

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68
UNITED STATES OF AMERICA,
Plaintiff,

vs.

TERRY LYNN NICHOLS,
Defendant.

AA

REPORTER'S TRANSCRIPT

(Trial to Jury: Volume 59)

AA

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 9:00 a.m., on the 3d day of November,
1997, in Courtroom C-204, United States Courthouse, Denver,
Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
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APPEARANCES

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NEUREITER, and JANE TIGAR, Attorneys at Law, 1120 Lincoln
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Defendant Nichols.

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PROCEEDINGS

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

THE COURT: Please be seated.

Good morning.

You have, Mr. Mackey, an estimate of the length of
your opening? Or whoever is delivering the openings.

MR. MACKEY: I am, your Honor; and I would estimate
an
hour and 40 minutes, perhaps.

THE COURT: All right. Is the defense going to do an
opening?

MR. TIGAR: Yes, your Honor. We'll open. Mr. Woods

and I will open about the same amount of time.

THE COURT: Well, we'll probably be needing or -- maybe need a recess in there; and instead of my interjecting, you may suggest where it's an appropriate time, seeing how it develops.

MR. TIGAR: We'll do that, your Honor. Thank you.

THE COURT: Okay. All right. Let's bring in the jury.

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

THE COURT: Members of the jury, good morning.

We've assigned seats for you this morning, and what we'll be doing in the course of the trial is changing the seating arrangement every now and then so that each person on the jury will, in the course of the trial, then have a little different perspective on the courtroom and the ability to see the exhibits and so forth. So we'll let you know when we change the seat assignments.

Now, as I indicated when I reviewed with you when we were last together, on Thursday, the outline of the trial, we're going to begin, first of all, with asking all of you to take the oath as jurors for deciding the case according to the law and the evidence, and then we'll proceed with opening statements.

And at this time, I'll ask you please to stand, raise your right hands, and take the oath as the jury for the trial of this case.

(Jurors sworn.)

THE COURT: Please be seated.

Now, again, just to review with you briefly again the stages of the trial that I outlined for you before, we will start with opening statements. And the opening statements are simply an opportunity for the lawyers on each side to give you an overview, a preliminary view, an introduction, if you will, of what they expect the evidence in the case to be. But before hearing from counsel, I want to remind you that what is said in opening statements is just that, expectation of what the evidence may be in the case. It will not be a part of the evidence. The evidence will come in, of course, as witnesses are called to the stand and the evidence is taken.

So these opening statements, though, are a chance for us to sort of get a picture in the beginning of just what we can expect to hear and what the issues will be in the case. So with that, I'll call on the Government counsel for the opening statement, Mr. Mackey.

OPENING STATEMENT

MR. MACKEY: Thank you, your Honor.

May it please the Court. Ladies and gentlemen of the jury, good morning. April 19, 1995, fell on a Wednesday, the middle of the workweek. On that morning, Terry Nichols was home. He was home in Herington, Kansas, with his wife and his daughter. He was home and at a very safe distance from a truck bomb that exploded in downtown Oklahoma City in front of the federal building in Oklahoma City in the heartland of America. And Terry Nichols had planned it just that way.

There were others in Oklahoma City on that morning, and Terry Nichols had planned on that, too. Tim McVeigh was in Oklahoma City on the morning of April 19. He was one of those

Oklahoma City on the morning of April 19. He was one of those people. And on that day, Terry Nichols knew exactly where Tim McVeigh would be and knew exactly what he would be doing.

Tim McVeigh was there to do one thing, one thing only, the only thing left to do, the final act in a plan of terrorism that Terry Nichols and Tim McVeigh had embarked upon months and months before that date.

This is a case about two men who conspired to murder innocent people. Their plan succeeded when the bomb went off and people died.

On that day, at that moment, Terry Nichols was not in Oklahoma City; but during the months before that date, Terry Nichols had been side by side with Tim McVeigh, together in their plan of violence.

And true to that plan, on Wednesday, April 19, 1995, Terry Nichols knew that Tim McVeigh would be delivering a large Ryder truck as close as he could get it to the federal building in downtown Oklahoma City. And true to that plan, Tim McVeigh detonated that bomb.

When the bomb exploded at 9:02 that morning, it consumed the truck, it destroyed the building, and it changed the face of American history forever. And it killed 168 people, men, women, and children, the cross section of this country, whites, African-Americans, Hispanics, Native Americans, people of all ages, races, and backgrounds.

For just as Terry Nichols and Tim McVeigh had planned, there were others in Oklahoma City on April 19, innocent others. And at that moment, in fact, there were hundreds of people inside the Murrah Building. Most of those people were there as workers, men and women carrying out the business of the federal government. Others were there as citizens, seeking the assistance of that very same government. And still others were youngsters and toddlers and infants entrusted by their parents to the safekeeping of the day-care center in that building.

Those who died were there inside the building. Scores of people, including 19 children, died because they were there inside the building. They were inside a nine-story building as the floor below them gave way and the ceiling above them crashed down.

As time stood still in downtown Oklahoma City that morning, Terry Nichols was home in Kansas, a long, safe distance from the blast that rocked that city just the way he had planned it.

At that same moment, Terry Nichols also thought he was safe from ever being linked to that horrible crime. Prior to the blast, without detection, Tim McVeigh and Terry Nichols had together managed to buy or steal every ingredient necessary to build that bomb: 4,000 pounds of ammonium nitrate, hundreds of blasting caps and explosives, 165 gallons of racing fuel, and numerous 55-gallon plastic barrels. And they had managed to do so for months before their target date of April 19, 1995, the second anniversary of the tragedy at Waco.

Together, they had hidden the ingredients in storage

together, they had hidden the ingredients in storage sheds, many of which were under false names. Together, they had acquired the knowledge to make those ingredients into a bomb; and together, just the day before the bombing, they had mixed those ingredients and prepared that bomb, just as they had planned.

And as they had planned, by the time the bomb went off, Tim McVeigh's getaway car was safe in Oklahoma City, waiting for him as his means of escape. Their plan did not call for Terry Nichols to be in Oklahoma City on that day.

But Susan Hunt, whom you will meet in this case, did need to be in Oklahoma City on April 19. She had a job. She had an important job. She was the office manager for the Department of Housing, Urban and Development (sic). And she had a plan. It was a simple plan: go to work and do what she could to provide housing for people in the state of Oklahoma. She followed her plan that day and somehow survived the bombing.

But Terry Nichols and Tim McVeigh also followed their plan that day, and 35 of Susan Hunt's co-workers died.

Their plan was not perfect. As the evidence will show, not all things went according to plan. Within minutes of the blast, Tim McVeigh was arrested by an alert Oklahoma highway trooper stopped on the highway. At the time of his arrest, Tim McVeigh was carrying a concealed weapon and driving on Interstate 35, north out of Oklahoma City, north to Kansas.

Within hours of the blast, the FBI had traced the Ryder truck bomb back to its origin, back to Junction City, Kansas. And by the next day, the FBI had found a witness who had seen Tim McVeigh driving a Ryder truck in Junction City, Kansas. Junction City, Kansas, is only a short distance from Herington, Kansas, where Terry Nichols was living at that time.

And within two days of the blast, on Friday, April 21,

FBI agents were on the way to Herington, on their way to talk to Terry Nichols. Terry Nichols had not planned on Tim McVeigh's arrest nor on the rapid developments of the FBI's investigation. He had not planned on any of it happening at all and certainly not as quickly as it did. And within two days of the blast, Terry Nichols was being questioned by the FBI, and his home was searched. And in the course of this trial, you will hear what Terry Nichols told the FBI, the denials of involvement; and you will see the physical evidence taken from his home that contradict those denials.

You will see the physical evidence such as a receipt for the purchase of 2,000 pounds of ammonium nitrate and a phony name with Tim McVeigh's fingerprint on it found in Terry Nichols' house. You will see 300 feet of blasting caps found in Terry Nichols' house, a cordless drill used to break in and steal explosives found in Terry Nichols' house, 55-gallon plastic barrels of the kind used to hold the bomb found in Terry Nichols' house, and stolen guns used to finance in part the bombing plan, all found in Terry Nichols' house.

In the course of the days that will now follow, you will hear the testimony from witnesses that will prove, as the grand jury has charged in an 11-count indictment, first, that Terry Nichols conspired with Tim McVeigh and others unknown to

use a truck bomb against the Murrah Building and the people inside the building; second, that Terry Nichols aided and abetted Tim McVeigh's use of that truck bomb to kill people and destroy that building; and third, that Terry Nichols aided and abetted the first-degree murder of the eight federal law enforcement officers who died that morning on April 19.

During this case, you will hear legal terms like "conspiracy" and "aiding and abetting," and these terms simply mean that a defendant may be guilty of a crime even if he wasn't at the scene. Under the law, Terry Nichols did not have to be in Oklahoma City on April 19 to be guilty of conspiring with Tim McVeigh or to be guilty of aiding and abetting the murders that took place that day.

Those criminal charges will shape the evidence in this case. They will focus on the question: Did Terry Nichols know of the plan to bomb the Murrah Building? And if he did know, did he intentionally help carry out that plan? The answer to those questions, as the evidence will show, is that Terry Nichols knew from the beginning of the plan to bomb the Murrah Building and he intentionally helped that plan succeed. Terry Nichols was there at the beginning and he was there at the end. The evidence will show that Terry Nichols was there at the beginning to acquire the bomb ingredients and he was there at the end to stash Tim McVeigh's getaway car in Oklahoma City and to prepare the bomb.

Prior to the explosion, Tim McVeigh -- excuse me -- Terry Nichols was there side by side with Tim McVeigh each step of the way. Terry Nichols plus Tim McVeigh equaled the destruction of the Murrah Building.

The prosecution's evidence in this case will focus on the conduct of Terry Nichols. The only person on trial is Terry Nichols. The only charges before you are those against Terry Nichols. And as his Honor has told you, the ultimate question for you in this case will be did the United States prove beyond a reasonable doubt the charges against Terry Nichols. This case will not seek to identify every possible other co-conspirator. As we proceed through trial, we will keep the evidence focused on the conduct of Terry Nichols.

You are the fact-finders in this case. One fact is horribly true: 168 people died as a result of the bombing that morning. 168 men, women and children. This is a murder case; and because it is a murder case, we will prove to you the identity of each of those victims and the manner of their death. That kind of testimony will be emotional, but by no means will every victim's story be told during this trial. Instead, in the course of our case, you will hear from one representative of the 13 agencies and organizations that once had offices in the Murrah Building.

Those representative witnesses will describe the events of that morning. They will identify their fellow workers who died. They will tell you about the way the blast, the loss of life, and the total destruction of their workplace changed their lives and stopped the flow of services to the people in Oklahoma. And you will see from those representative witnesses, those federal employees who were there inside that

building that day that they were hard-working, conscientious people who had done no harm to Terry Nichols or Tim McVeigh and certainly did not deserve to die.

But there were more victims than those who simply worked there. The Murrah Building was a modern office complex and it had a day-care center. It was called the America's Day-Care Center (sic), and it was located on the second floor. There were deaths inside the day care that day. But no one from the day care can come to court and tell you about those who died. There were three adult workers that day. Every one of those women died. There were 21 children in the day care. 15 of those children died. Obviously, those who survived cannot come to court and testify about those who died. And so instead, one mother representing those who died will appear before you and identify the children and the adult care workers who died.

But there were yet other victims, more than the workers and more than the day-care people. On Wednesday, April 19, the Murrah Building was open for business. And quite predictably, at the moment of the blast, there were visitors inside, people at the first floor Social Security office seeking assistance and others inside that public office building. 29 people, including four children, were simply visiting at the moment the bomb exploded, people who on any other day would not have been there. They died alongside the federal workers and the people in the day-care center.

All of this testimony about the loss of life will be difficult to listen to, but it's the reason we're here. This is a murder case.

The image of anyone exploding a truck bomb outside a day-care center is almost unthinkable, but that is the ugly reality of this case. What could give anyone enough reason in their own mind to commit such a crime? The answer for Terry Nichols and Tim McVeigh is revealed in the date of the bombing, April 19, 1995, two years to the day after the fire at Waco, Texas. Terry Nichols and Tim McVeigh blamed the federal government for the events at Waco, and they selected April 19, 1995, as the date to strike back against that government. The date of the bombing was no coincidence. Terry Nichols and Tim McVeigh intended to send a message on that day.

Then why that place? Why Oklahoma City? Why the Murrah Building? The motive in this case is revealed not only by the date but by the building they chose to attack. As you will learn from a friend of Tim McVeigh, Tim McVeigh thought that ATF agents who had served at Waco had their offices in the Murrah Building in Oklahoma City. You will learn that he was right, and you will hear testimony from one ATF agent who was at Waco and who was also in that building on April 19.

The proof in this trial will allow you to compare the views of hatred of the federal government shared by Terry Nichols and Tim McVeigh. When Trooper Charlie Hanger arrested Tim McVeigh on the morning of the bombing on April 19, on the front seat of McVeigh's car were documents referencing Waco. And when the FBI searched Terry Nichols' house two days later, inside that house, they found documents about Waco. Terry Nichols felt strongly about Waco. And before the bombing, he described it as an injustice and predicted civil unrest in this

described it as an injustice and predicted civil unrest in this country because of it.

Terry Nichols and Tim McVeigh thought that attacking the Murrah Building was a justified way to express their views about Waco. The bombing of a federal office building after the workers and the day-care children had arrived was nothing less than an act of terror.

Of course, there could be no prosecution if the only proof was that Terry Nichols viewed the federal government with contempt. Each of us has our rights to our political views. But the proof will show far more than political dissent and contempt for the government. The proof will show that Terry Nichols teamed with Tim McVeigh in a plan of action, a plan to commit a horrendous act of murder. Actions do speak louder than words.

And we are not here because of anything Terry Nichols thought or said. We are here because of the actions of Terry Nichols. We are here because Terry Nichols purchased 4,000 pounds of ammonium nitrate in a false name, because Terry Nichols stole, transported, and concealed hundreds of blasting caps and other explosives, because Terry Nichols bought barrels in which to mix those ingredients, because Terry Nichols rented storage sheds in false names to hide the bomb ingredients, because Terry Nichols stashed Tim McVeigh's getaway car in Oklahoma City, because Terry Nichols helped McVeigh prepare the bomb and because Terry Nichols tried to conceal and destroy the evidence of his own role in that plot. By these actions, Terry Nichols displayed his commitment to a plan that ended with the death of many, many people and the destruction of a federal building.

This will be a trial about that conduct. You will learn that Terry Nichols and Tim McVeigh knew each other and had known each other for many years before the bombing, before they decided to take action against the federal government and its employees. Their relationship dates back to 1988 when they first met as they entered the U.S. Army together. Tim McVeigh was a 19-year-old recruit, and he worked hard to impress his platoon leader, Terry Nichols, a man who had enlisted in the Army at the age of 33. These men were more than 13 years apart in age. They left the service at different times, but they remained friends. By 1993, they were living together. Tim McVeigh spent a part of 1993 with Terry Nichols and his family in Decker, Michigan. By that time, Terry Nichols, divorced from his first wife, was married to a young Filipino woman whom he had met during a short visit to that country. But both Terry Nichols and Tim McVeigh left Michigan in 1993 and neither ever returned there to live.

Instead, by early 1994, Tim McVeigh had settled in Kingman, Arizona, a small town near the western border of Arizona and Nevada. Terry Nichols lived briefly with Tim McVeigh in Kingman and then in early 1994 moved to Marion, Kansas, central Kansas. But as you will learn, distance did not separate these two men for long. In fact, during the late summer 1994, Tim McVeigh traveled from Kingman to Arizona -- excuse me -- to Kansas and lived with Terry Nichols and his family. Tim McVeigh was still there in Kansas in mid September of 1994 when Terry Nichols' wife and his daughter left this

country and returned to the Philippines. His wife and daughter did not return to this country for the next six months. Their departure left Terry Nichols and Tim McVeigh alone and together in Marion, Kansas, and that combination of time and place begins a series of events spelled out in the grand jury's indictment.

September 1994 marks the time and central Kansas marks the place where Terry Nichols and Tim McVeigh took their first steps in their plan to attack the federal government. They began with their commitment to each other and Tim McVeigh's attempt to recruit a third person, a man named Michael Fortier, into their plan.

Michael Fortier, who had met both Terry Nichols and Tim McVeigh when they were together in the Army, will be called by the government as a witness. Michael Fortier is in custody and is awaiting sentencing on his conviction on four felonies, including conspiring with Terry Nichols and Tim McVeigh to transport and sell stolen firearms and including crimes arising from false statements he made to the FBI when first questioned about the bombing in 1995. Because he is testifying pursuant to a plea agreement, you should consider Michael Fortier's testimony with caution and care and look for corroboration. The evidence in this case will provide that corroboration.

Michael Fortier will tell you that after he left the Army, he and Tim McVeigh remained friends and the two of them spent time together, time together in Kingman; and because of the time spent together, Michael Fortier knew that Tim McVeigh held a deep-seated hatred for the federal government about Waco. He will tell you that in 1994, he got a letter from McVeigh and in the letter, Tim McVeigh told him, "Terry and I have decided to take offensive action against the government." The letter went on to solicit Michael Fortier to join McVeigh and Terry Nichols in their plan of violence.

Michael Fortier will also tell you that shortly after he got the letter, he had a face-to-face conversation with Tim McVeigh, who was there to recruit Michael Fortier. Michael Fortier spelled out to -- Tim McVeigh spelled out to Michael Fortier what their plan was. He described the plan of Terry Nichols and Tim McVeigh. "Our plan is to bomb a federal building." Michael Fortier rejected McVeigh, but his refusal did not stop Terry Nichols and Tim McVeigh from pursuing their plan. And in fact, in the 30 days thereafter, in the fall of 1994, Terry Nichols and Tim McVeigh together had gathered virtually all of the ingredients they would need for their bomb.

The Murrah Building in downtown Oklahoma City is gone. It's gone entirely from where it once stood. And the hole that remains is proof that it takes very little to build a weapon of mass destruction; a little know-how and just a few ingredients. The truck bomb that exploded on that day in downtown Oklahoma City, as the evidence will show, was enormously powerful, but it was also quite simple. It consisted of tons of ammonium nitrate fertilizer, gallons of fuel, mixed inside large plastic barrels. And that mixture was then rigged with explosives that would both ignite the blast and boost the power. And you will hear from experts in this case who will describe the recipe for

that bomb and how very, very simple that recipe is. And you will learn, too, that Terry Nichols and Tim McVeigh had the know-how. They knew how to build a fertilizer bomb.

The main component of that bomb was ammonium nitrate, and it was Terry Nichols who acquired it. Unlike Tim McVeigh, Terry Nichols had spent many years on farms in Michigan and Kansas, and that farming experience made Terry Nichols the natural candidate to walk into a Kansas farm supply store and pay for 4,000 pounds of ammonium nitrate. And the proof will be that Terry Nichols did just that.

Buying ammonium nitrate fertilizer is not illegal. Possessing ammonium nitrate fertilizer is not illegal. And yet as the proof will show, Terry Nichols used a phony name when he bought 4,000 pounds of fertilizer at the Mid-Kansas Co-op in McPherson, Kansas. The phony name Terry Nichols used on both occasions at the farm supply store was Mike Havens, first on September 30, 1994, when he paid for 2,000 pounds of fertilizer and later on October 18, when he paid for another 2,000 pounds. On both occasions, he used the false name Mike Havens.

Staying at motels is certainly not illegal. And yet as the proof will show, Terry Nichols used phony names when he registered at motels. And twice in October of 1994, within days of the ammonium nitrate purchases, Terry Nichols used the phony name Havens when he checked into motels. First, he used the name Terry Havens, and later, he used the name Joe Havens. And on both occasions, Terry Nichols checked in under the same false address and the same false license plate number.

The trail that began at the farm supply store in McPherson, Kansas, in the fall of 1994 ended at Terry Nichols' house in Herington, Kansas, in the spring of '95. On April 22, the FBI executed a court-issued search warrant at the Terry Nichols residence; and inside the house, they found a receipt, a receipt from the McPherson farm supply store. The receipt was found inside a kitchen drawer in Terry Nichols' kitchen. The receipt was dated September 30, 1994, and it reflected the sale of 2,000 pounds of ammonium nitrate to a customer using the name Mike Havens. So the proof in this case will answer the question who was Mike Havens, and the answer is Terry Nichols.

The proof will be that on September 30, Terry Nichols was at that farm store, using the name Michael Havens and purchasing a ton of fertilizer, a key ingredient in the bomb.

September 30, 1994, was a Friday. It was also the last day that Terry Nichols worked for a Kansas rancher, a man by the name of Tim Donahue. Mr. Donahue's ranch is located less than 40 miles from the McPherson, Kansas, supply store. Mr. Donahue will be a witness in this case, and he will tell

you that Terry Nichols surprised him on the last day of work when Terry Nichols announced that he would be leaving early. Terry Nichols did leave work early that day; and several hours later that same day near dusk, Tim Donahue went back to Terry Nichols' house to run an errand. When he got back to Terry Nichols' house, Terry Nichols was there and so was Tim McVeigh. Parked at the house on September 30 was Terry Nichols' truck, a dark-colored pickup with a light-colored camper shell.

The employee at the farm store on that same day will

The employee at the farm store on that same day will also testify, Rich Schlender. And he will tell you that the customer, Mike Havens, was driving a dark-colored pickup with a light-colored camper shell. Mr. Schlender encountered the same Mike Havens the second time on October 18 when he returned to buy yet another 2,000 pounds of ammonium nitrate; and again, the customer was driving the dark-colored pickup with a light-colored camper.

Rich Schlender will not come to the stand and point out Terry Nichols to you and swear to you that he knows that man was Mike Havens, but he will tell you that the receipt found in Terry Nichols' house was for the sale of 2,000 pounds of ammonium nitrate from his store; his store in McPherson, Kansas.

The evidence in this case will also answer the question if you buy 2,000 pounds of ammonium nitrate for an illegal purpose, what do you do with it. And the answer is you hide it. And that's what Terry Nichols and Tim McVeigh did as part of their plan. They rented storage sheds, multiple storage sheds, and more often than not in phony names. Before Terry Nichols purchased that first 2,000 pounds of ammonium nitrate on September 30, they already had a place to hide it. On September 22, several days before, while Tim McVeigh and Terry Nichols were living together in Kansas, McVeigh rented a storage shed. He used a phony name, but he left his fingerprints behind on the lease. And when asked to provide for an address, he gave them Terry Nichols' address. And on that date in September of 1994, Tim McVeigh selected the storage facility in, of all places, Herington, Kansas, the very same city that Terry Nichols selected to move to in March of 1995, only weeks before the bombing.

Ammonium nitrate fertilizer, even tons of it, cannot hurt you if left alone, but by its chemical nature, it is an oxidizer; and combined with certain other ingredients, it can become deadly. In the fall of 1994, Terry Nichols and Tim McVeigh launched a plan to acquire all those other ingredients that would turn commonplace fertilizer into something very dangerous, and together, they used whatever means necessary to get those other ingredients.

Burglary and theft were some of those means that Terry Nichols and Tim McVeigh used to get the explosive components. Together, they broke into explosive sheds at a Kansas rock quarry near where Terry Nichols lived; and together, they stole from the sheds hundreds of blasting caps and other explosives.

In the course of this trial, you will hear from people who make their living around explosives. One such person is Bud Radtke. Mr. Radtke has a job title. He's known as a blaster, and he does that just about every day at the Kansas rock quarry where he has worked for years. It's his job to use explosives to blast rock out of the earth for road construction. And each day, Mr. Radtke sets off explosives that are a combination of ammonium nitrate fertilizer and fuel, and he boosts the four of those explosives with sausage-shaped explosives called Tovex, and he often initiates those explosions with blasting caps often referred to as Primadet.

Mr. Radtke's explosives are obviously dangerous, and so they are stored some safe distance away from the operations

quarry as well as the offices of the quarry. They are secure under padlock, and they are surrounded by walls of dirt to keep them safe.

When Bud Radtke came to work on Monday, October 3, he discovered that his explosives sheds had been broken into and hundreds and hundreds of Tovex sausages and Primadet blasting caps had been stolen. Whoever broke in had come prepared because each shed was protected with a padlock and that padlock in turn protected by a shroud, and someone had a cordless drill to reach up inside that shroud and drill out the padlocks that protected the sheds. The thieves left behind one padlock, padlock that had been drilled out; and that padlock has become evidence in this case.

The evidence in this case will answer the question where was Terry Nichols when Bud Radtke's explosive sheds were broken into. And the answer will be that he was together with Tim McVeigh, engaged in the theft of those explosives. You'll learn that Mr. Radtke's rock quarry is about 10 miles from where Terry Nichols and Tim McVeigh were living in central Kansas in the fall of 1994. And on the other hand, Kingman, Arizona, is more than 1,000 miles away, more than 1,000 miles away from central Kansas. And that's how far Terry Nichols and Tim McVeigh drove in order to hide the stolen explosives.

On Tuesday, April 4, the day after Mr. Radtke had discovered the burglary, Terry Nichols and Tim McVeigh were together in Kingman, Arizona. And on that date in Kingman, Tim McVeigh rented a storage shed. And Michael Fortier will tell you that he went to that storage shed with Tim McVeigh and Terry Nichols. He'll describe what he saw: Boxes with the emblem of explosives.

The FBI's investigation in this case led not only to Oklahoma and to Kansas but to Arizona, as well. And after the bombing, the FBI recovered Primadet blasting caps from Kingman, Arizona, and they tested those blasting caps for fingerprints, and you'll learn the results of those tests. Terry Nichols' fingerprints were found on blasting caps recovered in Kingman, and you will learn that the blasting caps that had Terry Nichols' fingerprints were identical to the blasting caps found in Terry Nichols' house in Kansas and, in turn, identical to the blasting caps stolen from Bud Radtke.

In the course of this case, you will also hear yet other kinds of physical evidence that links Terry Nichols to the theft of Mr. Radtke's explosives. In April 1995, when the FBI learned about the break-in at the rock quarry, they gathered up the evidence from the local sheriff's office, including the padlock. And at the same time, they also found a cordless drill and a set of drill bits inside Terry Nichols' home, and then they went to work to see if either of those might hold the clues to the identity of the burglars. You'll learn what they found.

Under a microscope, a person can see and study the marks that were inside the padlock, the drilled-out padlock, and they can see the marks left by the drill bit that drilled that padlock out. And just as easily, someone can see and study the marks of which -- the marks that would be left by drill bits taken from Terry Nichols' home. And expert

witnesses will tell you when those two sets of tool marks are compared, they match and tell you that one of the bits, one of the drill bits found in Terry Nichols' home was the bit used to drill the padlock at Bud Radtke's quarry.

Of course, it is not illegal to use phony names. But in this case, you will learn that Terry Nichols did so over and over again. And the question is why. And the answer is, the evidence will show -- is that he did so repeatedly in order to conceal his involvement with Tim McVeigh and the bombing plan. When questioned, Terry Nichols was asked by the FBI, "Have you used a name other than your own?" He told them about two, Ken Parker and Jim Kyle, but he concealed others. Terry Nichols did not reveal his use of the name Havens, but then Havens was the name used to purchase 4,000 pounds of ammonium nitrate.

The other name he concealed was Bridges, Daryl Bridges. And during this trial, you will learn exactly why Terry Nichols concealed from the FBI the fact that he was Daryl Bridges, because to discover that fact would mean the FBI could easily trace the activities and the whereabouts of both Terry Nichols and Tim McVeigh.

What Terry Nichols attempted to conceal from the FBI nonetheless will be proven to you in this trial, and you will learn that, together, Terry Nichols and Tim McVeigh bought a telephone calling card in the name of Daryl Bridges and the use of that phone card left a trail. By following that trail, you will see that both men used that card in 1994 to acquire bombing components; and by following that trail, you'll see that both men used that card in 1995 to finalize their plan of violence.

And during the course of this trial, you'll be able to follow the entire trail left by the Daryl Bridges phone card. The trail begins at Terry Nichols' house again because that's where the FBI found the Daryl Bridges phone card. And as you will learn, they followed that trail by trying to determine who paid for the phone calls on that card. And the proof will be that only two men ever paid for calls on the Bridges card: Two men, Terry Nichols and Tim McVeigh.

But the FBI did not stop there. They gathered the records that would show when and where those phone calls were made on the Bridges card. And you'll hear testimony from a computer specialist from the FBI, a man named Fred Dexter, who studied those records and prepared a chronological summary of the phone calls made on the Bridges phone card, and that summary is the rest of the trail. The Daryl Bridges phone summary will serve as an important source of information to you in the course of this trial. It will help you and other witnesses reconstruct the activities of Terry Nichols and Tim McVeigh. And the trail left by the Bridges phone card will be part of the proof, for example, that Terry Nichols and Tim McVeigh were successful in the fall of 1994 in finding yet other bomb ingredients.

Again, ammonium nitrate by itself is harmless, but if mixed with fuels, a sensitizing process, it is one step closer to becoming an explosive. One different -- among the different types of fuels that can be used to accomplish that purpose is nitromethane. Nitromethane is not the kind of fuel you buy at

a gas station. It's a special kind of fuel for dragsters and race cars. It's sold by chemical companies and by distributors at dragstrips, and the proof in this case will show that Terry Nichols and Tim McVeigh knew that's where you go in order to find nitromethane.

The evidence in this case will answer the question where was Terry Nichols during the month-long search to acquire nitromethane. The answer will be right there side by side with Tim McVeigh. Like the other bomb components, the search for nitromethane began in central Kansas in the fall of 1994. The Bridges phone card left a trail of 30 phone calls made to chemical companies, racetracks, and distributors for nitromethane. Most of those calls were made during the last week in September, the last week of Mr. Nichols' employment at the Donahue ranch, the same week of the purchase of the 2,000 pounds of ammonium nitrate.

The search for fuel that began in Kansas in 1994 ended in Texas later in October of 1994. It ended on October 21 at a dragstrip south of Dallas, Texas, almost 500 miles from central Kansas. The search ended when a fuel salesman at a dragstrip sold three 55-gallon drums of nitromethane for cash to a man with Tim McVeigh's physical features. The salesman will testify in this case, and he will tell you that he loaded that 165 gallons of racing fuel into the back of a pickup with a light-colored camper shell.

He will tell you that Terry Nichols was not there when he made that sale. But the proof in this case will show you where Terry Nichols was, and the answer will be close at hand.

You will see proof that Terry Nichols spent the night before the fuel purchase in a motel in Oklahoma. That motel sits south of Oklahoma City and on the interstate that connects to Dallas. When Terry Nichols left the motel the next morning, the same day of the fuel purchase, he was driving his pickup with the camper shell, and he left his fingerprints behind on the registration card, a card he had filled out in a phony name.

Now, in order to mix ammonium nitrate and nitromethane, you need a container, and the evidence in this case will answer the question where was Terry Nichols when the containers for the bomb were being sought. And the answer again, just as with the ammonium nitrate, just as with the explosives, side by side with Tim McVeigh.

As the evidence will show, in October 1994, Terry Nichols and Tim McVeigh were quite busy. They were hiding the stolen explosives in Arizona, they were acquiring the second ton of ammonium nitrate in Kansas, they were tracking down racing fuel in Texas, they were searching for containers that would hold those ingredients and they were crisscrossing huge parts of this country while doing all of that. And again, the trail left by the Bridges phone card will reconstruct that activity, including the search for the bomb containers.

On October 18, 1994, the second 2,000-pound purchase of ammonium nitrate was made; and later that same afternoon, October 18, there were a number of phone calls made on the Bridges calling card from nearby Council Grove, Kansas. Calls

Bridges calling cards from nearby Council Grove, Kansas. Calls were made from a pay phone located across the street from a storage facility where Terry Nichols had rented a unit in one of his false names. Several of the calls from that Council Grove pay phone were made to companies that used barrels and containers.

The last phone call on that day, April 18, was to a coin shop in Wichita, Kansas; and on the very next morning, Terry Nichols walked into that very same coin shop. You will hear the testimony of the coin shop dealer, and you will see Terry Nichols' pictures captured on the store's security camera. Moments after Terry Nichols walked out of the coin shop, the Bridges trail started up again, from a pay phone across the street from the coin shop, five phone calls made in a row, all five made to phone companies listed -- excuse me -- to companies listed in the phone book in the Yellow Pages under barrels.

And the proof will be that Terry Nichols got what he was looking for as he stood at a pay phone in Wichita, Kansas, going down the Yellow Pages, calling companies under barrels.

Part of that proof was found in the bomb crater in Oklahoma City. The other part of the proof is found in Terry Nichols' garage. The bomb that destroyed the Murrah Building left very few traces of the bomb that it once was. Large, well-made bombs, when they explode, leave little trace behind, and that was the case here. But there were some clues that did remain. Small amounts of ammonium nitrate were found embedded into a piece of the Ryder truck. And in addition, small plastic fragments were found among the streets surrounding the bomb crater. You will see those plastic pieces. They are off-white in color. And you will see when you look at them that they have been subjected to intense heat and pressure.

You will hear testimony from witnesses about those plastic pieces, including Linda Jones. Linda Jones is an explosive expert from Great Britain, and she will tell you that those plastic pieces found near the bomb crater were close, quite close to the explosion.

And as you will see in this case, the same plastic fragments found in the streets of Oklahoma City were linked to evidence taken from Terry Nichols' garage. Among the many items discovered during the search were plastic barrels. Each was a 55-gallon container. Each was off-white in color. Plastic is a chemical compound and a trained chemist can look inside a piece of plastic and tell you how it was made and a chemist will do so in this case and he will tell you that the charred pieces of plastic found in Oklahoma City and plastic from the barrels found in Terry Nichols' garage were made by the same manufacturer.

Your Honor, this would do. How long did you want to go?

THE COURT: Well, all right. We'll -- we'll take a break at this time. Perhaps we can take a 15-minute break. And members of the jury, we're doing this so -- you can step back to counsel table. We're doing this so that, you know, you can focus attention on these statements. We're not going to always be breaking at the same time in our recesses here, so I'll acquaint you with that now, but we know that all of us

have limited attention spans, so we're going to be breaking in at times to assist, recognizing the importance of what counsel are providing here in these overviews and we'll be doing the same thing, of course, during the defense opening.

So I'm going to also be saying to you at every break what I'm going to say to you now and which you'll get very tired of hearing, but it is important for you to recognize that you must, among yourselves, wait until you've heard it all before you even talk about it or talk about any part of it. So during all of our recesses, I'm going to be instructing you that you must not discuss anything that you see and hear in the courtroom or anything about the case. That seems unnatural at first, but I'm sure you'll get used to it. And it simply recognizes, as I'm sure each of you does recognize, that we can't put the trial on all at once and of course, we're not into any evidence even yet, so please withhold discussion of the case among yourselves and even in your own minds withhold forming any judgments.

Opening statements are not a part of the evidence in the case so what is said in opening statements does not factor in to your decision, even, but I just mention this caution to you now and as I say, I'll be repeating it whenever we recess because it is an extremely important part of your duty as jurors to withhold judgment in the case as well as not let anything outside of the case interfere with your decisions that are to be made on the law and the evidence.

We're going to recess now about 15 minutes. So you're excused from the jury box.

We'll be going out this way. We'll get you used to this routine as we go.

(Jury out at 9:52 a.m.)

THE COURT: Okay. 15 minutes.

(Recess at 9:53 a.m.)

(Reconvened at 10:07 a.m.)

THE COURT: Be seated, please.

(Jury in at 10:08 a.m.)

THE COURT: All right.

Mr. Mackey, you may resume.

MR. MACKEY: As you will learn through the course of this trial, by the close of October of 1994, Terry Nichols and Tim McVeigh had acquired virtually all of the ingredients they would need in order to build the bomb. Those ingredients were hidden safely in storage sheds. But the two men knew at that time there would be more costs to put their plan in final stages, more costs as they waited for April 19 to arrive, they would need money to rent a bomb truck, they would need money to continue to pay the rent on the storage sheds where they hid their components, and they would need money to pay the bills on the Bridges phone card, all of those needs at a time when neither man had regular income and both were living out of hotels and traveling great distances. That was their problem. Armed robbery was their solution. And again the search at Terry Nichols' house produced evidence that you will see, this time evidence of armed robbery.

In addition to the 55-gallon off-white plastic

barrels, in addition to the receipt for the ammonium nitrate, in addition to the drill and drill bit, in addition to the blasting caps, in addition to the Bridges' phone card, in addition to all of that, the FBI found firearms and ammunition stolen during an armed robbery of an Arkansas gun collector.

That evidence and other testimony will answer the question where was Terry Nichols on November 5, 1994, when Tim McVeigh's former friend and gun collector, Roger Moore, was robbed at gunpoint at his home in Arkansas.

The answer is that Terry Nichols was there; the answer is Terry Nichols was the robber.

As the evidence will show, on that day, Terry Nichols, wearing a ski mask and carrying a pistol-gripped shotgun, stole firearms, ammunition, currency, gold and silver coins, pieces of jade, and other valuables from Roger Moore. And Terry Nichols committed that robbery as one means to finance his plan with Tim McVeigh.

During this trial, you will meet Roger Moore. Roger Moore is 62 years old. For many years, he's lived in a remote area of Arkansas near Hot Springs. He owns horses and other livestock that he keeps on his property. And for years, he has run a mail-order business from that home selling ammunition around the country. He also attends weekend gun shows where he sells ammunition.

And Roger Moore will tell you that during one of those gun shows, he met Tim McVeigh and that on more than one occasion afterward, Tim McVeigh stayed at his home in Arkansas. Roger Moore will also tell you that his relationship with Tim McVeigh ended very badly, ended in an argument. On Saturday, November 5, 1994, Roger Moore was home alone because his business associate and companion, Karen Anderson, was on the road at a gun show.

And around 9:00 that morning, Roger Moore walked out of his home to tend to his animals; and just as he stepped outside his home, he was confronted by a man wearing a ski mask, carrying a pistol-gripped shotgun. The man tied Roger Moore up, put duct tape across his eyes, and over the course of the next hour or so virtually cleaned out Roger Moore's home. He loaded the loot into Roger Moore's van and then drove off. That van was recovered empty a short distance from the Moore home later.

During the robbery, the masked gunman took scores of firearms, cash, gold and silver coins, precious stones, pieces of carved jade, camera equipment, ammunition, alarm devices, even the quilt off of Karen Anderson's bed and the keys to Roger Moore's safe-deposit boxes. I mention these items because many of them were found, found in Terry Nichols' house.

Because the gunman wore a ski mask and because Roger Moore had his eyes taped, he cannot positively identify the robber, but he knows it was not Tim McVeigh. He knows Tim McVeigh is tall and thin and that the robber, his robber, was shorter with a medium build. And as the evidence will show, Tim McVeigh was not the robber. Tim McVeigh was not even there. Instead he was miles away at a gun show and then later at his father's home in western New York. But because the

at his father's home in western New York. But because the gunman knew exactly where to find many of Roger Moore's possessions and because they had split on very bad terms, Roger Moore always suspected that Tim McVeigh had something to do with the robbery. Roger Moore was right.

Michael Fortier will testify that Tim McVeigh told him

that he and Terry Nichols had settled upon a plan to rob a gun collector who Tim McVeigh knew and who lived in Arkansas. McVeigh also told Fortier that Nichols and he -- that is, McVeigh -- would share the proceeds from that robbery.

In the course of this case, you will learn a bit about

U.S. geography. You will learn, for example, if you drive from Roger Moore's house in Arkansas, you can get to Junction City, Kansas, in nine and a half hours, time enough to rob Roger Moore in the morning and check into a motel in Junction City the same day.

The Sunset Motel in Junction City is where Terry Nichols checked into that day. When he checked in, he used a false name and a false address. And on the next morning, Sunday, Terry Nichols began calling for Tim McVeigh in New York, and Tim McVeigh began calling for Terry Nichols in Kansas. And as the evidence will show, they did not stop calling until they connected. Between Sunday morning and Monday evening, the two men made 16 phone calls to each other, often from pay phones, six different pay phones.

November 7 was a Monday, the first business day after the robbery. And on that Monday, Terry Nichols rented a storage shed, Unit No. 37, at Council Grove, Kansas, using the name Ted Parker. The woman who met Terry Nichols at the storage facility to rent him the unit remembers him driving a dark-colored pickup with a light-colored camper shell. Terry Nichols rented Unit No. 37 on that day even though he already had Unit No. 40 at the very same facility.

As of November 7, Terry Nichols had two storage names (sic) under two different false names at the same facility in Council Grove, Kansas, two units that he would pay to keep for months. The evidence will show that at least one thing happened between the time that Terry Nichols rented his first storage unit at Council Grove and the second. And the answer is that Roger Moore lost a truckload of property.

Within days of the Roger Moore robbery, Terry Nichols left Kansas and drove to Las Vegas. He spent time with his ex-wife, Lana Padilla, and their 12-year-old son, Josh; and two weeks later, he left this country and flew to the Philippines. You will learn that when Terry Nichols left for the Philippines, he was afraid that he would not come back alive. And so before he left, Terry Nichols took steps to assure that his bombing plans with Tim McVeigh could succeed, even in the event he did not return alive.

On November 22, 1994, immediately before he boarded his plane to the Philippines, Terry Nichols handed Lana Padilla, his ex-wife, a paper bag, a paper bag wrapped in tape with instructions not to open the bag unless he failed to return by a future date. Lana Padilla was curious; and shortly after Terry Nichols left, she opened the bag. She was not

supposed to unless Terry Nichols did not come back. She did so anyway.

Inside the bag, as she will tell you, she found, among other things, a letter from Terry Nichols to Tim McVeigh. And in that letter, Terry Nichols specified that he was writing to Tim McVeigh only in the event that something should happen to him; in his words, only for my -- purpose of my death. The letter explained that if McVeigh received the letter, it was because Lana Padilla had mailed it to him at Terry Nichols' instructions, but Terry Nichols assured Tim McVeigh in that letter that that was all Lana Padilla knew.

The letter to Tim McVeigh spelled out instructions to McVeigh about the two storage units that Terry Nichols had in Council Grove, Kansas. And at the end of those instructions, Terry Nichols wrote the words, "You're on your own. Go for it." At the very bottom of the letter, Terry Nichols added the words, "As far as heat, none that I know."

Inside the bag, Lana Padilla also found directions to a secret compartment that Terry Nichols had built into the back of one of her kitchen cabinet drawers. She followed the directions and found \$20,000 of currency hidden in that compartment.

Inside the paper bag, she also found instructions to another storage unit, yet another one, and this one in Las Vegas. Lana Padilla visited that storage shed while Terry Nichols was still in the Philippines. She'll describe what she saw. She spent time in that storage shed.

Inside the shed she saw a ski mask. She also saw a box of carved jade, camera equipment, precious stones, among other things, like the things just stolen from Roger Moore.

As it turns out, it was never necessary for Lana Padilla in fact to mail anything to Tim McVeigh. In mid January, 1995, Terry Nichols came back from the Philippines safe and unharmed. And so Terry -- excuse me -- Lana Padilla never married -- excuse me -- never mailed Terry Nichols' letter.

When he got back, they talked about what she had found, and they quarreled about the money that Terry Nichols had hidden in her drawer, and she kept part of it. But she did not tell Terry Nichols that she also kept a copy of the letter that he had written to Tim McVeigh. After the bombing, Lana Padilla turned over that copy to the FBI, and you will see that letter in evidence in this case. And you will see in Terry Nichols' own words, "Go for it."

When Terry Nichols returned from the Philippines in January of 1995, he was alone. His wife and daughter were still in the Philippines. He owned no real estate anywhere. He had no job, no regular paycheck. He could have chosen to live anywhere. He could have chosen to live in Las Vegas near his son. His choice was to return to Kansas. Within days of his return to this country, he was back in Kansas and together again with Tim McVeigh, together with Tim McVeigh at the Sunset Motel in Junction City, Kansas.

Terry Nichols immediately went back to the place where the bomb components were stored, the stolen property hidden, and back to the company of Tim McVeigh.

As the evidence will show, after their initial rendezvous in January of 1995, Terry Nichols and Tim McVeigh kept their distance from one another during the waiting period that followed. Terry Nichols stayed in Kansas; Tim McVeigh stayed in Arizona. While Terry Nichols waited, he made more payments on the storage shed, paid money on the Bridges card, but other than that, there was little else left to do but wait for April 19. In 1995, there was no need for the plan to absorb every waking hour; and in fact, in 1995, Terry Nichols did other things, many entirely innocent things.

But on April 11, 1995, the wait was over. Eight days before the bombing, the wait was over. On that day, April 11, Terry Nichols called for Tim McVeigh in Arizona, and Tim McVeigh called for Terry Nichols in Kansas. And on the next day, Tim McVeigh checked out of his Arizona motel and began the drive to Kansas, to the site of the bomb components and to Terry Nichols.

The proof in this case will establish exactly when Tim McVeigh arrived in Kansas in April of 1995. Proof will not come from police authorities but from men who make their living working on cars. On the evening of Thursday, April 13, six days before the bombing, Tim McVeigh had just made it across the Oklahoma border into Kansas. Tim McVeigh stopped there briefly at a Wal-Mart, the city called Arkansas City, Kansas. And at the Wal-Mart, because he had car problems, Tim McVeigh bought an oil filter that would fit the small Pontiac station wagon he had just driven from Arizona. Tim McVeigh got a Wal-Mart customer receipt for the oil filter, and that receipt showed the purchase took place shortly before 6:00 p.m. on Thursday, April 13.

At 9:00 a.m. the very next morning, Friday, April 14, Tim McVeigh drove that same small Pontiac station wagon into the Firestone store in downtown Junction City, Kansas, just a few miles north of Terry Nichols' home. The station wagon was belching white smoke, and in time it was clear repairs were too expensive.

In the course of that morning, as the evidence will show, Tim McVeigh got another car and made two phone calls. For \$250, Tim McVeigh bought a 1977 Mercury Marquis from the Firestone manager and left his Pontiac station wagon there as part of the deal. And while the Firestone store was working on the Mercury to get it ready for the road, Tim McVeigh walked across the street to the bus stop and made two pay phone calls at that bus stop, using the Daryl Bridges card. The first call he made from that pay phone at the bus stop was to Terry Nichols' home. It lasted about a minute. He hung up and immediately made a second phone call.

Tim McVeigh's very next phone call was to the Ryder dealership in Junction City, Kansas, to the very same Ryder dealership that would later rent him the bomb truck.

When Tim McVeigh drove out of the Firestone store that morning with his old, large Mercury, he told the manager he was headed to Michigan. That's not where he went. He stayed right there in Kansas near Terry Nichols. Later that same day, Friday, April 14, McVeigh drove his Mercury into the Dreamland Motel in Junction City. The Junction City Dreamland Motel sits

Motel in Junction City. The Junction City Dreamland Motel sits right next door to the Sunset Motel. When he checked in, Tim McVeigh used his true name, Tim McVeigh. But he listed as his address the Decker, Michigan, farm where Terry Nichols and he had once lived together.

At the time he checked in, he paid for four nights in advance, four nights' lodging, indicating he would leave on Tuesday, April 18, the day before the bombing.

When Tim McVeigh drove into the Dreamland, he had his Mercury. In the course of his stay, the car disappeared, and he was last seen driving a Ryder truck. The evidence in this case will explain why and how it came that Tim McVeigh would show up with a Mercury and leave in a Ryder. And the proof will focus on the events that happened in the three days immediately preceding the bombing.

The proof will be that on Sunday, Easter Sunday, Tim McVeigh's Mercury was driven from Kansas to Oklahoma City and parked near the Murrah Building where it would serve as his getaway car. The proof will be that on Monday, Tim McVeigh rented the Ryder truck. On Tuesday, the bomb components, the tons of bomb components were mixed together, the preparation of the bomb complete. And of course on Wednesday, Tim McVeigh delivered that truck bomb to downtown Oklahoma City.

The evidence in this case will answer the question: Where was Terry Nichols on each of those days? And the answer will be that whenever Tim McVeigh needed help to finish the plan, Terry Nichols was there, side by side with Tim McVeigh. Their plan called for stashing the getaway car in Oklahoma City. Terry Nichols was there to do that. Their plan called for moving and mixing the ingredients to prepare the bomb. Terry Nichols was there to do just that.

In the course of this trial, you will learn there is no dispute about one thing: Terry Nichols was in Oklahoma City on Easter Sunday. He was in Oklahoma City on Easter Sunday with Tim McVeigh. There will be considerable dispute about why. As fact-finders in this case, you will be called upon to decide: Was Terry Nichols in Oklahoma City on Easter Sunday with McVeigh to stash the getaway car as part of the bombing plan or, as Terry Nichols told the FBI, was he there to pick up a used television set?

The answer in this case will be that Terry Nichols on April 16, 1995, Easter Sunday, was there just as he had been, as Tim McVeigh's partner in the plan to bomb the building. His presence in Oklahoma City had nothing to do with a television set and everything to do with completing their plan.

You must resolve that question in the course of this trial because Terry Nichols first posed it when he made his statement to the FBI after the bombing.

The series of events that led the FBI to Terry Nichols all emanate from one single clue left behind by Tim McVeigh. When Tim McVeigh checked into the Dreamland, as I mentioned, he left behind the address of Decker, Michigan, an address shared with he and Terry Nichols. When he was arrested on the day of the bombing, April 19, he listed his address as Decker, Michigan. That clue led the FBI to Terry Nichols in Herington, Kansas. It led them to Terry Nichols on Friday, April 21. And

by that day, April 21, the FBI knew that Terry Nichols and Tim McVeigh had been friends. They knew they had lived together in Decker, Michigan; and they knew that at that very time Terry Nichols was living in Herington, a city just nearby Junction City where Tim McVeigh had stayed before the bombing and where the bomb truck had been rented.

And the proof will show, just as the FBI was learning about Terry Nichols, Terry Nichols was learning about the FBI's investigation. Before Terry Nichols ever spoke to the FBI, he already knew that Tim McVeigh had been arrested. He knew that the bomb truck had been traced back to Kansas, and he knew that it was suspected that the bomb was made of ammonium nitrate and he heard news on the radio that the FBI was looking for him.

Terry Nichols later told the FBI he left his house that Friday to avoid another Waco. At 2:45 p.m. on that Friday, Terry Nichols, his wife, and his daughter got into his pickup and drove off. They did not go to the Herington police station. Instead they drove off in the opposite direction. And only when Terry Nichols spotted the FBI cars that arrived in tiny Herington did he stop, turn around, reverse course, and then go to the police station.

In the course of this trial, you will have the opportunity to hear what Terry Nichols told the FBI on Friday, April 21. You will hear from Agents Steve Smith and Scott Crabtree. They'll describe that interview for you.

They'll tell you that consistent with FBI policy, they did not tape-record Terry Nichols' statement but rather took contemporaneous notes and then prepared a written report. Agent Smith, who is a former accountant for Arthur Andersen, will describe the very meticulous notes that he took as he spoke to Terry Nichols at Herington police station, and he will describe how Terry Nichols' very deliberate manner in answering allowed him to keep pace with everything that Terry Nichols said. In his statement to Agent Smith and Crabtree, Terry Nichols denied any involvement in the Oklahoma City bombing, and he denied knowing of anyone else's participation.

Now with the benefit of the FBI subsequent investigation, you'll have the opportunity to test the truthfulness of Terry Nichols' statements. Terry Nichols will fail that test because what he told the FBI on April 21 simply was not true.

As you might expect, Agents Smith and Crabtree wanted to know from Terry Nichols about his last contact with Tim McVeigh. Terry Nichols told them that he had spoken personally with Tim McVeigh on Easter Sunday and that Easter Sunday was the first time that he had any contact with Tim McVeigh for months. Terry Nichols told the FBI that on Easter he got an unexpected phone call from Tim McVeigh who told him that he was calling from Oklahoma City. Of all people, Tim McVeigh; of all places, Oklahoma City; of all times, three days before the bombing.

And according to Terry Nichols' story, months earlier he had written to Tim McVeigh and asked him to bring a used television set to Kansas. Tim McVeigh was living in Arizona. Terry Nichols was living in Kansas. And supposedly on Easter, Tim McVeigh called from Oklahoma City, announced to Terry

Nichols that his car had broken down, and if Terry Nichols wanted his used television set, he would simply have to drive to Oklahoma City and pick it up.

Despite the fact that it was Easter Sunday, despite the fact that McVeigh called while Nichols finished his Easter dinner with his family, despite the fact that Josh, his 12-year-old son, was visiting on his spring break, despite all of that, Terry Nichols agreed to immediately leave his home and to make the 500-mile, 10-hour, round-trip drive to Oklahoma City and back.

Within 10 minutes of McVeigh's call, Terry Nichols left his house. He left his wife, his daughter, and his son. Before he left his family, he told them where he was going. He said, I'm going to Omaha, Nebraska. Omaha, Nebraska. He did not tell his family that he was going to Oklahoma City.

In the course of this case, you will have to answer the question: Why would Terry Nichols lie to his family about where he was headed on Easter Sunday?

According to Terry Nichols' story, he was to go to downtown Oklahoma City and McVeigh would find him. Terry Nichols said he drove past the Murrah Building and then found Tim McVeigh in the vicinity.

He told Agents Smith and Crabtree that when he picked up McVeigh, McVeigh was standing there in a light rain with his used television set and green laundry bag, no car in sight, according to Terry Nichols.

Terry Nichols also told the agents that he drove Tim McVeigh from Oklahoma City back to Junction City, Kansas, passing through Herington along the way, and then dropped Tim McVeigh off in the middle of the night, 1:30 in the morning, at a closed McDonald's restaurant. According to Nichols, without

knowing where Tim McVeigh would be staying, without knowing when or if he would ever see him again, he left his Army buddy standing at a closed McDonald's in the middle of the night.

Agents Smith and Crabtree asked Terry Nichols about the conversation he had with Tim McVeigh as the two drove back from Oklahoma City to Junction City, the 5-hour drive. Terry Nichols admitted that the two men talked about Waco.

The Government's evidence in this case will prove that Terry Nichols concealed what he knew to be the real purpose of the trip to Oklahoma City on Easter. He made a false statement when he told the agents that he assumed the call came from Oklahoma City because, as the evidence will show, there was a phone call to Terry Nichols' house on Easter Sunday, about 3:00 p.m. It didn't come from Oklahoma City. As the evidence will show, it came from Herington, a few blocks away from Terry Nichols' house, a phone call made from Tim McVeigh on the Daryl Bridges phone call. It was the phone call to let Terry Nichols know it was time to take the vehicles to Oklahoma City.

And that Easter afternoon, two vehicles drove from Kansas to Oklahoma City, Terry Nichols' pickup and Tim McVeigh's Mercury; and that evening, that night, one vehicle came back, Terry Nichols' truck carrying Tim McVeigh and Terry Nichols. The getaway car was planted in Oklahoma City.

Terry Nichols also made a false statement, as we will

prove, when he told the agents that he had not spoken or talked to Tim McVeigh for months before the Easter Sunday phone call. In fact, as the evidence will show, the two men saw or spoke to each other virtually every day in the week preceding the bombing.

You will see physical evidence that Terry Nichols and Tim McVeigh got together almost immediately after Tim McVeigh arrived in Kansas in April of 1995 and that they had been together in Kansas before they ever drove to Oklahoma City.

As you will recall, when McVeigh arrived in Kansas, on April 13, he bought an oil filter at Wal-Mart. By the next morning, Friday, he had no use for that oil filter for that small Pontiac station wagon. He had just bought a large Mercury.

On the next day, Saturday, April 15 -- before Easter Sunday -- Saturday, April 15, Terry Nichols had both that Wal-Mart receipt and the oil filter in his possession. You will see the receipt, and you will learn where the FBI found it.

When Terry Nichols arrived at the Herington Police Department on April 21, he was carrying his wallet, and inside the wallet was the Wal-Mart receipt. Terry Nichols could not have known the clues that would -- that receipt would provide to the FBI's investigation. The receipt had two dates on it, April 13, the day that Tim McVeigh bought the oil filter, and April 15, the day that Terry Nichols presented that oil filter at a Wal-Mart store near his home.

The receipt also had two fingerprints on it. One belonged to Terry Nichols. One belonged to Tim McVeigh. According to his story, Terry Nichols had not seen Tim McVeigh for months until Easter Sunday, but he had the Wal-Mart receipt on Saturday, the day before. And as the evidence will show, both can't be true.

The Wal-Mart receipt will show, will prove, that Terry Nichols and Tim McVeigh were together face to face in central Kansas before Easter Sunday. It will prove that Terry Nichols tried to conceal the real purpose of his drive to Oklahoma City.

On Monday morning, only hours after Terry Nichols, according to his story, had dropped Tim McVeigh off in the middle of the night, the two men were in touch again. That Monday morning, Tim McVeigh called Terry Nichols' home from the Dreamland. And later that same day, Tim McVeigh went to the Ryder truck dealership, Elliott's Body Shop, in Junction City and rented the truck that would become the truck bomb. On that Monday afternoon, using the false name of Bob Kling, Tim McVeigh picked up the 20-foot Ryder truck that would become the bomb truck. Terry Nichols was not with Tim McVeigh at Elliott's Body Shop, but Tim McVeigh had to tell the dealership where it was that he was taking their 20-foot Ryder truck, just like Terry Nichols had to tell his family where he was going when he left on Easter Sunday. They both chose to say Omaha, Nebraska.

Monday ended the way it started, with phone calls between the two men. This time it was Terry Nichols who called for Tim McVeigh. Standing at a pay phone late Monday night

for Tim McVeigh. Standing at a pay phone late Monday night, April 17, only hours before -- or rather after the bomb truck had been rented, Terry Nichols called for Tim McVeigh at the Dreamland. The evidence will be that on that Monday night, Terry Nichols drove his son, Josh, to Kansas City to put him on a plane to send him home to his mother. With his son on a plane and while still at the airport, Terry Nichols called Tim McVeigh at the Dreamland using the Bridges phone card. Even Tim Mc -- excuse me, even though Terry Nichols had insisted to the FBI he had no idea where Tim McVeigh was staying, he called the Dreamland Motel, the precise place where Tim McVeigh was staying.

And the evidence will show that Terry Nichols' Monday night phone call from the airport had a purpose. The purpose was to make plans to meet the next morning at a location between Terry Nichols' home and Tim McVeigh's motel. The place was Geary Lake, a low-lying area next to the highway that connects Herington, where Terry Nichols lived, and Junction City, where Tim McVeigh was staying, a place where two men, after removing the tons of ingredients from nearby storage, could mix those same ingredients into a bomb.

The next day, April 18, Tuesday, the day before the bombing, was a day that one man spotted a Ryder truck sitting on the bank of the Geary Lake. He also spotted a pickup. A second man got an even better look. April 18 was not a workday

for Army Sergeant Richard Wahl. He took the day off to go fishing with his son. It was not a perfect day for fishing by any means. It was cold. It was windy. It was miserable. But

a promise is a promise, and his son insisted.

And Richard Wahl will tell you that he fished all morning on Tuesday, April 15, at Geary Lake. He will tell you that he didn't catch a thing and that it was unpleasant to be outside as the wind, so strong, continuously blew his boat to shore. But as he and his son fished there for three hours, he noticed something. He noticed that though there were no other fishermen there, his son and he were not alone. From the time he got there in the morning until the time he left at noon, there were two other vehicles parked nearby, less than 150 yards from the boat ramp that he used. And while he was at that lake, those two trucks remained parked side by side. One was a large, yellow Ryder truck. The second one was a dark-colored pickup with a light topper.

Richard Wahl watched for people around the truck but did not see anyone, but he will tell you that he saw signs of activity because the side door on the Ryder truck was open at one point and then later closed shut.

And as you will hear, Terry Nichols and Tim McVeigh knew how to build fertilizer bombs. They had spent time reading literature, researching the different recipes, talking among themselves about which recipe was most explosive. They knew what they were doing on April 18.

After helping to mix the bomb on Tuesday, April 18, Terry Nichols' part of the plan was over. The last step would be left to Tim McVeigh, just as they had planned. When Terry Nichols drove from Geary Lake that morning, he drove to a

military surplus center at Fort Riley, an Army post outside of Junction City. We will prove to you that he did not sign in until 1 p.m. that afternoon.

However, Terry Nichols gave an entirely different accounting for his whereabouts that same day when questioned by the FBI. He told Agents Smith and Crabtree that he had been there all morning outside looking at surplus military items, all morning in the cold, windy, miserable conditions.

He also told the agents that early that morning, unexpectedly, he got another phone call from Tim McVeigh; and Tim McVeigh wanted to borrow his pickup. And with very few questions asked, according to Terry Nichols, he loaned his pickup to Tim McVeigh that morning.

But as the proof will show, Terry Nichols was not at the Army surplus center all morning on Tuesday, April 18. No one saw him there, because he wasn't there. He was with his truck at Geary Lake. He was with Tim McVeigh. And Terry Nichols' and Tim McVeigh's plan was tragically completed the next day at 9:02 in downtown Oklahoma City.

On Friday morning, April 21, Gladys Wendt, who will be a witness in this case, as usual, drove from her farmhouse to her hair appointment in Herington, Kansas; and after her hair appointment, as usual, she went to her friend's home to pick her up for the two to go out for coffee.

The friend lived in Herington on 2d Street, the same street that Terry Nichols lived on. Gladys Wendt pulled her car up and, as was her custom, waited outside for her friend to come out. As she sat there waiting, she noticed a man across the street furiously tossing ammonium nitrate on his tiny unkempt yard, as she will describe it, so much so, that it began to accumulate like snow. The man was Terry Nichols. And the fertilizer toss was one attempt to conceal his involvement in the Oklahoma City bombing. Later that day, Terry Nichols admitted to the agents that he had tried to get rid of the ammonium nitrate because he thought having fertilizer in his house would make him look guilty to a jury.

He also insisted the only ammonium nitrate he had ever purchased was a hundred pounds in the spring of 1995 and that the only reason he bought that was to resell it as plant food at gun shows.

On Wednesday morning, April 19, 1995, the huge truck bomb exploded outside the nine stories of plate glass windows in downtown Oklahoma City. The explosion ripped a gaping hole in the building and snuffed out the lives of 168 innocent men, women, and children. No one in that building, no one in that city, no one in the nation could comprehend that anyone could hate so much. But the evidence in this case will prove us wrong. It will prove that over the eight months leading up to April 19, Terry Nichols and Tim McVeigh had together carefully and methodically prepared for that one day when they would launch a violent attack against America. And on that day, America's TV screens filled with the images of collapsed buildings, a city in chaos, and the lifeless bodies of small babies. And on that day, Terry Nichols was home. He was home in Herington, Kansas, with his wife and his daughter. Terry

Nichols had planned it just that way.

Thank you.

THE COURT: Are you prepared to proceed, Mr. Tigar?

You have heard of course, only from counsel for the Government. There is another side in the case, of course. So you'll hear now opening statement for the defense. Mr. Tigar.

MR. TIGAR: I will begin, your Honor, then; and at some point, we might take a break.

THE COURT: Yes, wherever you say.

OPENING STATEMENT

MR. TIGAR: May it please the Court, Counsel, Mr. Nichols, members of the jury, on the 19th morning of April at 9:02 in the morning, or actually just a few minutes before, Timothy McVeigh parked in front of the Murrah Building in Oklahoma City. He was in a Ford F-700 truck from Ryder rentals with a 20-foot box. And Timothy McVeigh was not alone. With him in the cab of that truck were one or two other people. The driver parked the truck and set the bomb to go off.

Yes, Terry Nichols was not there and did not know about the bombing until the next day. He was at home in Herington, Kansas, at 109 South 2d Street in a house he'd bought and moved into one month and six days before. He was at home. With him there were his pregnant wife, Marife; their infant daughter, Nicole; Marife Torres Nichols, born in the Philippines, who came to the United States as Terry Nichols' wife. Terry Nichols was building a life, not a bomb.

My name is Michael Tigar; and with our team, I represent Terry Nichols. We're here to gain respect for the undeniable fact that right now Terry Nichols is presumed innocent. We're here to help point out the hundreds of reasonable doubts that lurk in the evidence.

In this opening statement, I want to introduce you first to our team members, the ones that are going to help us here; and then I want to outline for you the allegations, the charges, to point out what is not in dispute, what we agree with these prosecutors about, and what on the other hand we do contest, what the Government will try to prove and fail, and where you may find the reasonable doubts when the evidence is all in. Yes, when the evidence is all in.

Can you see my hand? You can't see my hand. Not until I've turned it over and showed you both sides could you say that you've seen my hand.

And just as in life, the last bit of evidence about an important thing may be the thing that lights up the whole picture, so we beg you to have open minds. We'll present evidence to you, beginning with our cross-examination of the very first witnesses that take that witness stand; but for the first few weeks of the trial, the Government has the choice of what witnesses to bring, what evidence to bring. He that pleadeth his cause first seemeth just, but the defendant come and searcheth it out.

Over and over again, you're going to hear about the presumption of innocence. That means we start with a clean page. That means that suspicion, prejudice, prejudgment, speculation have no place.

Now when the Government next, we are going to

NOW, when the Government rests, we are going to present our witnesses and exhibits. So after introductions and review of the allegations here, Ron Woods and I, my co-counsel, are going to do an opening statement in three parts so that you can have a perfect way of keeping track of the strands of proof.

First, I'm going to describe for you the results of our investigation into the Oklahoma City bombing. I'm going to describe for you how Timothy McVeigh planned this crime, who he planned it with, and who helped him commit it. I will tell you about the people that Timothy McVeigh used and lied to, the people he used in ways that he had to know would put them under unjustified suspicion.

Second, Ron Woods and I are going to tell you about Terry Lynn Nichols, born and raised in a farming community, married, the father of three children. Ron will tell you about what happened when Terry Nichols first heard on the radio that he was being sought as somebody who knew Timothy McVeigh, how he went right to the police station and spent nine-and-a-half hours telling the truth -- yes, the truth -- to the FBI, even as the FBI agents lied to him, lied to his family, and lied to the court.

And third, I'm going to talk very briefly about the FBI and its laboratory, its so-called "experts," some of whom are going to testify here, how those people ignored vital evidence, used junk science, did sloppy fieldwork, and rushed to a very wrong and quite early judgment. I say "briefly," because when their witnesses testify, we will cross-examine them fully and you'll have a chance to see who it is that's right and who is not.

So who's on the Nichols team? Well, the first member is Terry Lynn Nichols. Me, I'm Michael Tigar; and I am a school teacher. I teach at the University of Texas in Austin, Texas. My co-counsel is Ron Woods, solo practitioner from Houston, former United States Attorney for the Southern District of Texas and formerly special agent for the Federal Bureau of Investigation. We have some lawyers here, young lawyers helping: Reid Neureiter from Washington, Adam Thurschwell from New York, and Jane Tigar from Austin.

Now, handling the evidence -- and you'll see these people working in the courtroom from time to time -- we have Rose Haire, Tia Goodman, and Jan Halbert and Molly Ross from Oklahoma City and Stephanie White from Denver.

So let's begin by asking: What are those prosecutors charging that Terry Nichols did? What are they going to try to prove beyond a reasonable doubt? Well, you know there's an indictment, and there are 11 separate charges. When the case is all over, Judge Matsch will tell you what the formal, legal elements of each of these charges are; and he'll say to you, in effect, that if the Government fails to prove any element of a charge beyond a reasonable doubt, then it becomes your duty to acquit on that charge and to say not guilty.

Now, the first charge is that Timothy McVeigh, Terry Nichols, and others used -- conspired to use a weapon of mass destruction against the Murrah Federal Building and the people in it. We do not contest that Timothy McVeigh did indeed conspire with several other people to blow up that building.

We agree and understand and stipulate and concede that at least 168 people died from that crime, that the crime visited enormous harms on the hundreds of others. There's no dispute about that. The dispute is can they overcome the presumption in law that Terry Nichols had nothing whatever to do with it.

But I want to warn you: The prosecutors may choose not to accept the reality that we accept. They may choose to put before you graphic, emotional, tragic evidence of the devastation on April 19. These evidence -- these events, I repeat, are -- they're not in dispute. We understand that there's not a joy the world can give like -- like that it takes away. The prosecutors may replay these terrible images over and over as if to say that somebody has to be punished for these things. That, of course, is not the question. The question for you at the end of the evidence will be who; and that is a question to be answered, we trust, in the light shed by the evidence and the law and not in flashes of anger.

If the prosecutors present this evidence, our concern will be to show how it fits the picture that we have drawn and not theirs. We will cross-examine all the witnesses who come here, even those who have lost so much. By doing that, we mean them no disrespect. To the living, we owe respect. To the dead, we owe the truth.

Now, there will be plenty of evidence that Timothy McVeigh promised to do violence and that he preached his gospel of hate, that he assembled the bomb materials. But there will not be any witness who will say that they heard Terry Nichols utter any threats of violence to anybody. The key to this case is the charge, the allegation that Terry Nichols knew there was a conspiracy to use a weapon of mass destruction against the building and the people in it and intentionally joined in that agreement. As to that, Terry Nichols says not guilty, and as to that, the evidence will show you plenty of reasonable doubts. Guilt by association is not conspiracy, knowing is not conspiracy, being associated is not conspiracy.

In saying what the evidence will show -- by the way -

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we don't assume a burden we don't have. Terry Nichols is innocent. He's presumed innocent. If they want to change that, they've got to bring you evidence, to satisfy you beyond a reasonable doubt. We don't have any burden of proof here. And our job is simply to show the reasonable doubts; and to do that, we'll show you the hard evidence, the truthful alternatives to their theory. And from the first witnesses they present, we'll do that when we rise to cross-examine.

Back to the charges. The second charge is that Terry Nichols -- who wasn't there -- knowing, intentionally, willfully, maliciously helped Timothy and others to make and deliver a weapon of mass destruction. Once again, plenty of reasonable doubts; we'll ask for a verdict of not guilty.

The third charge is that Terry Nichols knowingly, intentionally, willfully, and maliciously helped Timothy McVeigh destroy the Murrah Building and cause death to people in it. The evidence will show reasonable doubts; we'll ask for a not guilty verdict.

And the charges in Counts 4 through 11 are murder,

premeditated murder of federal officers working that day in the Murrah Building. They all were killed; they all were on duty at that time. The bomb killed them. There will be many, many reasonable doubts that Terry Nichols knew there was a plan to kill and that he intended to kill anybody. Not guilty.

So those are the charges. Here's the evidence:

Part 1. How did this bomb arrive there on the 19th morning of April just before 9:02? Timothy McVeigh was born in New York. He enlisted in the Army in May 1988. There he met Terry Nichols and Michael Fortier. By coincidence, Nichols from Michigan, McVeigh from New York, and Fortier from Arizona, all entered the Army on the same day, May 24, 1988. In the Army, Timothy McVeigh began to show interest in bombs and bombing. I don't just means military ordnance. One expects that of a soldier. I don't mean pop-bottle bangers. The evidence will show that his interest, that he pursued by writing away for publications, was in manufacturing large-scale, homemade bombs. He was also drawn to fringe groups with an agenda of violence, racial violence.

McVeigh stayed in the Army until December 31, 1991, just the new year, just the start of '92. Terry Nichols had gotten out of the Army in May of '89. Timothy McVeigh served in the Gulf War. But after he got out of the Army, McVeigh's friends noticed that he became changed, more prone to talk about violence. The evidence will show that he began to talk about his views to anyone who would listen and even some who did not want to.

He gave away copies of books in which he had marked things, he gave away pamphlets and writings with racist messages and sent out mailings with violent sentiments. He sent copies of this stuff to dozens of people, including all his former Army friends, including Terry Nichols. And not surprisingly, some of Tim McVeigh's friends handled these things, they'd had them in their house, they got their fingerprints on it. In fact, at one time Timothy McVeigh even borrowed Terry Nichols' copier to make copies of things.

Well, as the evidence will show, this is not or should not be a case about controversial beliefs. Everybody -- you, me, the prosecutors -- has a right to that. Timothy McVeigh was different. His expressed beliefs included acts of massive violence. Yes, there will be evidence that Terry Nichols went to gun shows; that he had copies of the literature you can get at gun shows. Some of that literature contains sentiments that could only be described as radical, right-wing sentiments. And the evidence will be that there are movements in this country who think that we shouldn't have a strong federal government, who think that the gun laws are wrong, who think that there shouldn't be an income tax, who think a lot of things like that.

And the important thing will be to try to distinguish among people who associate with those movements or who hang around with people who have those views, between those who express violence and a willingness to use violence and those who do not. That will be the crucial inquiry.

So let's look at the crucial period here, from

McVeigh's discharge from the Army, beginning of '92, until April 19, 1995, a little over three years.

During this time, McVeigh held all sorts of jobs. He was a security guard, stock clerk, a farmhand, and he discovered the world of gun shows, where all sorts of things are bought and sold. Now, once again, you know, there are millions of Americans, I think, trade at, go to, make their living at these gun shows, including Terry Nichols; and you're going to hear a lot about them. If you've never been to one, they're a little bit like a swap meet or a flea market or a craft show even, in some respects. A promoter, somebody like Sertoma civic organization hires a space and advertises the show. And individual dealers can then rent tables to sell their wares. People sell guns, ammunition, military goods, and other things that would appeal to those at the show or to some of them. Roger Moore, for example, who you'll meet, made thousands of dollars selling porn movies at gun shows.

But for Timothy McVeigh, the gun shows were a special place. Mr. McVeigh began his interest in gun shows in the Army, and he first worked one in May 1992. Terry Nichols was not there.

Early in 1993, Mr. McVeigh was preaching his ideas to his friends Michael and Lori Fortier in Kingman, Arizona. Terry Nichols was living with his family on the Nichols farm in Michigan.

On February 13, 1993, McVeigh met Arkansas gun dealer Roger Moore at a gun show in Florida. Moore and McVeigh became friends and allies. Yes, the evidence will be that they remained friends and allies through the spring of 1995. Moore came to trust McVeigh, as he trusted few others. Moore also goes by the name Bob Miller, or just "Bob from Arkansas."

The McVeigh/Miller friendship provides the key to the so-called "robbery" of Roger Moore. The Government will not be able to prove that Roger Moore was robbed. Too many doubts, too many contradictions in Moore's own stories to different people, just beginning with one version in which he said his robber was a smelly guy who hadn't taken a bath for three months, weighed 180 pounds, was big enough to drag Moore across the floor, had a beard, and was extremely dark-complected. Roger Moore has told six different stories at least about that robbery to as many different people. And whatever version he comes up with will be contradicted by the evidence. He never heard of Terry Nichols.

No, there was too much going on, as the evidence will show, between Timothy McVeigh and Roger Moore and between Timothy McVeigh and Roger Moore's girlfriend, Karen Anderson. Within two weeks of their first meeting, McVeigh and Moore were partners at a gun show at Dinner Cay, Florida on February 27 and 28, 1993.

Later in 1993, McVeigh did visit the Terry Nichols -- did visit Terry Nichols at the Nichols family farm in Michigan. Now, there was where Terry grew up; where his dad, Robert, and his mother, Joyce, lived. Robert and Joyce were divorced, living apart. Terry's older brother, James Nichols, was managing most of the old family farm. Terry's eldest brother, Les, drove a truck. Sister Susie lived nearby. Tim McVeigh did stop by there. Worked a little bit. hung around mostly.

and stop by there. worked a little bit, hung around mostly, moved on.

During part of the year, 1993, Terry Nichols wasn't even in Michigan, because the evidence will be that his wife Marife was a citizen of the Philippines, and the family would visit there as much as they could.

But something else did happen in 1993. On February 28, the Bureau of Alcohol, Tobacco and Firearms, the ATF, raided the Branch Davidian compound in Waco. On April 19, 1993, was the tragic fire that cost the lives of so many men, women, and children. Many Americans were concerned and even angry about these episodes. People have the right to hold differing opinions about Waco, and Terry Nichols certainly held opinions about it.

For Timothy McVeigh, the Waco events -- you're going to hear this in the evidence -- they were a turning point. It moved him to step outside the law. It increased the kind of paranoia he had, even to the point of believing that Russian vehicles were being secretly stored at bases in Mississippi. And he spoke of this to his friends Michael and Lori Fortier and to Roger Moore -- but to Michael and Lori Fortier in Kingman, Arizona.

This is a good point to introduce to you Michael and Lori Fortier. Today, Michael Fortier is in prison. He'll find out when he gets out, only after he testifies in this trial, and after these prosecutors decide whether to make a recommendation about his cooperation. Lori Fortier has been given complete immunity from prosecution. But in 1992, through May 1995, the Fortiers were living in a trailer house in Kingman, Arizona. Michael Fortier was Timothy McVeigh's Army buddy. The Fortiers barely knew Terry Nichols. He never spent more than an hour in their company. The evidence will be that McVeigh used the Fortiers' trailer house as a base and that they were his most trusted confidants, to them were to go warning messages. To them they described in detail how he was going to make a bomb to avenge Waco, or so they say.

You will hear in great detail because the Fortiers helped Timothy McVeigh and were used by him and lied to by him and how they wove their own web of lies. But the Fortiers, despite all this, are not conspirators with Timothy McVeigh to bomb the Murrah Building and are not being treated as such by the Government.

And here is the prosecutors' problem: Neither Michael Fortier nor Lori Fortier ever heard Terry Nichols say that he was going to bomb anything, wanted to bomb anything, planned to bomb anything, was going to hurt anybody, wanted to hurt anybody, or planned to hurt anybody.

In order to believe that Terry Nichols ever planned or wanted any such thing, you would have to put your faith in the Fortiers, even though they never heard it and more. All they know is what Tim McVeigh told them. And the evidence will be that what Tim McVeigh told them was a series of lies, provable lies. The evidence will be that the story told by the Fortiers here in court is just one more version that they've concocted, a story a day, a story a week, until they saw they were caught by their own involvement and made a deal. You'll hear about

that deal. And you're also going to hear that the two of them were habitual users of one of the most dangerous drugs being peddled today, methamphetamine, speed. It makes you paranoid, it gives you delusions, and it makes you a liar.

The Fortiers you'll meet today are very different from the Fortiers of 1993, '94, and '95. We're going to show you the original Fortiers with pictures, their words, their writings before they made their bargains and cleaned themselves up for presentation. We'll show you that they did not even come up with a story about Terry Nichols until Terry Nichols had been charged and the major details they now recount were published in the papers.

It will be a dramatic moment, Michael Fortier in a motel in Oklahoma City with Lori Fortier and some FBI agents, and Michael Fortier steps out onto the balcony of the motel and says to the FBI agent, "You give me immunity, I'll give you Tim McVeigh." And the FBI agent looked back and said in effect, "Son, we've already got Tim McVeigh. If you're going to get something, you'll have to give us somebody else."

This would be a good point to break.

THE COURT: All right. Once again, members of the jury, we'll take a brief recess here to help us be attentive with respect to our ongoing proceedings and these arguments. Now, we may go into what would be the normal noon hour a little bit, so you may want to refresh yourself during this break.

And again, of course, as you're recessed from the -- excused from the courtroom during the previous recess, please hold on, don't talk about the case or anything about it, remembering that we're just in the very preliminary statements here. So you're excused now again about 15 minutes.

(Jury out at 11:10 a.m.)

THE COURT: Okay. We'll again be in recess.

(Recess at 11:11 a.m.)

(Reconvened at 11:26 a.m.)

THE COURT: Please be seated.

(Jury in at 11:26 a.m.)

THE COURT: Please continue.

MR. TIGAR: Thank you, your Honor.

Members of the jury, we were talking about the Fortiers. The evidence is going to show that a lot of the things they say don't make sense because they defy the laws of the physical universe, one of which is that nobody can be in two places at once.

This evidence, however, is going to show there is some reason to sympathize with the Fortiers' plight. There is no question that Timothy McVeigh used them and lied to them. He used their tools. He used their house. He used their phone. He used their typewriter to make false identification. He got them to disguise bomb components; and we know these things from the Fortiers -- not solely from them but because there is independent evidence of each of them.

Every time that we ask you to accept something that the Fortiers have said, we're going to bring independent evidence to verify or corroborate it; and the independent evidence will show that Timothy McVeigh used the Fortiers just

as he tried to use others, such as arms dealers Ed and Dave Paulsen, his boyhood friend Dave Darlak, his friend Greg Pfaff, the Nichols' family friend Kevin Nichols, James Nichols, and yes, Terry Nichols, too.

So let's continue tracking Timothy McVeigh on the road to Oklahoma City. On March 16, 1993, Timothy McVeigh visited Waco in sympathy with the Branch Davidians. He was photographed there. Terry Nichols was not there.

But later in 1993, later in March of that year, Timothy McVeigh began shopping for det cord. Now, that's something you can use to make an explosion; and there is nothing wrong, by the way, with having det cord or blasting caps or dynamite. And the evidence in this case will show that a very large number of people in this case had this kind of material or had access to it. Michael Fortier had it, Michael Fortier's father-in-law had it, Michael Fortier's brother had it, other Kingman residents had it, the Paulsens had it, to name just a few.

Indeed, the evidence will be -- and we might as well tell you -- that in 1976 and 1977, Terry Nichols and his brother James used dynamite on their family farm up in Michigan to clear stumps; and the evidence will be that in that part of Michigan that farmers have ready access to a formula for mixing ammonium nitrate and fuel oil to use (sic) explosions for such things as ditching and trenching and clearing the land. In fact, you can go to the county agriculture agents' office in that county and you can get a recipe for ammonium nitrate and fuel oil for farm purposes, the same official government publication that you can get in county agents' offices all over the United States in farm country.

We're also going to show you when witnesses come how many millions of tons of ammonium nitrate are used by farmers all over the United States every year. But McVeigh's shopping for det cord was in a different context, and Terry Nichols didn't have anything to do with that.

During the first eight months of 1993, Timothy McVeigh was on the move part of the time. Some of the time he, however -- most of it, in fact, he spent in Kingman, Arizona, with his friends the Fortiers. Kingman, Arizona, was Timothy McVeigh's base of operations until April 12, 1995; and the evidence of this close, continual contact will be indisputable.

McVeigh also traveled to gun shows to make money and to keep up connections with his friend Roger Moore. He and Moore were at a gun show in Kentucky on October 2 and 3 of 1993.

In early December of '93, Terry Nichols and his family had left the family farm in Michigan to move to Las Vegas, so Terry could look for work and be closer to his son by his first marriage, Joshua. McVeigh stayed in Michigan. He and Terry Nichols had very little contact, and McVeigh continued to work gun shows. But by the end of 1993, McVeigh's sentiments were taking shape. He confided them in a letter to his sister, and Terry Nichols wasn't there.

The evidence about these casual contacts, people

the evidence about these casual contacts, people writing letters, people visiting each other, is important, for it helps to explain some of the fingerprint evidence in the case that I'll talk about later.

But by the spring of '94, Terry Nichols despaired of finding good work in Las Vegas -- wasn't his kind of town; so he moved back to farm country. His wife and daughter returned from a trip to the Philippines, so the Nichols family occupied a farmhouse together in Marion, Kansas. Terry Nichols was employed by the Donahue ranch.

You're going to hear that he was a good farm worker. He made from 325 to \$350 a week and had the use of a three-bedroom house with utilities paid. But the work was hard and the hours were long, and everybody who worked for Donahue -- some of them will be here -- will tell you that. And Marife and Terry Nichols wondered if there wasn't a kind of work that would let Terry spend more time at home with the rest of his family.

And that was when in the summer of 1994 Timothy McVeigh, in one of his trips across the country, came to the Nichols' home in Kansas with a proposal. He wanted Terry Nichols to work with him, he said, in buying, selling and trading items at gun shows. McVeigh, with much more experience in this field, promised that they could make a good living and most of the shows are on weekends so they'd have free time.

McVeigh, you see, was kind of a drifter. He'd work some gun shows, hold a regular job, work some gun shows some more. No real family ties except to his dad and his sister in New York, who he rarely saw. His real attachments where he spent most of his time were with his friends the Fortiers and their buddies in Kingman, Arizona, and with his confederate, Roger Moore. Later, as the evidence will show, he formed some alliances with others.

In 1994, however, McVeigh had been living with the Fortiers before he came back to Kansas. He had been the best man at their wedding. In July of that year he was their housesitter when they went on their honeymoon. He sold them explosive components when he left Arizona. McVeigh and Michael Fortier had even gone to a militia organizer in Arizona in April of 1994, and Terry Nichols wasn't there.

Terry Nichols, not knowing these facts, agreed to do business with McVeigh. And while the business was getting started, Marife Nichols decided to return to the Philippines with young Nicole, their daughter, to visit Marife's parents and take classes at the university near her childhood home. She left the United States September 18, 1994.

On September 30, 1994, Terry Nichols finished working at the Donahue ranch. Up until that date, he was working in the fields most weekdays and -- excuse me -- every weekday and most Saturdays. As for the gun show partnership, McVeigh had a different agenda. You're going to hear from the Fortiers that McVeigh sent them a letter in late August or early September, 1994, saying that McVeigh and Terry Nichols were going to take action against the government. There is no copy of this so-called "letter" in existence.

The Fortiers never mentioned it until they were

dealing with the prosecutors to escape years in prison and perhaps a greater punishment. In any event, this so-called "letter" that only the Fortiers know about was written, they say, by Timothy McVeigh.

One trouble with their story is that Lori Fortier says that just after they got the letter, McVeigh came to Arizona and they talked about it. She says that McVeigh was in Arizona September 16, 1994; but he could not have been. He was in Kansas at that time. The Fortiers and physical reality collide. Another problem, of course, is that it isn't so. Terry Nichols never agreed to any such thing.

When we speak of these dates, these contradictions, there are going to be thousands of documents in evidence. Sometimes you'll have to resolve contradictions.

The FBI cast its net very wide. For example, we have a record in this case of almost every telephone call made by everybody connected with this case for years. The FBI went out and got all those records. Now, the problem with these phone records is sometimes the phone companies make mistakes. We can prove that. The problem with these phone records, such as those that "Mr. Computerman," Mr. Dexter, is going come in -- is that sometimes the FBI makes mistakes, and you'll see that. And often, the records don't show what is claimed for them.

There are some examples. Let's take phone records for a minute. There is no dispute way back in 1993, long before anybody is charged with doing anything wrong, Terry Nichols bought one of those prepaid calling cards. He and Marife were living in Michigan at the time on a farm that's run by Terry's brother James. They didn't have long distance service of their own.

Well, these days you can go to the drug store, the laundromat, the service station and get one of these calling cards; and the way you use it is you pay a certain amount and you get so many minutes of talk time.

And back in 1993, however, they were relatively new; and the conservative publication Spotlight advertised them. Terry Nichols not only didn't have long distance service, he had some financial difficulties. He had judgments against him. And he started doing business exclusively in cash, so he didn't have bank accounts, and in trade names, not his own name. He got one of these Spotlight cards in the name Daryl Bridges; and when he and McVeigh started their gun business, McVeigh got the PIN number so he could make calls on it, too. There are a lot of calls charged to that Bridges card, but the evidence is going to show you that the Bridges records cannot be the basis to conclude that anybody ever called anybody. They're just numbers. In order to make a conclusion about who called whom, you need more evidence. And in every instance we rely on, we'll present that evidence to you.

But why would Terry Nichols get a card in a different name than his own? Well, the evidence is that one of the judgments against him was from AT&T. They had sued him on a credit card bill. He figured that if he tried to get long distance service in his own name even with some other company

maybe AT&T could interfere with it. And the evidence will be that the forms are filled out and somebody on the farm took them to the post office, and we can prove that.

Now, that card was still being used in late September of 1994. So while Terry Nichols is out working on the Donahue ranch in Marion, Kansas, we can prove that he's out there. Somebody else -- and the only other person that had the card number is Tim McVeigh -- used that telephone card to call places that might supply components for a bomb. We can track the calls that were made, the sequence, the time of day and show you how that worked. Terry Nichols was not there. In fact, members of the jury, we'll have witnesses on the stand that will identify Timothy McVeigh from having known him before based on having made those calls.

One of those is a person that had known Tim McVeigh; that Tim McVeigh called -- and it had to be Tim McVeigh because the person recognized him -- to get racing fuel. And Terry Nichols wasn't there and didn't make that call.

What calls can it be shown that Terry Nichols made? Well, he called places he did business. He called places where you'd buy things, lawful things you use in the gun show business, to store things that you need for your business and things you're going to sell.

Let's take just one example of what the evidence will be about what Terry Nichols shopped for.

The Nichols family: They have this house, this little house in Herington, Kansas. There is a storage shed out behind it. They have plastic barrels back there. You're going to see pictures of those barrels, the ones that they had. Now, you're also going to hear evidence that when Timothy McVeigh built the bomb, he may have used plastic barrels to hold the explosive mixture.

Now, let's look what the evidence is going to show. First, most obviously, it's going to show that the barrels that the Nichols family had could not have been used to build the bomb because the Nichols family still have their barrels back in their shed. But the evidence is also going to show that these barrels -- they're 55-gallon barrels. 8 million of them are made every year by a single manufacturer. They're made of HDPE, high-density polyethylene, and they are designed under federal and international regulations to be reused from 15 to 30 times. Otherwise, you couldn't sell them.

And the evidence will be that in the heart of Kansas, in dairy barns, for example, which is where Terry Nichols got his barrels, there are -- there is udder wash and dairy-barn cleaner that is sold in these 55-gallon containers; and when the containers are empty, the dairy barn people put them out to recycling depots and you can buy them for five bucks apiece, which compares quite favorably to a Rubbermaid trash barrel at your local hardware store.

The barrels at Terry Nichols' house were not even from a barrel company in Wichita about which reference has been made.

Now, you also heard about fertilizer. Well, it's true that on September 30, 1994, and October 18, 1994, two men

bought ammonium nitrate at a farm cooperative in McPherson, Kansas. The two co-op employees who sold the ammonium nitrate in bags were unable to identify the purchasers while the transactions were fresh in their minds. These employees are called Rick Schlender and Jerry Showalter. But Mr. Schlender gave a very precise description of the vehicle. He said that the men were in a Dodge pickup truck with Kansas license plates, pulling a trailer made from a Ford truck bed.

Terry Nichols had a GMC pickup truck with Michigan license plates and never owned a Ford pickup bed trailer.

Now, the FBI got to these two witnesses, accused them of making false statements, tried to get them to change their story; and you'll hear about how that process worked. You will even hear that Mr. Schlender committed perjury before the grand jury that indicted this case; but in the end, the evidence is that Terry Nichols was not there. In fact, on September 29, 1994, Mr. Showalter, the other fellow -- he remembers he got a call. He was at McPherson at the co-op there working. He got a call from another branch of the co-op in Galva, Kansas, saying somebody is in the store, wants to buy 2 tons of ammonium nitrate in bags. Showalter advised his colleague in Galva to send that person over to the McPherson store.

Now, on September 29, 1994, Terry Nichols was working on the Donahue farm. Couldn't have been him.

Now, Terry Nichols did have access, no question, to storage units, those rental storage units in the mid-Kansas area. You know the ones. When Terry Nichols told the FBI about these sheds -- and he did, and he told them in what names he rented them. They went out and searched them. No residue of any ammonium nitrate or other bomb component was ever found in these sheds. They were, as Terry Nichols told the FBI, used to store household furniture and things he was keeping to sell in trade.

Now, you are going to see a receipt for a large purchase of ammonium nitrate. The Government has told you what's on the front of the receipt. But let's turn the receipt over on its back; and by the time all the witnesses have testified, you'll know the whole story, for on the back of that receipt are fingerprints of one and only one individual, Timothy McVeigh. And the way that that fingerprint evidence showed the receipt was handled shows exactly what happened and supports Terry Nichols' innocence.

Now, beginning October 1, 1994 -- that's the time we're in -- Terry Nichols was working to create a viable gun show business. Tim McVeigh had a different plan. Unbeknown to Terry Nichols, he called Michael Fortier and asked him to max out his credit cards and give him the money.

On October 2, 1994, McVeigh visited a racetrack and inquired about buying racing fuel. Terry Nichols was not there.

On October 21, 1994, McVeigh bought three 55-gallon drums of nitromethane, in Ennis, Texas. Terry Nichols was not there. And Lori Fortier's description of that transaction will prove again that she has a powerful imagination, for she has it taking place even before it could possibly have done so.

The evidence will show that in searching for racing fuel. McVeigh used the Fortiers' phone on October 7, 1994. And

fact, McVeigh used the Fortiers' phone on October 7, 1994. And Terry Nichols was not there.

By late October, 1994, McVeigh's bombing plans were well advanced. Terry Nichols, who had started this gun show venture, had reached a parting of the ways with McVeigh. Now their paths begin to diverge again. McVeigh went his own way, hooking up with the Fortiers in Kingman, keeping in touch with Roger -- Roger Moore -- excuse me -- and confiding in the Fortiers about his plans.

On October 29, 1994, Terry Nichols called a travel agency to book a flight from the United States to the Philippines. He was going to join his wife, Marife, and daughter, Nicole, over there.

Terry Nichols planned to bring Marife and Nicole back to the United States and settle somewhere in the Midwest to be in business by and for himself. He had already sold some coins and things to raise money to make the trip and to help finance Marife's education; and before going to the Philippines, the evidence is going to show that Terry Nichols did not just one thing but many things that a normal person does when going on a trip to a foreign country where the political situation is unstable and there is a record of violence.

First, he updated his life insurance.

Second, he had some penny stock, so he changed ownership provisions so they'd go to his family in the event of his death. We're not talking about a rich man with lawyers to draft wills; talking about practical things. He put his belongings, including his pickup truck, into a storage shed, rented a big enough one to put his pickup truck. And he had things spread around in storage sheds in Kansas and Las Vegas; and some of these sheds were in different names for reasons you'll hear.

So Terry Nichols wrote a letter to be opened only after his death, so it couldn't be part of a live conspiracy. We're going to show you the entire letter, and you'll see evidence behind every word of it. In the letter he asked Timothy McVeigh to go to the storage units, take things out, and see that they were properly distributed to Mr. Nichols' family in the event of Mr. Nichols' death.

The letter also reminds Mr. McVeigh that the rent on the storage shed is due on particular days and so -- need to pay that if he's not going to do it in a timely way.

Then it says something that somebody might say to someone that you had known in life but would be reading the words after you're dead. It says, "You're on your own; go for it," which happens to be one of the most overused expressions in the language and which was a motivational slogan in an insurance agency where Terry Nichols worked during the 1980's. Today, "Go for it" is such a well-worn phrase you can even find it on boxes of Girl Scout cookies. There is no letters -- no reference in this letter to bombs or bombings or violence or anything illegal at all, not a word.

Having settled his affairs, Terry Nichols spent a few days camping with his son Josh to talk about the trip he was going to take. Then he went to the Philippines, where he spent Thanksgiving, Christmas, and New Year's with Marife and Nicole. He planned to return and did return in January of 1995. The

evidence will show that after he did he bought a house for his family, for Marife, Nicole and Josh, began acquiring a stock of military surplus items to sell supplementing gun sales, and then began to establish his own separate business in his own name centered in Kansas.

What did McVeigh do during those months while Terry Nichols was there in the Philippines, not in the United States, gone away with his family? McVeigh enlisted Michael Fortier's help. He reached out to known adherents to radical right wing causes, he investigated Ryder truck rentals, and he negotiated for the purchase of bomb components. Terry Nichols wasn't there for any of this, but the evidence will tell you who was and what they did.

On November 30, 1994, a power company employee was working in the Arizona desert near Kingman. He found a letter from Timothy McVeigh fastened to a high-voltage tower and addressed to SC. SC, the evidence will show, is Steve Colbern, connected to McVeigh through gun dealer Roger Moore and his paramour Karen Anderson. The letter was an effort to recruit Colbern, whose identity had been given to McVeigh by Karen Anderson and Roger Moore.

McVeigh contacted an arms and explosives dealer named Dave Paulsen. In a series of meetings and telephone conversations, McVeigh tried to induce Paulsen to sell or trade dynamite to him. First meeting was December 3 or 4, 1994, in Kalamazoo, Michigan; and Terry Nichols, of course, wasn't there.

The evidence suggests a question. If, as the Government claims, there was a robbery or burglary in October to get components, what was McVeigh doing seeking dynamite in December? On December 13, 1994, McVeigh sent a letter to a friend volunteering to help if she needed anybody, as he put it, "blown up."

In the middle of December, McVeigh enlisted the Fortiers once again. Lori Fortier wrapped up some blasting caps for McVeigh in Christmas paper so McVeigh could transport them. Tim McVeigh offered Michael Fortier \$10,000 to help him by driving to Kansas to pick up some things and to help in other ways. Michael Fortier went along with this plan, although later McVeigh stiffed him for the 10,000. Terry Nichols was with his family in the Philippines preparing for Christmas.

McVeigh's Christmas packages were to trade with arms dealer Dave Paulsen for dynamite. The Fortier driving trip was to case the Murrah Building. Yes, Michael Fortier and Tim McVeigh drove together to Oklahoma City to look it over; and Terry Nichols wasn't there.

From early December, 1994, until January, 1995, Tim McVeigh called arms and explosive dealer Dave Paulsen's phone dozens of times. One of those calls was 49 minutes long. When Tim McVeigh was arrested on April 19, he still had Dave Paulsen's business card, which he apparently tried to get rid of by dropping it in the arresting officer's patrol car.

Oh, those blasting caps to trade with Paulsen? McVeigh told Kevin Nicholas he had bought, not stolen -- bought them.

Tim McVeigh also reinforced his connection with Arkansas gun dealer Roger Moore. In September 1994, McVeigh had asked Michael Fortier to forward a letter to "Bob" that McVeigh had sealed in a plastic baggy to prevent there being fingerprints. Then in January, 1995, McVeigh sent another letter to Moore. Roger Moore's reply to that letter, which refers to a plan, refers to it being secret from satellite surveillance and other things. Moore's letter to McVeigh you'll find in evidence, and it is significant.

On January 16, 1995, Terry Nichols returned from the Philippines. He visited for a few days with his son Josh, made financial settlement for Josh's support with Lana Padilla, his former wife, assembled his available resources, met with Tim McVeigh in Junction City to divide up their wares; and after that meeting, Terry Nichols never worked with Timothy McVeigh again. Instead he bought -- shopped for and bought a house in Herington, Kansas, centrally located for the business he was going to enter. He shopped for and bought furniture. He began to buy and sell at gun shows in his own name. He began to deal, in addition to the arms he had for sale, in military surplus, going to the Fort Riley, Kansas, sales and auctions to build an inventory, a business technique that Timothy McVeigh never used.

And Terry Nichols prepared for his wife, daughter, and son to come and live in Herington. We'll show you the telephone calls he made, the places he stayed, and introduce you to the people he met along the way.

In Kingman, however, at the end of January, McVeigh was working on his plan. He enlisted the Fortiers to go to gun shows and sell weapons with him. On January 31, McVeigh checked into the Belle Arte Motel in Kingman, saying that he would stay several weeks. The motel management kicked him out, and he left on February 8. What happened? McVeigh was having loud gatherings in and near his motel room, including one with a person who resembles the description of the man with McVeigh when he rented the Ryder truck months later and when he drove it to Oklahoma City. Lori Fortier helped Tim McVeigh make a false driver's license in the name Robert Kling, the name McVeigh was to use when renting the Ryder truck in Junction City, Kansas.

Tim McVeigh approached a friend of the Fortiers, James Rosencrans, to recruit him to do some driving from one undisclosed location to another. Rosencrans says he refused.

The evidence shows a pattern here. Tim McVeigh didn't confide his plans to the Fortiers, just like he didn't tell his boyhood friend Darlak or his other friend Pfaff why he wanted racing fuels. Except for the Fortiers and some hints to his sister Jennifer, he used people without leveling with them. Tim McVeigh left the Belle Arte Motel; but he stayed in Kingman, some of the time in motels and some of the time living with the Fortiers at their home. This was his base of operations.

In March and April, 1995, Tim McVeigh told Michael
and

Lori Fortier that Terry Nichols would not have anything to do with any plan to blow up a building. Now, of course, the evidence is the Fortiers are unreliable witnesses. You can't believe anything Tim McVeigh told them unless you find independent corroboration. So let's look at what McVeigh and the Fortiers did, not just what they said.

Tim McVeigh questioned Michael Fortier about using James Rosencrans as a driver. He mentioned the underground connections of Roger Moore as a potential getaway plan, corroborated by Rosencrans. The continued contact with Moore is documented by the exchange of letters.

But all during this time, Terry Nichols continues to his earn his living at gun shows in the Midwest and to furnish the home he bought for his family. On March 17, 1995, Marife and Nicole Nichols arrived in Kansas, and the Nichols family took another step towards being reunited March 31, 1995. The following two weeks, in Kansas, Terry Nichols continues to work and earn his livelihood.

But from Kingman, Arizona, on April 5 -- 14 days to go -- Timothy McVeigh called a Ryder truck rental outfit in Lake Havasu, Nevada, and got a quote for a rental. Terry Nichols at that time was on his way to Michigan, to visit his family and work at a gun show.

But in Kingman, just minutes after calling the Ryder Truck Rental place, Timothy McVeigh called the leader of a violent right wing separatist group in Elohim City, Oklahoma, and asked to speak to Andreas Strassmeier, a citizen of Germany known for terrorist activities.

On April 5, McVeigh, using the name Tim Tuttle, called the National Alliance in Arizona, another arms separatist organization, and he called them nine times in two days.

April 12, 1995, McVeigh headed east. He lied to Michael Fortier and told him he was going to Colorado.

When Timothy McVeigh arrived in Kansas, he bought an old Mercury Marquis from a Firestone dealer in Junction City. It was the car he was driving when he was arrested. On the drive from Arizona to Kansas, he may have stopped at the Oklahoma City federal building yet again. A senior federal employee reports seeing him there.

Friday, April 14, Junction City, Kansas: McVeigh using the name Robert Kling, the name on the fake license that Lori and Michael Fortier helped him make, called the local Ryder rental place and reserved a truck for the next Monday. He already knew how Ryder truck rentals worked from his Arizona call.

Timothy McVeigh stayed from April 14 to April 18 at the Dreamland Motel in Junction City. He registered in his own name; but to leave a false trail, he gave an address belonging to Terry Nichols' older brother James in Michigan, knowing to do so would draw attention away from his base in Kingman.

Saturday, April 15, in the evening, a Chinese restaurant, the Hunam Palace, in Junction City received a delivery order from McVeigh's motel room. The caller used the name Robert Kling.

When the food was delivered to McVeigh's room, the

order was accepted by a male person not McVeigh and certainly not Terry Nichols, matching the description of the man who was with McVeigh when he rented the Ryder truck on April 17 the man who came to be known as "John Doe No. 2."

Saturday or Sunday night, Dreamland Motel owner Lea McGown heard two male voices talking in the McVeigh motel room. Terry Nichols was not there.

Sunday, April 16, Timothy McVeigh drove his Mercury Marquis to Oklahoma City. Along the way, he called Terry Nichols at his home and prevailed on Mr. Nichols to come to Oklahoma City and give him a ride back to Junction City.

Terry Nichols knew that McVeigh had gone to Josh's house in Las Vegas -- Josh Nichols' house to pick up a television set of Terry's. You'll hear Josh Nichols say that McVeigh did come to the house in Las Vegas, pick up that television set. And McVeigh had agreed to deliver it; so when McVeigh called, he told Mr. Nichols, "You want the TV set? Come get it or forget about it."

And indeed, when Terry Nichols returned home after that drive, both Josh and Marife noticed he had brought the TV set with him. Ron Woods will give more detail on that.

Monday, April 17, Tim McVeigh, posing as Robert Kling, picked up the Ryder truck. And the Ryder rental dealer in Junction City is Elliott's Body Shop. There are three Elliott's employees who stood in the small office at Elliott's during the time that truck was being rented, and their names are Eldon Elliott, Tom Kessinger, and Vicki Beemer. If the Government does not call them, we will do so; for each of them said that McVeigh was not alone, he was with a somewhat stocky man with a dark complexion. And independently, they all agreed on the description of that second person. This other person was not Terry Nichols. Terry Nichols was not there. And later, a lot of people saw that Ryder truck with Tim McVeigh and this other person in and near it.

But all that weekend, except for picking up the TV set, the Nichols family did their chores; and on that Easter Sunday, they went to church. Terry Nichols' son Joshua was visiting from Las Vegas. The whole family was together.

Tuesday, April 18, a crucial date: Terry Nichols did not build a bomb. There will be a great deal of evidence on that day. During a part of the day, Timothy McVeigh had borrowed Terry Nichols' pickup truck while Terry was at an auction at Fort Riley, Kansas. These are places where military surplus dealers, like Terry was becoming, buy goods to sell or trade. To buy the goods, you have to inspect batches and batches of stuff that are spread out over a big area. You then have to look and see what you think the stuff is worth, and then you make a sealed bid.

We'll present video footage of how that process worked. You make the bid; if you win, the stuff is yours. We have a lot of documents from that date to prove to you that in his new independent business, Terry Nichols was buying peaceable military surplus items like picks, shovels, nails, ammo cans -- empty ammo cans.

As for what Terry Nichols did that day, there is

plenty of evidence. After McVeigh returned the truck, Mr. Nichols picked up his business cards at Kinko's, picked up a license plate tag at the local Kansas tax authorities, did other errands. He was building his life, not a bomb.

The Government will try to tell you a different story about what Terry Nichols did that day, and they're going to present evidence of times and timers, of clocks and clockers. The biggest difficulty in the Government's evidence, members of the jury, will be their own clock. Yes, folks, the official time clock at the Fort Riley military base that day was at least one month and one hour off. We will have to reconstruct Mr. Nichols' movements from other evidence, and we'll present that evidence.

Terry Nichols knew where he had been that day, and he told the FBI where he had been that day. He was at home with his family Tuesday night.

But that night, Timothy McVeigh and his accomplice were on the move. At 9 p.m. that night, 12 hours and a little more before the bomb was ignited, Timothy McVeigh and that same man were at the wheel of the Ryder truck in Council Grove, Kansas; and other people saw McVeigh and his accomplices that night as well.

Notice what the evidence will be: Recruiting in Kingman, McVeigh with associates in Kingman, reaching out to known havens of violence, with another man on April 17 with similar features to one of the people he's seen with in Kingman; and on the 18th, we see him again with that same person matching that same description.

And on the 19th morning of April, in Oklahoma City, a half-dozen witnesses, each of whom will be called to testify before you, spotted Timothy McVeigh and his accomplice. And Terry Nichols wasn't there at 9:02 a.m.

Actually, a few minutes before, Timothy McVeigh and his accomplice got out of the Ryder truck. An explosion as quick as a heartbeat and sadness as long as life. McVeigh was arrested less than 90 minutes later. He told the trooper who arrested him, he was coming and going from Arkansas where Roger Moore lives.

He did not give the address he had been using in Kingman, Arizona, where he told the Fortiers to keep his mail, where they had intercepted and delivered key messages from him. No, he gave the address of the Nichols family farm in Michigan, where he had been a couple of years before. In doing so, he focused unjustified suspicion on Terry's brother's James and diverted attention from his Kingman base.

Terry Nichols did not even know about the bombing until the next morning, when he went to arrange for cable TV service for his home. But by the evening of April 20, 1995, the FBI had set its forces in motion, forces that would result, as the evidence will show, in false conclusions and inaccurate evidence. When Terry Nichols heard his name mentioned, he gathered up his wife and daughter and went to the Herington police station. And Ron Woods will describe what happened there.

THE COURT: Mr. Woods.

MR. WOODS: Thank you, your Honor.

If it please the Court, counsel Mr. Nichols, members

if it please the court, counsel, Mr. Nichols, members of the jury, the evidence will show that in conducting the investigation right after the bombing that the FBI did an excellent job for a day and a half. The evidence will show that the FBI was able to find the rear axle of the Ryder rental truck which had been blown a block away from the site. And on that rear axle is a VIN number, a vehicle identification number. Each vehicle has a separate identification number so that it can be traced back to the manufacturer. By looking at that number, they were able to trace that Ryder truck back to a Ford manufacturer; and then the sale from Ford to Ryder rental.

They were able to go to Ryder rental's national headquarters in Miami and, through their computer records, find that that truck had been rented only two days before in Junction City, Kansas, by Robert Kling. They had that information on Wednesday, the 19th, that afternoon, quickly, by checking records and doing an efficient job.

They immediately sent the closest FBI agent they could find to Junction City, who was Scott Crabtree, in Salina, Kansas. They told him to call Eldon Elliott's Body Shop and get there right away.

Scott Crabtree will testify that he called Eldon Elliott's Body Shop, told them to keep the documents handy, don't talk about the case: I'm coming there right away to interview everybody involved in the rental.

Agent Crabtree got there that afternoon and separated Eldon Elliott, Vicki Beemer, and Tom Kessinger, and interviewed them in depth as to the description of Robert Kling and the second person that was with him.

He then had the FBI headquarters in Washington fly down that evening one of their forensic artists, who arrived early morning hours and met with Vicki Beemer, Tom Kessinger and Eldon Elliott separately; and by interviewing them and by getting descriptions, he was able to come up with sketches of Robert Kling and John Doe No. 2.

During this period of time, the FBI, utilizing the information on the contract, had determined that the name Robert Kling and the address in South Dakota was false, did not exist, there was no address.

So when the artist completed the sketches, they were designated as John Doe 1 and John Doe No. 2. This is early Thursday morning, the 20th. And you may have seen -- you may recall having seen those on television, those two sketches.

That was done by talking to the three witnesses whose memory was fresh. This is on the 19th. Remember that the rental had only occurred two days earlier. Their memories are fresh. They can recall the details.

The FBI then took these sketches of John Doe 1 and 2 and dispersed their forces throughout the Junction City area and the surrounding area, taking these sketches around to all the businesses, the filling stations, the restaurants, the motels, attempting to find out who John Doe 1 and 2 were. They were also at that time released nationwide on television that you probably recall seeing.

They were very fortunate in arriving at the Dreamland Motel that afternoon, and the owner of the Dreamland, Lea McGown, told the FBI agents, this John Doe No. 1 sketch is Tim

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McVeigh, who was a renter in my motel from Friday, April 14, till Tuesday, April 18. The FBI looked at the registration records and found that Tim McVeigh had registered in his own name and had given North Van Dyke in Decker, Michigan.

They immediately contacted their Detroit, Michigan office and had them run down the address.

The FBI called Sergeant David Hall, who is a deputy sheriff in Sanilac County, near Decker, who has 20-years-plus experience. Mr. Hall -- Sergeant Hall checked his records in the sheriff's office and found that he did recall that address, 3616 North Van Dyke, because several months earlier, he had conducted an investigation at that address. He recalled that Kelly Langenburg, the ex-wife of James Nichols, during a child custody dispute had made allegations that James Nichols was building small explosives on his farm there in Decker.

Sergeant Hall told the FBI this. The FBI was very interested. They requested an immediate meeting with Sergeant Hall and Kelly Langenburg. That meeting was set up early the morning of Friday, the 21st.

The FBI came to Decker and met with Sergeant Hall and Kelly Langenburg; and at this time, Kelly Langenburg told the FBI that yes, she was the former wife of James Nichols, she lived at that address in Decker on the farm, and that she knew a brother by the name of Terry Nichols who had lived there with his family, his young Filipino wife, back in 1993, but that he, Terry Nichols, had moved away from that address in late '93 to move to the Las Vegas area to get work there and be near his son Josh, who was a son by the former marriage of Lana Padilla. And it's interesting, because Kelly Langenburg is the sister of Lana Padilla. Kelly Langenburg was able to tell the FBI the phone numbers for both the office and the home of Lana Padilla.

She also said that she recalls meeting a Tim McVeigh who was an army friend of Terry Nichols -- had visited and stayed and did work around the farm for a very short period of 1993.

The FBI became very interested in this information and told Sergeant Hall: This is the best information to date we have, and we're going to run with it.

Sergeant Hall will tell you that within an hour or two, by noon, on Friday, the 21st, the FBI had assembled over 100 agents in this small community for the purpose of executing a search warrant and arresting James Nichols on his farm, in which Sergeant Hall took part in.

The evidence will show that this is a day and a half later, after the -- the investigation began; and the evidence will show that this is when the FBI began to jump to conclusions and conclude guilt by association.

The evidence will show that the search warrant was executed; that Mr. James Nichols was arrested and kept in custody for 32 days before he was released. The evidence will further show that all charges were dismissed.

Continuing the FBI investigation, they immediately notified the Las Vegas office to go pick up Lana Padilla and the 12-year-old son, Josh, and bring them to the Las Vegas office, which they do, early morning, Friday. Keep in mind the time difference here between the East Coast and the West Coast.

But all this is happening Friday morning, the 21st.

They bring Lana Padilla and her 12-year-old Josh into the FBI office and they separate them, put them in different rooms. And teams of people interview the two of them. And they don't let them go back home for five days. They keep them in hotel rooms at night and not let them return home.

But during this meeting on Friday morning, Lana Padilla says: Well, yes, Terry Nichols is my former husband. As a matter of fact, I just got off the phone with him a few minutes ago. He's at his home in Herington, and here's the address, 109 South 2nd Street. And my son Josh had just returned home a couple of days ago because he spent the Easter holidays with him.

That's the information that the FBI was gathering at that time.

Now, it's interesting: At this time the FBI has set up -- first, let me cover one more incident that happened that morning. The FBI finally decides to put Tim McVeigh's name into the National Crime Information Center computer system midmorning Friday, after they've had his name for a day and a half. They put it into the computer system and find out immediately that there is a Tim McVeigh who has been arrested in Perry, Oklahoma, was arrested approximately 10:30 in the morning on the 19th. That's approximately 90 minutes away from Oklahoma City and 90 miles away from Oklahoma City. They found out that Tim McVeigh was still in custody in Perry, Oklahoma.

So they sent agents immediately to Perry, Oklahoma, to arrest and take custody of Mr. McVeigh and bring him out. And many of you probably recall seeing that scene; being brought out with the orange jacket.

By this time, the FBI has set up an SIOC -- an SIOC is a strategic information operations center -- in Washington, D.C., which is staffed by all of the top senior officials of the FBI and the top senior officials of the Department of Justice. They have an open phone line to the FBI offices that are involved in this investigation. They have an open phone line to the Detroit office. They have an open phone line to Oklahoma City, of course, because that's where the investigation is centered. They have an open phone line to Las Vegas, and they have an open phone line to Junction City and to Kansas City, where the agents are conducting the investigation.

Through this phone line, they're able to coordinate and distribute and share the information that they're getting so that everybody involved in the investigation will know the facts that they are obtaining at that time.

And at this time, approximately noon on Friday of April 21, a decision is made in Washington at the highest levels to arrest Terry Nichols. The problem with it is they didn't have any evidence that Mr. Nichols had committed a crime, so they make the decision, well, we're going to go to Herington and we're going to arrest him as a material witness. And a material witness warrant allows the individual to be kept in custody without bail until he is taken to the grand jury.

So the FBI sends out word to the Kansas City office, the nearest big office; and they dispatch a S.W.A.T. team, a

special weapons arrest team, out of Kansas City, with all their vehicles, their black uniforms, their heavy weapons, and their flak jackets to head to Herington to arrest Mr. Nichols.

They also send out a special operations group, SOG, which is just a surveillance team. It's just a bunch of agents who go to Herington, Kansas, for the purpose of keeping Mr. Nichols under surveillance until they can get a material witness warrant signed by a judge in Oklahoma City.

Now, the problem that develops for the FBI is that somebody in the Government leaks word to the press that Terry Nichols and James Nichols are wanted as suspects in the case. And that afternoon, shortly after noon -- in fact, it was about 2:00 in Central Daylight Time -- Terry Nichols is running an errand to the lumber store in Herington, Texas (sic), and he hears over the radio that Terry Nichols and James Nichols are wanted as suspects in this case.

He turns around and goes back home and tells his wife, Marife, who is at home on 2nd Street, he's just heard his name along with James Nichols' name as suspects wanted in connection with the Oklahoma City bombing case. They turn on the news; and within a few moments, they're able to see the news that Tim McVeigh has been arrested in connection with the bombing; that Janet Reno is holding press conferences demanding the death penalty, and that Terry Nichols and James Nichols are wanted as suspects in the case.

Now, Marife Nichols will testify that Terry at this time became very concerned and very worried and that he wanted to go to the police station right away.

She will testify that she and the infant daughter, Nicole, who is under two years old and is still breast-feeding at that time, got in the truck with Terry to go to the police station; but she said, Look, just calm down; try to get your senses about you.

So Terry drove back to the lumber store where he was going initially to run the errand to try to calm down. The evidence will show that he went to surplus center and got out of the vehicle, but he became so concerned that he knew he needed to go to the police station as soon as possible.

He got back in his vehicle and drove directly to the police station.

Marife Nichols, along with everybody that was in the police station, Chief of Police Barry Thacker, Director of Public Service Dale Kuhn, Officer Delbert Lindsey, and the dispatcher, Leslie Starwalt, will testify that Mr. Nichols, along with his young wife and his infant daughter, walked into the police station and that he looked pale and scared, but he was very cooperative. He submitted to a search immediately by the officers when he said that Look, my name is on television as being involved in the bombing. I'm here to answer any questions and I'd like to know, you know -- ask some questions myself. What's going on?

The officers asked to search him. He readily consented to a search; and then they asked him to sit down and have a seat while they were able -- or while they would try to contact somebody that could answer his questions.

Now, the officers there didn't tell Mr. Nichols that an hour before there had been an FBI agent that had come into

an hour before, there had been an FBI agent that had come into the police station, Mr. Steve Smith, Agent Steve Smith. Agent Smith had come in and asked for information about Terry Nichols: What is his address, because we're going to set up surveillance on him in connection with this bombing.

The problem was Steve Smith didn't leave any way to be contacted when he left; so all the officers there, Chief Thacker and Director Kuhn, just had to wait until the FBI contacted them.

Now, the evidence will show that Mr. Nichols, his house, and his vehicle had been under surveillance for about an hour beginning shortly after 2 p.m. This is 3 p.m. when they walked into the police station.

The evidence will show that all these surveillance agents from Kansas came out in a mass and grouped together on the outskirts of Herington to get from Steve Smith information that he obtained as to the address and to plan their surveillance; that after spending some time trying to get their cars unstuck from the mud, they then proceeded to set up surveillance on Mr. Nichols' house and observed him leave the house with his wife and his infant daughter, drive to Surplus City, and then drive to the police station, which is called the Director of Public Service. That's the name of the building.

They watched him enter the building with his young wife and his infant daughter, carrying the infant daughter; but the agents didn't go in, because the surveillance agents had come to the conclusion that Mr. Nichols was now holding the police officers hostage. That's the mind-set that we're dealing with.

They were so concerned that they radioed their supervisor in Kansas City, Bill Chornyak, and asked Chornyak to please call the police station, talk to the chief or the director, and ask discreet questions in a sort of a coded manner: Are you in danger, is there a hostage situation, what's going on?

They've surrounded the place. Yet their assumption is

Mr. Nichols is holding the officers hostage. Chief Kuhn -- or Director Kuhn will testify that yes, he received a call from Chornyak, who was talking in an unusual manner; but Director Kuhn assured him no, there is no hostage situation, there is no danger, there is no crisis. Mr. Nichols has been here for some time, and he wants to talk to you, so why don't you come on in.

The evidence will show that the FBI then picked their most experienced interviewers from the group they had out there to go in and interview Mr. Nichols and his wife. And you will see that Scott Crabtree is one of those that went in.

The agents went in and immediately separated his wife and child and began to interview her in teams and then took Mr. Nichols downstairs, where they interviewed him in teams. Two teams of two each began to interview him.

And that when Mr. Nichols said, you know, I'd like to know why I'm being named as a suspect in the case, they lied to him. They said, We have no idea why you're being named as a suspect. We want to talk to you. Will you answer our questions?

And they gave him a form to sign, a waiver of rights form. And Mr. Nichols said, I don't want to sign this form. I'd like to find out more information.

They then -- the agents then get on the phone to Howard Shapiro, who you will see is the top lawyer in Washington for the FBI. Mr. Shapiro tells them: Keep talking to him. Try to get him to talk until we can get this material witness warrant signed and get him in custody.

So the agents go back in and they ask questions and Nichols asks questions. And at that point, the interview starts; and it lasts for nine-and-a-half hours.

Now, while this interview is going on, in Oklahoma City, where they're drafting the warrant, the information has been relayed to everybody in the country in the FBI. The information was relayed that Mr. Nichols had gone into the police station at 3:00, so the agents were on the phone to Washington. Washington is aware that he had voluntarily walked into the police station at 3:00. They get on the phone line, they notify Oklahoma City, Kansas City, Junction City, and Vegas and Detroit: Mr. Nichols has voluntarily walked in.

Yet in Oklahoma, where the people have this information, they draw up an arrest warrant at 4:45 p.m., and they go to a judge and tell the judge that Mr. Nichols has attempted to flee the jurisdiction of the United States and that we need an arrest warrant because it's impractical to secure his attendance in front of a grand jury any other way.

The judge, based on this information, issues a warrant; and this warrant allows the FBI to take Mr. Nichols into custody and hold him without bail until they take him to a grand jury.

This warrant is then faxed to all the offices out of Oklahoma City. It's faxed to Washington, it's faxed to the agents in Kansas City, and the agents there in Herington who are doing the interview. Everybody knows that there is a warrant issued at that time at 4:45 p.m. Yet they never tell Terry Nichols until the next morning when they conclude the interview.

But this interview is very important. It lasts nine-and-a-half hours. And I'm not going to go over every detail that's in the interview. We certainly will go over every detail when these agents take the stand and talk about it, because there are hundreds of factual statements in that interview that are true, and the FBI went out and verified them.

Now, as the prosecutor told you, the interview is not recorded. It's not video-recorded and it's not tape-recorded. Whereas every major police department in this nation tape-records interviews with suspects, the FBI doesn't. The FBI wants to rely on the recollection of the agents.

The evidence will show that one of the reasons they do this is because at trial, the Government wants to rely on the credibility of the FBI, as opposed to the credibility of the suspect being interviewed.

The evidence will show that a tape recording of that interview would clear up those questions, would show a jury exactly what the suspect said and would clear up exactly how

the FBI framed the question and in what context it was said.

But we don't have a tape recording, and you don't have it in any FBI case. All you have is the recollections of the agents.

So when that happens, we're -- when these agents take the stand, you're going to see a lot of questions, and you're going to see these notes that this accountant wrote up. They are totally illegible. But we're going to spend a lot of time with him.

Now, I want to take us from that point where the interview has begun, because there are several things that happened in this interview, several things that you need to be aware of before you start hearing the Government's case, the evidence they put on, because I anticipate the agents will probably come later after you've heard some evidence.

Now, the evidence will show that Mr. Nichols told the FBI during that nine-and-a-half hour interview that he had seen and been with McVeigh on Sunday, Easter Sunday, April 16, and on Tuesday, April 18. He told the agents as to the Sunday visit with Mr. McVeigh -- he advised them that two months earlier, he had mailed a letter to McVeigh, who he knew was staying in Kingman, Arizona, and asked Mr. McVeigh to go by Josh Nichols' and Lana Padilla's house in Vegas, which is very near Kingman, and to pick up the television set belonging to Terry Nichols, to bring it to him on his next trip through the Midwest. And you will see during the course of this trial that McVeigh is always on the road. He is traveling from one state to the other constantly. Mr. Nichols asked that if he would please pick that set up and drop it by on his next trip through.

Josh Nichols will testify in this trial that yes, at the end of March, Tim McVeigh came by and picked up the television set.

Mr. Nichols will testify that on Easter Sunday, after returning from church with his wife and after having Easter dinner -- that shortly after 3 p.m., Tim McVeigh called and in this telephone call, he asked Terry Nichols to come to Oklahoma City to pick him up because his, Tim McVeigh's, car was broken down in Oklahoma and that he was pressed for time to get back East to visit his relatives in New York state.

Mr. McVeigh also told Mr. Nichols, I've got your television set and if you want that, you can pick me up down here.

Mr. Nichols will testify -- told the FBI, rather -- Mr. Nichols told the FBI that the -- that he, McVeigh, asked him, Terry Nichols, to tell his family that he was going to Omaha rather than to Oklahoma City. Mr. Nichols told the FBI that McVeigh was of a very private nature, never wanted anybody to know his business, and was always asking him to keep things secret or confused.

Mr. Nichols told the FBI he considered many of these requests to be trivial and unimportant, and that will come out during the interview of these agents.

Mr. Nichols will also -- told the FBI at that time that he had told his family he was going to Omaha, but that he then told his wife that he went to Oklahoma City instead on

then told his wife that he went to Oklahoma City instead on that day he told his wife.

So Mr. Nichols had not kept that a secret from his wife.

Mr. -- the police -- the FBI will, through their relating this interview -- will relate that Mr. Nichols told the FBI that McVeigh said come to Oklahoma City, take a particular exit, take 8th Street, go down to some city blocks and follow the city blocks around in a circle, and you will see me.

Mr. Nichols told the FBI that's what he did. It took him approximately five hours to drive to Oklahoma City from Herington and that he took that exit, he went down 8th Street, and then he went and circled these blocks; and the FBI asked him, Well, did you go by the federal building? And he said, Yes, I went by there a couple of times and I finally saw Mr. McVeigh at the end of an alley. I went around the block and picked him up; and he had with him a television set and a green laundry bag which he had his clothes in; that I picked him up. I didn't see a car anywhere around. I picked him up and drove back to Junction City, where he wanted to go. We got back to Junction City, Kansas, about 1:30 in the morning, and he wanted to be dropped off at a McDonald's.

Now, the evidence is going to show that at this time on Friday the 21st, neither the FBI nor Terry Nichols knew that there was a video camera on the Regency Towers Apartments one block down from the federal building in Oklahoma City. This video camera looks out into the street and photographs vehicles in the street.

The evidence will show that upon finding that video camera that Mr. Nichols' vehicle is shown on that camera going by this block twice, once at 8:17 p.m. and once at 8:24 p.m., just exactly as Mr. Nichols had told the FBI.

But the important thing to note in this video is there is no Mercury Marquis that Mr. McVeigh had that's in front of him or anywhere around. It never shows on that video.

The important thing to note is because that's the Government's theory -- and you just heard it -- the Government's theory is that McVeigh and Nichols caravanned down to plant the car there. The physical evidence doesn't show that. The physical evidence corroborates what Nichols told the FBI. He was asked to go down there, he drove around some blocks. It's five hours after he left. It's 8:17. He told the FBI it took about five hours to get there, and it shows him going by twice on this video camera. It corroborates what he said.

He told the FBI he then went back to Junction City, took five hours to drive back. The reference to Waco -- he told the FBI McVeigh mentioned Waco; there is going to be some demonstration in Washington come the two-year anniversary. That's the extent of what he told the FBI.

But Mr. McVeigh wanted to be dropped off at a McDonald's in Junction City. He said that he would call someone from there.

Now, it's very important to remember this McDonald's in Junction City on Washington Street. This is early Monday

morning, the 17th, at 1:30, because this is the same McDonald's that later in the day, the evidence is going to show, that Tim McVeigh called a cab in Junction City and had the cab deliver him to this McDonald's where he was captured on video inside the McDonald's. There must be videos everywhere now, which you're going to find out. But you're going to see a video inside this McDonald's that captures Tim McVeigh there at 3:57 that afternoon. You're then going to hear from Vicki Beemer, Eldon Elliott, and Tom Kessinger that 15 minutes later and one mile away, Tim McVeigh and John Doe No. 2 walk into Eldon Elliott's to rent that truck.

This is sort of Tim McVeigh's base of operations there in Junction City, hanging around this McDonald's. That's where he asked to be dropped off, and he told Terry Nichols he was going to call somebody.

Now, Terry Nichols told the FBI that he dropped him off in Junction City and then drove back home 25 miles south to Herington. Josh Nichols will testify that he was asleep on the couch at about 2 a.m. that morning. He recalls being woken up by his father, Terry Nichols, who was coming in, carrying a television set. Mr. Josh Nichols will tell you this is the same set that Tim McVeigh had picked up two weeks earlier at the end of March in Las Vegas.

Now, the evidence is going to show that the FBI took this television set and they conducted every test in the world on it. They looked for secret codes inside. They looked for secret bomb-making material. They looked for everything. All they found was this is a normal working television set without an antenna. But that's the story of the television set, and you're going to hear it from separate witnesses.

As to the visit on Tuesday, the 18th, there is no contact there on Monday, April 17, when Mr. McVeigh is picking the truck up. The evidence is going to be that Mr. Nichols was home with his family that afternoon watching videos, "The Lion King," with his son and his daughter; and then at 6 p.m., they left to go to Kansas City, which is several hours to the east, to take Josh Nichols to the plane to catch his ride back to Las Vegas.

Mr. Nichols told the FBI that on Tuesday, Mr. McVeigh had wanted to borrow his pickup because he didn't have a car. His car was broken down in Oklahoma City. They had discussed this over the telephone. Mr. Nichols told the FBI, well, I told McVeigh that I was going to be at an auction over at Fort Riley, which is real near Junction City, for those of you who aren't familiar with it. It's just outside Junction City.

Mr. Nichols told the FBI that he told McVeigh, I'm going to be at the auction on Tuesday morning. You can borrow the truck then, but you've got to pick me up about noon or so.

And Mr. Nichols told the FBI that he went over to this same McDonald's again Tuesday morning -- this is the 18th, a day before the bombing -- and he picked up McVeigh at that McDonald's and that the two of them then drove to Fort Riley to the DRMO, Defense -- I'll get that information for you later. It's initials that stand for something about how they auction off all of the Army surplus goods. They have a huge facility

there.

Mr. Nichols told the FBI that McVeigh dropped him off there early that morning after 7:30, after it took them time to drive into the fort and go to the auction and that McVeigh was to return shortly after noon to pick him up.

Mr. Nichols told the FBI that McVeigh was not there at noon so that he, Terry Nichols, went to another part of the auction where you have to enter into a building to look at the items inside the building. And it's at this place where you have to sign in. You don't have to sign in at this huge fenced-in open lot where there are hundreds and hundreds of exhibits to observe. You only have to sign in when you go inside the building to look at the items inside the building and to look -- and to do your bid, place your bid.

And you're going to see a video of this huge area of items to inspect, and you're going to hear a number of witnesses who will tell you that it takes hours to look at these items in this huge fenced area and that you don't have to sign in when you go to this outside area.

You're going to see documents that Mr. Nichols had -- that the FBI had obtained -- where he looked at the items outside, circled them, and put bid prices on them, a number of items. He put bid prices on them.

You're going to see documents also that he then placed a bid listing all these bid prices that day there at the DRMO bid.

When he went inside the building, he had to sign in. It was 12:50, according to the sign-in.

He then told the FBI that after spending about an hour there, he went back outside and McVeigh showed up; and at this time he, Terry Nichols, drove McVeigh back to that McDonald's and let McVeigh out. And this was the last time he saw McVeigh.

He told the FBI that when he let McVeigh out, McVeigh had earlier told him that he had a room in Junction City. He told him that he had bought this car real cheap that's broken down in Oklahoma City, doesn't know if it's worth it to fix it. He also told him that, Look, I've got some items in a storage shed in Herington. If I don't get down there and pick it up before I leave, will you pick those items up for me?

He also told Nichols that I've got some friends here that I may be able to borrow a car to head on to New York state to see my relatives.

He also told Nichols that he had been going around in Nichols' car looking for another vehicle but apparently had not bought one.

Mr. Nichols told the FBI all of this.

Now, the Government's theory is going to be that Mr. Nichols was not at the auction that morning; instead, as the prosecutor told you, they have a witness who saw a Ryder truck and a pickup similar to Mr. Nichols' at Geary Lake. Their theory is that Mr. Nichols and Mr. McVeigh were building a bomb at Geary Lake that morning; and their theory is based on the fact that if the truck was rented late afternoon on Monday, the 17th, it would be in Oklahoma City at 9:00 on Wednesday

the 17th, it shows up in Oklahoma City at 9 a.m. on Wednesday, then the bomb had to be constructed on Tuesday. That's their deduction.

So to corroborate this theory, they went out and they set up a roadblock at Geary Lake. There is a highway that runs between Junction City and Herington, and they set up a roadblock to stop people who pass that way every day and they asked them: Do you recall seeing a Ryder truck and any vehicle at Geary Lake?

Well, the evidence is going to show that there are a large number of citizens in central Kansas who pass that spot every day. A lot of people in Herington take their kids to school in Junction City in the morning and they go pick them up in the afternoon. A lot of people work in Junction City and a lot of people run errands, go to the doctor's, etc., in Junction City.

The evidence is going to show that the FBI was only able to come up with a couple of witnesses that corroborated their theory that saw a vehicle like Terry Nichols' there. There are over 20 witnesses that the FBI is not going to call -- that the Government is not going to call. We're going

to have to call those people in our case when we put on evidence.

There are over 20 people who saw a Ryder truck with different cars and different individuals at Geary Lake during that time period.

Nobody -- the Government hasn't found a witness that saw Terry Nichols at Geary Lake. There is no witnesses that saw Terry Nichols at Geary Lake, because he was at the auction that morning. The documents will show that he was -- the bidding documents will show that, and the timing sequence will show that, but that's the Government's theory.

Now, as to this interview that's being conducted on Friday afternoon, the 21st, by the FBI in teams, the evidence is going to show further that the federal public defender for the State of Kansas, a person by the name of Dave Phillips, heard on the news that afternoon that the FBI had Terry Nichols in custody, interviewing him in Herington. He also heard on the news that Janet Reno was holding press conferences saying that they were going to seek the death penalty for everyone arrested in connection with in case.

Mr. Phillips will testify and tell you that as the federal public defender, it was his obligation -- and he called the police station and tried to talk to the agents, to let them know that he was offering his services as a public defender to Terry Nichols. But the evidence will show that Mr. Phillips was never able to get through. His calls were always put on hold or said that we'll call you back. He never was able to talk and offer his services. And the evidence will show that the agents knew he was calling, yet they continued to talk to Terry Nichols. They didn't advise him. They didn't advise him they had an arrest warrant for him. They continued to ask questions and get information and continued to tell him they don't know why his name had been mentioned.

The evidence will show that at the very end in the

THE EVIDENCE WILL SHOW THAT AT THE VERY END IN THE early morning hours of the next morning on the 22d that the FBI decided to get aggressive with Mr. Nichols, so they went in and very heavy-handedly accused him of being a participant in the bombing. Mr. Nichols denied his involvement, and at that time the Government served him with an arrest warrant and took him into custody.

And, oh, yes, what about Marife Nichols, his wife and child who were upstairs? She will testify that the FBI took her and the young daughter who was breast-feeding -- took them to a motel in Abilene, Kansas; and then over the next 35 days, they moved her from city to city and from motel to motel while teams of agents and teams of lawyers out of the Department of Justice, even a lady, Donna Bucella, specially designated out of Janet Reno's office, came to quiz her. 35 days, they quizzed her. She asked her, "Shouldn't I have a lawyer?" They told her, "As long as you tell the truth, you don't need a lawyer."

They even took her to Oklahoma City in mid May and told her, "We're going to put you in front of the grand jury." When they got down there, they told her, "Well, we're going to reset your appearance. We're going to call you later on in the month."

So at that time, they took her up to Kansas City and parked her in a motel while the agents went home to visit their family.

She had no money. She had no vehicle, no way to leave the FBI custody. There she was with her infant daughter; and during this period, she finds out that she's pregnant with a second child that she and Terry are going to have, which has since been born.

So this is what happened to Marife Nichols, and you will hear from her about this.

Now, you will note during the course of this trial as to John Doe No. 2 that so many witnesses saw at the pertinent time -- John Doe No. 2 was with McVeigh on Monday afternoon when he picked up that truck. John Doe No. 2 was with McVeigh on Wednesday morning, when he parked it in Oklahoma City. You will see during the course of this trial that the FBI actively avoided running down any John Doe No. 2 lead if it contradicted their theory that it was just Mr. Nichols and Mr. McVeigh involved. And because of that closed mind-set and because of what they're trying to do by fitting square pegs in round holes, we're going to show this through cross-examination and through the presentation of neutral, unbiased witnesses during the course of this trial.

Thank you for your attention.

MR. TIGAR: Your Honor, I have five minutes just to conclude. Shall I do it now before lunch?

THE COURT: Is anybody uncomfortable?

MR. TIGAR: Five minutes.

THE COURT: Go ahead.

MR. TIGAR: I promise.

Briefly now, Part 3, the so-called "science." I want to wait on this because I want you to hear it from the witness stand.

The FBI Laboratory personnel moved quickly to collect things, fingerprints, writing, soil samples, tools, bomb residue.

The fingerprint evidence, I've discussed. That evidence corroborates that Mr. Nichols was what he said he was, a self-employed dealer in gun show items; and we'll show the other side as it comes in.

The residue evidence: There was no bomb material residue at any storage shed or area to which Terry Nichols had access. None. Terry Nichols had the same kinds of items in his storage shed that many other people in this case will be shown to have: Michael Fortier, Fortier's brother, Dave Paulsen, Kevin Nicholas and dozens of others.

Barrels: We're going to show the truth about the barrels. Finding HDPE, high-density polyethylene -- that's plastic -- barrels in your house is about as remarkable as finding a baseball cap at a Rockies game.

Soil samples: We'll show you pictures of how the soil samples were collected at Geary State Park and show the FBI performed sloppily and with an accustomed lack of relevance.

Tool marks: An FBI agent will come in here and try to tell you that a drill bit from Terry Nichols' house was used to drill a lock at a quarry where some explosives went missing. Of course, the evidence will be that many people had access to that particular drill bit. But more importantly, that drill bit evidence -- and you'll hear it from this stand -- is an example of bad testing procedures, inadequate research, incompetent work, some of which can be laid at the door of Kansas law enforcement; but most of it will belong to the FBI, and that evidence is contraindicated by other evidence about the drill in question.

Finally, you're going to hear evidence about the crime scene. The Government's imported expert all the way from England will admit to you that there is no ironclad forensic evidence that anybody (sic) that somebody could get from that burglarized quarry was used in the bomb at the Murrah Building.

Of course, on April 19, 20, and 21 it was a priority to care for the injured, recover the dead. The FBI had special teams there whose responsibility it was to collect the evidence, photograph it, label it, package it, and get it to the FBI Laboratory and that the responsibility of those people was to deal with it competently.

The evidence will be that the Federal Bureau of Investigation failed at every single one of those tasks.

I'm about done.

For two months in 1994, Terry Nichols was Tim McVeigh's business associate; and he had befriended Tim McVeigh. Tim McVeigh did not treat his friends very well. You may ask how they even became acquaintances. Well, in 1988, Lana Padilla -- after Terry had gone in the Army, he found that his wife had virtually abandoned their son, Josh. So he went back to Michigan, got Josh, rented a house in Kansas, where he could raise Josh himself while he was serving as a soldier. To help pay the rent, he advertised in the paper for somebody to

let one of the rooms. That's when Tim McVeigh showed up in answer to the ad. And when Mr. Nichols got out of the Army on his single-parent discharge, he went back to Michigan and cared for Josh and for Lana's son by a former marriage.

There he is. Terry Nichols living at 109 South 2d Street in Kansas, presumed innocent, living in that house he just bought on a 15-year contract, printing business cards in his own name, receipts for the taxes he had paid, picks, shovels, ammo cans, nails, and arms for sure; yes, for things to sell at gun shows, in his shed.

Oh, and ammonium nitrate: Yes, he bought a bag of ammonium nitrate. And in his shed are hundreds of little plastic bottles with labels so he could repackage this fertilizer and sell it for about five or ten times what he paid for it. And you'll see the labels and the little plant food jars, and you'll see how he ground it up to put it in the little jars.

He was building a life, not a bomb.

This trial, as you can see perhaps from the length of these statements, is a long journey. It is a journey we will take together. And over and over again, Judge Matsch will tell us not to make up our minds till the journey is done, for we all know at times at the close of day, when the sun's last rays illuminate something that we just hadn't noticed before, you may find the reasonable doubt in that last bit of evidence. And when the journey is over, we'll stand before you and ask you for a verdict of not guilty. For now and into the journey, we bid you well.

THE COURT: Members of the jury, we all appreciate your cooperation in working on into what would normally be our noon lunch recess, but it is helpful to get all of the opening statements together at the same time and to assist you, I think, in recognizing, as I have told you before, that these statements are statements of what the lawyers in the case expect the evidence to be. But, of course, again, I repeat that the statements themselves are not evidence. You must wait for the witnesses and the exhibits. That will constitute the evidence, and we will start that this afternoon after this luncheon recess.

Also, you know, we will be working with you on scheduling and making special arrangements when necessary. Tomorrow is an election day in Colorado, and it is also one where the communities -- and you come from different communities -- have special ballot issues; so what I hope -- and you can discuss this; this is something you can discuss during the noontime, but, of course, the case you can't. I'd propose that we recess early tomorrow, like 4:00, so that you'd have time to get to your respective polling places, knowing that there is a difference here before the polls close. We do not, of course, ask you to give up that right as citizens to vote in your elections. So that's what I suggest, and you let us know if there is any difficulty with that.

Now, we're going to recess at this time till 2:25. These noon recesses may seem long to you because, you know, you want to get moving on the case and so do we; but there are things that have to be done during these recesses. Witnesses don't just come up out of the floor here. We have to get them

don't just come up out of the floor here. We have to get them to the courthouse, arrange for their presence, and so forth; and that's why some of these times out seem long, but there are things going on.

The main thing is, of course, that we don't interrupt once we have a witness on here excepting for our rest-stop-type recesses.

Now, again, you know, you've heard a lot of explanation here from counsel about what they expect to happen in the course of this trial; but, of course, what actually happens could be different from what they say; and one of the things that will be going on, as I'm sure you recognize from my explanation to you last week, is that there will be disagreements among the lawyers in the case about what you can hear.

You recall that I mentioned rules of evidence, and I did that individually with you during the jury selection process. And I repeat it now again for all of you so that you will recognize what happens here when we do have disagreements and when one lawyer will object to a question put by the opposing counsel and I'll be ruling on that. Please, again, remember that these are the professional responsibilities of the lawyers and that my rulings will control what you hear and see as the evidence in the case. And you should not be speculating about the reasons for the objections or in the case of an objection that's sustained what would the answer have been, that kind of thing. Let me take care of the evidence. And please recognize that the lawyers have a job to do here in raising these objections.

So you're excused now till 2:25, and please don't discuss the case or anything about it. We'll start with our first witness when you're back in the courtroom.

You're excused for now.

(Jury out at 12:56 p.m.)

THE COURT: We will, of course, invoke the sequestration of witnesses ruling excepting to the extent that counsel have agreed on certain witnesses being present at certain times.

MR. TIGAR: Thank you, your Honor. Mr. Manspeaker did deliver the message. We had reached an agreement as to one witness.

THE COURT: All right. 2:25.

(Recess at 12:57 p.m.)

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REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 3d day of November, 1997.

Paul Zuckerman

Bonnie Carpenter

Kara Spitler

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