling you that the room was filled with Tovex sausages and blasting caps to try to fit the Government's theory?

Then Mr. Fortier gave you other testimony that was consistent with that. He told you that he went to the storage unit in Herington with Mr. McVeigh when he drove out there in December, and you remember that he testified that at one of the

storage units, there was a mattress covering the door and he couldn't see in. If he wanted to get up here and sell his soul and lie, why didn't he tell you that I saw 4,000 pounds of ammonium nitrate in bags stored in that locker? Because he's not stretching in what he's telling you. He never testified that Mr. McVeigh told him, for example, that he was going to rent this truck at Elliott's Body Shop or pointed out the exact quarry that he was going to rob, things that would mesh in with the Government's proof. He's telling you what he knows and only what he knows.

The challenges to the credibility of the Fortiers can be divided into three basic areas: Prior lies to the press, friends, family, and the FBI; the fact that the Fortiers were subjected to pressure by the Government and the media; and Michael Fortier's statement that he was going to tell a fable. If you boil it all down, that's what you get. Starting with the prior lies, you heard Mr. Fortier tell you the reason that he was lying, that he was trying to protect Mr. McVeigh to protect himself.

I ask you to look at Mike Fortier. Look at the kind of person he is. Look at the kind of person Lori Fortier is. They're a young couple at the time. Their lifestyle was not characterized by taking much responsibility. And all of a sudden they get thrust into this national spotlight with tremendous pressure. Isn't it likely, isn't it understandable, that these people would try to get out of this by lying?

And Mr. Jones' argument on this I thought was sort of strange, I have to say. He told you that you can disbelieve Mr. Fortier because he was lying and he lied to Judge Russell when he said that he had lied to the -- that he had only lied to the FBI for three days, that was a big lie, supposedly he had lied for three weeks and so you shouldn't believe him. What was the lie that he was admitting to Judge Russell? The lie was that he wasn't telling the whole truth about what Tim McVeigh did. That was the lie. Slightly circular if you believe Mr. Jones' argument that Mr. Fortier was telling the truth when he said everything he told you about Mr. McVeigh's plot. But of course the Fortiers' testimony can't be taken in the abstract, and it doesn't make any sense to argue that they're lying about all of these things, because the lion's share of them are established with independent proof.

But let me ask you to look at the argument regarding pressure from the FBI and the media, pressure to plead guilty to the crimes in this case. Does that make any sense at all? As human beings, does that make sense? If what Mr. Fortier had to testify about, not regarding the gun testimony but regarding misprison of felony, regarding the fact that he knew about this crime, that crime that he pled guilty to, he knew about this crime and didn't do anything about it, if that wasn't true, would anyone get up in front of the entire nation, let alone

this jury, and admit to having prior knowledge of this most heinous, most bloody crime in our history? Would anyone do that? Would anyone voluntarily subject themselves for a lifetime of having to worry whether the next person they meet would find out about their background, their past, that they had some involvement in this? And would anyone, anyone, do that for tabloid fame? This tell a fable to make money with the tabloids: Does that make any sense at all when you consider the gravity of what we're talking about here? Would anyone do any of those things unless they were telling the truth?

The Government's evidence doesn't stop with the Fortiers, of course. And you heard testimony from Jennifer McVeigh, and the letters that were introduced with her speak volumes. Those letters -- forgetting about her testimony about

something big happening -- those letters tell you that Mr. McVeigh was expecting something big to happen. There's a letter on March 25 in which Mr. McVeigh says, Don't write any letters after April 1 because the G-men may intercept them, thus incriminating you, incriminating her. This isn't just a mistake; that this man, the man who wrote this letter, was also

the man in Junction City in Room 25, was also across from the J & K Bus Depot at the time of the quote, was also the man that

Eldon Elliott identified, was also the man who was arrested just where he would have been at the time, just where he would have been after the bombing if he left Oklahoma City at the right time, was arrested with hate literature in his car and bomb residue on his clothes.

Thank you for being patient. I know it's been hard. Let me just close by telling you a couple thoughts. It's the mark of the magnificence of our justice system that we insist on justice and fairness even for those who have treated others with ultimate inhumanity and injustice. And your decision in this case is about one thing. Not emotion. It's about justice; hard, cold facts; and proof; justice.

Your verdict won't mend aching hearts forever broken. Your verdict will never bring Helena Garrett's baby back to her. She will mourn for the rest of her life, and nothing any of you can say or do will change this. That's not what this process is about. The mothers and fathers, sons and daughters, grandparents and grandchildren who died in that bombing will not be brought back by your verdict, and that's not the reason to deliver a verdict in this case.

There's one thing that you can do. At the times of greatest trial and difficulty, it's vitally important to return to basic principles, basic principles. The central tenet of our government is justice. I ask you to deliver the justice that defines this nation, the justice that the nation deserves.

I ask you to declare together with a strong, clear voice that our society has no room for one whose seething hatred leads

n1m

to kill innocent children; innocent men and women; innocent, dedicated public servants. The only justice -- only justice can begin to salve the wounds that this crime has wrought on the wounded, the killed, and on this nation.

Thank you.

THE COURT: Members of the jury, we do appreciate your

cooperation and patience in letting us run late to complete these arguments, but I did believe that fairness required that we hear it all. But, of course, you haven't heard all that is necessary before you begin deliberations, because I will instruct you on the law, and I'm not going to do that tonight.

What remains with respect to the trial is of course these instructions, which I will read to you, and you will have copies -- the deliberating jurors will have copies of the instructions. That's a very important part of what you must consider in your deliberations in the case and in arriving at your verdict; because as I have said so many times, that you must decide this case according to the evidence and also according to the law. You've heard the evidence. You've heard

the arguments. You have not heard the particular principles of

law that will be given to you in the instructions. And you will recall way back when you were being selected as jurors in this case, you agreed that the instructions are important and you would be bound by them.

So we're going to recess now; and of course it is different from all other recesses in this trial, because, first of all, you have heard everything except the instructions; and secondly, we are now keeping you together, separate and apart from other people, and you understand the reasons for that and the importance of it.

But the case is not given to you now. And while you may be together, you should not begin your deliberations and you should not discuss the case. And you must await one more time, even in your own minds, coming to any sort of conclusions about this case.

I'm going to suggest that we start at 8:30 in the morning. I think given the arrangements, that ought to be convenient for everybody. And I can get these instructions read to you, I'm sure, in less than an hour, and then the case will be yours to decide. The deliberations will take place here, in this courthouse, you understand.

We will also make arrangements to have all of these exhibits organized. We're going to take the courtroom next to this one and block it off, put all of the exhibits in there, and have arrangements so that at your own choice and with your own timing, you can go there and review these exhibits such as you wish.

There will be an index for you so that -- two indexes, really, one with respect to the Government's and one with respect to the defense exhibits, so you'd have an opportunity to find that which you want to find.

to find what you want to find.

And, of course, the deliberations will be done by 12 of you, and there will be a separation there; but the alternates will -- you know, we said back in World War II, that those -- "They also serve who only sit and wait." That's true with respect to alternate service on a jury. But we ask you to wait till you have heard what I have to tell you about the law, and then you'll be getting the case rather early tomorrow morning, and then it will be up to you. But for now, continue to avoid discussion of the case. Keep open minds, and we hope that you have a pleasant evening.

8:30 in the morning. Does anybody have any problem with that? I think you've been getting here about that time anyway. So we'll expect to come right into the courtroom and finish this trial at that time.

You're excused until then.

(Jury out at 6:35 p.m.)

THE COURT: We'll recess till 8:30 tomorrow morning.

(Recess at 6:35 p.m.)

* * * * *

INDEX

Item	
Page	
CLOSING ARGUMENTS	
By Mr. Jones	
By Mr. Nigh	
By Mr. Tritico	
By Mr. Jones	
By Mr. Mendeloff	

* * * * *

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.

Paul Zuckerman

Kara Spitler