

Kansas, for the last time. When Mr. Nichols spoke to the FBI on April 21st, he told them at first that Mr. McVeigh had left and they had parted the way they always did, "Catch you later." But eventually during the questioning, Mr. Nichols admitted that Mr. McVeigh had asked him to clear out his storage shed in Herington, Kansas. And Mr. Nichols admitted to the FBI that he had done that; that on the morning after the bombing on April 20th, he had gone to Unit 2 in Herington and cleared out the storage shed for Mr. McVeigh.

There are several questions that are raised by Mr. Nichols' version of the story to the FBI. First is how did he know that he should clean out that storage shed on the morning of April 20th if he wasn't involved with the bombing. Mr. McVeigh, he says, told him that he was leaving to go back East to see relatives. That means Mr. McVeigh would have had to leave on the afternoon of April 18th and returned on the 19th for -- to clean out the storage shed in order not to raise suspicion in Mr. Nichols' mind. Just 24 hours to get all the way to New York and back to his family. That, of course, makes no sense. The reason that Mr. Nichols cleaned out the storage shed on Wednesday, April 20th -- excuse me -- on Thursday, April 20th, was because he was expecting Mr. McVeigh to come back. He was expecting Mr. McVeigh to drive down to Oklahoma City, to leave the truck bomb that they had made and to drive directly back north to central Kansas.

You know this was the plan because when Mr. McVeigh was arrested on April 19th, after detonating the bomb outside the Murrah Building at approximately 9:02 a.m. on Wednesday the 19th, he got on Route -- I-35 and drove directly north, going back to Kansas. And as part of his plan, he was going to return to central Kansas to be with his partner in crime, Terry Nichols.

But thank goodness for Trooper Charlie Hanger. Trooper Charlie Hanger finally stopped Timothy McVeigh and Terry Nichols' plan. Timothy McVeigh could have driven anywhere. He could have gone south, he could have gone east, and he could have gone west; but he drove -- he chose to drive north back to Kansas.

Just the way he planned it.

When Trooper Hanger arrested him and brought him back to the Perry County jail, Terry Nichols was alone. On Thursday morning, when Timothy McVeigh did not arrive back as planned, Terry Nichols went to the storage shed and cleaned out Timothy McVeigh's items. He then went into town to get cable TV so that he could find out what had happened to his compatriot, and he recognized at that point that he needed more information. He started to panic.

He started to realize that for the first time, Terry Nichols didn't have a plan.

So he went and he bought three newspapers, three newspapers all from Kansas that talked about the Oklahoma City bombing.

Now, you have to ask yourself if Terry Nichols was responsible for the bombing, why would he buy three different newspapers on the same day? You know that the only reason that most people buy three different newspapers on the same day is

when the story is about you or someone you know.

If your wedding announcement is in the papers, your retirement or a touchdown that your son scored at the high school football game, you would buy several papers because you're proud of what your family had done. Terry Nichols bought three newspapers on the same day because the story about the Oklahoma City bombing was about him. He and Timothy McVeigh had planned and executed the event that was the headline in every paper around the country on April 20th. Terry Nichols wanted to read about the bombing; and most importantly, he probably wanted to find out about the investigation of the bombing because he wanted to know what law enforcement knew about what he had done.

He was a clever, crafty man, and he wanted to make sure that he had as much information as law enforcement did. He wanted to know if they had figured out that he had stored the bomb components in the storage sheds near his community. He wanted to know when the law enforcement would find out about the Ryder truck being rented in the town next to him. And he wanted to -- wanted to know when the police would realize that one of the main components in the massive bomb that destroyed the Murrah Building was ammonium nitrate.

Can you imagine the panic he started to feel? The methodical, careful, and devious Terry Nichols had planned for almost everything, but he never expected that Timothy McVeigh would not return to Kansas. For the first time in months, he was on his own with no plan.

And inside his house was plenty of incriminating evidence.

So on April 21 when he woke up that morning, he knew that he had to do something, but he didn't know what to do. So he got out in his yard and started tossing ammonium nitrate, covering his yard so it looked like snow.

You all remember Gladys Wendt. She was the lady from Herington, Kansas, who drove in to have her hair done every Friday morning, met up with her cousin, and took their day to hoot and holler. She told you exactly what she saw on the morning of April 21st, 1995. She saw Terry Nichols tossing ammonium nitrate on his yard, on a yard that didn't have a whole lot of grass, and it was certainly not done to grow that grass on April 21st, 1995. Gladys told you that that's -- the ammonium nitrate that looked like snow was on so heavy that it would have burnt any grass that was already there, but she kept her mouth shut and didn't talk to Terry Nichols.

Terry Nichols was trying to destroy the evidence that he knew would incriminate him, the evidence that he knew but at the time no one else knew would show that he had been part of the Oklahoma City bombing.

Why would he toss ammonium nitrate on his yard? He tossed it because he had mixed the bomb himself and he knew that the main charge, the massive part of the amm -- of the bomb was made of ammonium nitrate. And he panicked. He wanted to get rid of it, and he put it on his yard, hoping that law enforcement would never suspect him.

Just a couple hours later, as his wife Marife told you, he heard his name on the radio and decided that he had to talk to law enforcement. He couldn't take it anymore. He

... to law enforcement. He couldn't care anymore. He wanted to know what they knew, and he wanted to try and explain away everything he had done.

And he thought that he could talk his way out of it. He knew or at least he thought that no one could ever trace the Daryl Bridges phone card. He knew it was a debit card. And he knew that -- or he thought that because he didn't receive a bill for those records and because that card was in a false name, that once he debited the account, there would never be any records of his criminal calls with Timothy McVeigh.

He was wrong.

He also knew that he had been with Timothy McVeigh on the evening of April 16th. And he knew from the CNN broadcast on April 21st, which was interesting -- which was introduced in evidence that the FBI acknowledged that they had recovered a videotape from near the Murrah Building so in his calculating way, he knew that he had to admit to law enforcement that he had been in Oklahoma City on April 16th, 1995, because the videotape could have captured him going around the Murrah Building. And he was right. You saw the videotape from the Regency Towers, showing his truck passing by the building, going down 5th Street one way towards the Murrah Building, on the evening of April 16th.

You also showed the -- saw the videotape which showed the Ryder truck approaching the Murrah Building just moments before the blast.

So Terry Nichols, on the afternoon of April 21st, did a calculation in his mind. He decided that he knew what law enforcement knew. He knew what they could figure out and what they couldn't, and he was going to go in and talk to them. He was going to go in and try and blame it on his friend Timothy McVeigh and elude detection for all criminal activities.

But Terry Nichols lied, and Terry Nichols lied over and over again to the FBI on the pieces of information that he thought they could never contradict. But he was wrong. Terry Nichols lied about anything that would have incriminated him just like a guilty man does.

The first lie Terry Nichols told was that he had no contact with Timothy McVeigh before April 16th other than the letter he wrote for the television. You know that's a lie because you've seen the phone records.

You also know that that's a lie because of the Wal-Mart receipt.

He also lied about the purpose of his trip to Oklahoma City. He admitted that he went to Oklahoma City, but he lied and said he was going down there to pick up a television set.

He lied and said that he hadn't seen Timothy McVeigh face to face before that date. And it's the Wal-Mart receipt, a simple receipt for \$2.54 that shows you he was lying about everything.

Here's the Wal-Mart receipt with the front and the back and the sticker that shows you that on April 15th, 1995, Terry Nichols returned the oil filter that was circled here by Mr. Kordyak at the Manhattan Wal-Mart. You know he was there because we found another receipt that showed him purchasing items for his home; but most importantly, his own wife told you

that he returned the oil filter on that day.

In case there's any question, you can see right on the back here, circled on the left of this piece of evidence is SWB upside down, which is Southwestern Bell, and Mr. Nichols' No. 9349. You can see that that matches the Southwestern Bell card for Mr. Nichols, Government's Exhibit 2003.

You also know that that receipt was Mr. McVeigh's receipt from Arkansas City because it says on the receipt that the initial purchase was made in Arkansas City on April 13. You know that Mr. McVeigh handled that receipt because you heard that there were fingerprints on that receipt of Timothy McVeigh and Terry Nichols.

Here on this chart, you see the Wal-Mart receipt with the purchase from Arkansas City on April 13th, the circle of the oil filter with the initials and the tag showing, "Return on April 15th"; and to the left, you see Terry Nichols' thumbprint on the top and Timothy McVeigh's thumbprint on the bottom.

Here is the exhibit -- Government's Exhibit 265CC that Mr. Huff made for you to show you exactly where those fingerprints were on the front of the receipt. Up here, where it says "Terry Nichols," shows that Terry Nichols had his thumbprint right here where the initials were and above the "Wal-Mart." And Timothy McVeigh had his fingerprint, his thumbprint right down on the bottom of the front of the receipt.

Their fingerprints were found not just on the front, but also on the back, as if Timothy McVeigh had been face to face with Terry Nichols and handed him the receipt just like that.

For Terry Nichols to get that April 13th, 1995, Wal-Mart receipt, Terry Nichols had to be face to face with Timothy McVeigh before April 15th when he returned the oil filter. He had to get that oil filter that Mr. Kordyak told you he got returned on April 15th from Timothy McVeigh. That's what happened, ladies and gentlemen. The documentary evidence proves it, and Mrs. Nichols left no doubt in your mind about what happened.

So once you see that evidence, what is the only conclusion that you can make? That Terry Nichols lied about why he went to Oklahoma City on April 16th, that Sunday. He had already been face to face with Timothy McVeigh the day before. He had received that oil filter and that receipt. If he was face to face with him, why didn't he get his television set with him then? Because he wasn't going to Oklahoma City to pick up a television set. He was going there to stash the getaway car and to prepare for the bombing of the Murrah Building. There is no other explanation. Terry Nichols and Timothy McVeigh were face to face before April 16th. Terry Nichols lied to everyone and he lied about something that he knew would show he had been part of the plan up to the very end, and it's a simple Wal-Mart receipt that tells you that that is true.

Terry Nichols had returned the oil filter that day,

but he did not get his cash. Mrs. Nichols told you that he had forgotten when he was in the store. After he went back to the automotive section and returned the oil filter, they went about their shopping. He forgot to go to the customer service desk to get his money back, so he still had that receipt in his hand. They drove on to Junction City and stopped at the Wal-Mart one more time where Mr. Nichols tried to get his money back, but the lines were too long.

If Terry Nichols had been able to get his money back that day, he would have left the receipt with the Wal-Mart and you would have never seen it. But even criminals mess up. And Terry Nichols had no idea on April 15th that that Wal-Mart receipt would tell you everything you need to know about what Terry Nichols was doing in the week before the bombing and why he was going to Oklahoma City on April 16th, 1995.

So Terry Nichols lied about his contact before April 16th because he didn't want to tell the truth about his trip to Oklahoma City.

He lied about his knowledge of Timothy McVeigh being at the Dreamland because, again, that would tell you that he had been in contact with Timothy McVeigh on those days preceding the bombing and that they had planned to build the bomb in that phone call from the Kansas City airport to the Dreamland Motel the night before the meeting at Geary Lake.

You know he lied about that because you've seen the phone records.

He also lied about having any explosives in his house because he didn't want the FBI to be suspicious, but we know Primadet was found in his house.

He lied about being at DRMO for six hours because of the reasons we've already reviewed. He didn't want anyone to know that he had been mixing those bomb components with his own hands just 24 hours before the bombing. He lied about DRMO but let the FBI know that he had signed in so they could go see the record at 12:50. He told them the truth about what he knew they could figure out, and he lied about the things he thought they could never discover.

The best example of that is his statement -- it's his lack of forthrightness about Bridges and Havens. He told the FBI and the marshal service about the aliases that he used. He never mentioned Bridges and he never mentioned Havens. He never mentioned Bridges for the reasons we've already stated, because that phone card, the phone card in Bridges' name, gives you a road map to what Terry Nichols and Timothy McVeigh were doing from the fall of 1994 to the spring of 1995; and he surely didn't want to reveal the name "Havens," whether it was Joe, Mike, or Terry, because he knew that would lead the FBI to the purchase of 4,000 pounds of ammonium nitrate back in the fall of 1994.

When Mr. Nichols did talk about the storage sheds that he had rented, he told the FBI about the Council Grove storage shed No. 40, and he told them about the Herington storage shed. He told them that because he had seen -- he thought the FBI knew about some of the storage sheds when they came back and asked him during the end of the interview, but he never revealed Council Grove No. 37. Even though he told them about

revealed COUNCIL GROVE NO. 37. Even though he told them about No. 40, he never revealed No. 37; but again, that would have led the FBI to the robbery of Roger Moore and the storage of the stolen guns.

He never told the truth about the purpose of emptying the storage shed in Herington because he knew that if he didn't make it sound like he was just doing Timothy McVeigh a favor, everyone would have known that he was emptying the storage shed in Herington on April 20th because his plan with Timothy McVeigh had gone awry after the bombing. Timothy McVeigh had not returned.

He definitely did not want the FBI to know about Michael Fortier, because he knew that Michael Fortier knew he was part of the plan. So when he talked to the FBI, he said he didn't know Michael Fortier's first name. You know that's not true because the book recovered from Mr. Nichols' house listing addresses shows on page 4 that he has Michael Fortier's first name and his full address. He was hoping beyond hope at that time that the FBI would not be able to find Michael Fortier and determine that Terry Nichols had agreed with Timothy McVeigh to bomb and kill.

And finally, after the F -- after he finally acknowledged at the end of his interview that he had tossed ammonium nitrate on his yard, he explained to the agents that the reason he did it, but didn't tell them about it initially, was because it would make him look guilty in front of a jury. Well, we all agree on that. It definitely makes him look guilty in front of a jury.

He also said that anyone with ammonium nitrate on April 21st would have been a suspect in the bombing, an absolutely ludicrous assertion. Terry Nichols had this yard in front of his home on April 21st, 1995. He tossed that ammonium nitrate on there not to grow his grass, but to hide the evidence. And he knew the reason it would make him a suspect was not just because he had ammonium nitrate in his house, but because he had virtually everything else anyone would need to bomb the Murrah Building.

Look at this list of items that were found in Mr. Nichols' house two days after the bombing. The ammonium nitrate receipt in the name of "Mike Havens," showing he purchased 2,000 pounds of ammonium nitrate, which led us to the second receipt showing he had purchased a total of 4,000 pounds of ammonium nitrate.

He had ammonium nitrate in his home.

He had the Primadet, the exact same kind of Primadet that was stolen from the quarry.

He had the Makita drill, the drill that was used to drill the padlocks at the quarry.

He had plastic barrels, Smurfit plastic barrels that were used to contain the device in Oklahoma City.

He had the Bridges card, the card that showed all the phone calls he made to further the plot.

He had the Hunter, the book that showed him and showed

you that he knew exactly what would happen if an ammonium nitrate/fuel bomb was placed in front of a glass building.

He had Mr. Moore's guns and ammunition.

He had Mr. Moore's quilt and keys.

And he had Waco materials, showing how he felt about the government's actions at Waco.

This list of incriminating evidence was found in Terry Nichols' house. All of these items were there on April 22d when the agents searched his home.

Mr. Nichols was not a suspect because he tossed ammonium nitrate on his yard or just because he had some antigovernment literature in his home. He was a suspect because of everything else that he had in his house and every action he had taken from September of 1994 until April 19, 1995.

In the face of this overwhelming avalanche of evidence, Terry Nichols presented a defense to you that was meant to confuse and to throw blame once again onto someone else.

Ask yourself what type of man would raise the issue of John Doe 2 and other sightings of a Ryder truck at Geary Lake. This is the defense of a guilty man. Terry Nichols used witnesses that he knew were mistaken. He knew that what they were telling you could not be true. The best example of that is when he called Germaine Johnston, a victim of the bombing, in to testify before you, the most disingenuous type of defense that you could have. Germaine Johnston had been in the building on the morning of April 19th, and she told you that

she was in shock, she was confused and traumatized, as anyone would be by the bombing. But despite that, Terry Nichols called her into this courtroom and had her tell you about how she searched the streets looking for friends and family and how she finally turned down an alley to look for her husband. She recalls that when she walked down that alley, she saw two men sitting near a Mercury at around 9:30 a.m., about 25 minutes after the bombing, and that they talked to her and asked her about what had happened and asked her how many people had died.

Terry Nichols knows that Mrs. Johnston could not have seen what she said. He admits that Timothy McVeigh was arrested in Perry, Oklahoma, 75 miles from the bombing scene, 75 minutes after the bombing. For that to be true, Timothy McVeigh had to get in his Mercury Marquis and drive to Perry, Oklahoma, immediately after the bombing to arrive at the same time that Trooper Hanger arrested him.

No one is here to criticize Ms. Johnston. She was a victim of the crime. But her recollections cannot be correct. Despite knowing that and despite knowing that it contradicts his own theory, Terry Nichols brought her before you to somehow try and confuse you about what had really happened with Timothy McVeigh on that day.

You know that Timothy McVeigh was alone because Trooper Hanger arrested him alone in his Mercury Marquis after 10 a.m. on the morning of April 19th. So why did Terry Nichols present that kind of defense to you? Again, he presented the only defense a guilty man has. He tried to confuse you, embarrass witnesses, and raise some kind of doubt about who was involved.

He has no burden; but once he takes the burden to present a case, you can study it and evaluate it just the way you would the Government's case. And how can you look at the witnesses that he presented? They fall in several different categories.

One, we'll call the John Doe 2 category, Timothy McVeigh's phantom companion in Kansas and Oklahoma City.

Geary Lake, where everybody sees a Ryder truck at different times but almost nobody sees it twice.

DRMO, where almost anything can happen except seeing Terry Nichols.

The Herington witnesses who showed you that Terry Nichols was building an alibi, not building a life.

The witnesses called to impeach Roger Moore who proved that no matter what else they think of Roger Moore, Roger Moore got robbed.

The madman McVeigh witnesses, the people who said that McVeigh had radical ideas and also told you that he wouldn't stay friends with the people who didn't share those ideas.

And finally, the witnesses who confirmed that Michael Fortier sometimes used drugs, something that the Government had already told you during its case.

And what did you hear about these types of witnesses? Let's start with the John Doe 2 witnesses. You've seen the sketch. Everybody in America has seen the sketch of John Doe 2, including all the witnesses that the defense paraded before you. They had seen the television coverage, the newspapers, and seen the sketches of John Doe 2. Those witnesses told you some other things.

Two of their witnesses, Mary Martinez and Sharen White, told you at that time, everybody else wanted to get involved and everybody claimed to have seen something. But in an attempt to divert you from the overwhelming evidence against Terry Nichols himself, they brought you conflicting tales which could not possibly be true. According to Mary Martinez, John Doe 2 is a fully erect Mexican midget who stood up in a Ryder truck. Sharen White, convinced that Timothy McVeigh was staring at her going 55 miles an hour. Shane Boyd, who told you that it was some Hispanic male who was buying a Coke at the Dreamland; therefore, he must be John Doe 2. Rose Mary Zinn, who insulted everyone when she said the dark-colored man who came into her store was John Doe and he was going to rob her.

To find the John Doe 2 that the defense presented to you, we would need to have a morph machine. We need somebody who's tall, who's short, who's muscular, who's thin, with dark hair, long hair, Asian, Mexican, dark or light.

That names about three-quarters of America. The only thing that the defense accomplished in proving to you -- is to prove to you as a result of the media frenzy that followed the Oklahoma City bombing, sightings of John Doe 2 were about as common and about as credible as sightings of Elvis. Don't get distracted by the sightings.

No one is telling you that Timothy McVeigh was never with anyone else. That is not the issue here. The issue is who is on trial. John Doe 2 is not on trial and Timothy McVeigh is not on trial. This is the trial of Terry Nichols.

McVeigh is not on trial. This is the trial of Terry Nichols, and this is the case where we evaluate the evidence against Terry Nichols.

And if there were someone else involved, what evidence has there been that anyone but Terry Nichols and Timothy McVeigh bought the one ton of fertilizer on September 30th? That alone tells you that Terry Nichols is guilty of the crimes charged.

What evidence was there that John Doe 2 was involved with the theft of explosives? You've seen evidence of Terry Nichols, and finding him guilty of the theft of explosives is enough showing that he agreed with Timothy McVeigh to bomb the building to find him guilty of these crimes.

There was no evidence that anyone but Terry Nichols and Timothy McVeigh were involved with the purchase of the second ton of ammonium nitrate fertilizer on October 18th.

The same holds true for October 21 when Terry Nichols and Timothy McVeigh went to Ennis, Texas, to purchase the nitromethane.

The only evidence that we have heard in this case is that Terry Nichols was involved with robbing Roger Moore on November 5th, 1994.

And if this phantom of John Doe 2 were to be charged, could we charge him with April 14 when Terry Nichols was called by Timothy McVeigh right before Timothy McVeigh tried to rent the Ryder truck? No. The only evidence is that Timothy McVeigh and Terry Nichols were together, making their final plans. Stashing the getaway car on April 16? Which Mr. Nichols does not dispute that he was in Oklahoma City. He and Timothy McVeigh were the only ones down there, planting the getaway car.

And finally, on April 18th, 1995, Terry Nichols and Timothy McVeigh were building the bomb to destroy the Murrah Building and kill 168 people.

Any of those road stops, ladies and gentlemen, any of those steps along the road to destruction are enough to convict Terry Nichols of these crimes; but if you had any doubt in your mind, any doubt whatsoever, it was erased when Mrs. Marife Nichols took the stand.

The defense counsel told you to wait until the end to hear all the evidence, and they were right, because it was the last witness of the defense count -- case, Marife Nichols, who made you absolutely sure that Terry Nichols was involved in this plan from beginning to end. Marife Nichols told you Terry Nichols and Timothy McVeigh were best friends. Marife Nichols told you that Terry Nichols used false names. She told you that the two men were together in 1994 and that all of the coins in Terry Nichols' house belonged to him. She told you that Timothy McVeigh had never been to her house in Herington; that Terry Nichols had never scared her with a wig and ski mask, and she told you that their family had been separated more than they had been together. She had been gone for seven months during the time of the conspiracy.

She told you herself that Terry Nichols returned the oil filter on April 15 that belonged to Timothy McVeigh. She told you that Terry Nichols had lied to her about going to Omaha. She recounted for you the conversation with Josh

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Nichols when Terry Nichols turned his back on him and left him there on Easter Sunday. And she told you about the letter that Terry Nichols had gotten from Timothy McVeigh the week before the bombing.

She said to the best of her knowledge, Timothy McVeigh had never called before April 17. And on the morning of April 19, she had no idea where Terry Nichols was.

She even told you that on the day that Terry Nichols spoke to the FBI, he was concerned about a fuel meter in his garage as soon as he heard his name over the radio. He turned and said, "I have to do something about that."

Marife Nichols told you that Terry Nichols gave her money before they went to the police station and that only as they were about to enter the doors did he finally admit that he had lied about Omaha and that, in fact, he had been in Oklahoma City on April 19 -- April 16, 1995.

And one small fact, maybe most telling about Terry Nichols' story about building a life instead of building a bomb, was when Marife Nichols told you that she had called to arrange to leave the United States on the morning of April 21, 1995, to return to the Philippines. After being back with her husband for just more than a month, she wanted to leave the country and go back to the Philippines. Terry Nichols was not building a life. He was building a bomb.

Over the past few hours this morning, we have reviewed an avalanche of evidence. Beginning with the fall of 1994, we know that Terry Nichols made a choice to quit his job and join in this plan to bomb the Murrah Building and kill the people inside of it with Timothy McVeigh.

The avalanche, the momentum of this evidence has been apparent over the past few hours. When Terry Nichols and Timothy McVeigh began on the road to destruction back in September of 1994, they were together in central Kansas. At each stop along the road, Terry Nichols made a choice, a choice to participate in the plot to bomb and kill. He didn't just happen to be Mr. Havens. He didn't just happen to rent three storage sheds in false names. He didn't just happen to use the Daryl Bridges phone card to obtain bomb components and he did just not mistakenly rob Roger Moore.

Even at the end of the plan, the last few days of April of 1994 (sic), Terry Nichols did not just run into Mr. McVeigh by chance. He did not just go to Oklahoma City to assist Timothy McVeigh without knowing what he was doing. Nor did he do anything but make a purposeful choice on April 18 to mix the bomb at Geary Lake. This wasn't a coincidence. Terry Nichols was in it every step of the way.

When you all go back into the jury room to review all of the evidence against Terry Nichols, you will see that there is but one conclusion: Terry Nichols joined with Timothy McVeigh to bomb the Alfred P. Murrah Building and intentionally kill any federal workers and anyone else who was in that building on the second anniversary of Waco on April 19th, 1995.

The avalanche of evidence that we have presented against Terry Nichols can be displayed quite easily by just looking at the time, the place, and the distance. This is a

map of America. From this, you can see the miles and miles that Terry Nichols drove on the road to destruction to accomplish his task.

Back in the fall of 1994, all across America, citizens were carrying out their daily rituals, tending to their families, and pursuing their interests with a sense of security that no one from within their own borders would ever attack our own citizens. Little did we know that in the middle of America, in the middle of Kansas, Terry Nichols and Timothy McVeigh decided to take action against the Government.

Look for a moment at this map. Look where Kansas is. It's literally in the middle of America.

In the Heartland of America, in central Kansas in the fall of 1994, no one thought twice about someone purchasing 4,000 pounds of ammonium nitrate. And why not? At that time, people thought of Kansas as a place with friendly neighbors, church picnics, and not having to lock your doors. No one thought that central Kansas would be ground zero for a plan for mass murder.

No one in Kansas suspected that Terry Nichols had robbed a quarry and no one had any idea that he had rented all those storage sheds in false names. But over the months in the fall of 1994 and the spring of 1995, while citizens of the Heartland trusted their neighbors, Timothy McVeigh and Terry Nichols were deceiving everyone.

In response to this avalanche of evidence, Terry Nichols is asking you to believe that he had no idea what Timothy McVeigh was doing in the fall of 1994 or the spring of 1995. As many have said before, a picture is worth a thousand words and if we take a look at a picture of Kansas, we can see what was happening during that time.

Here in central Kansas, virtually all the activities of the bombing plot occurred. You can see right here Junction City. We know that's where the Ryder truck was rented on April 17th.

Just due north and east, in Manhattan was where many of the phone calls were made, including the contacts between Mr. Nichols and Mr. McVeigh concerning the Roger Moore robbery.

Coming south, in Council Grove was where Mr. Nichols rented the storage sheds to store the bomb components and the stolen weapons.

Making a circle back around and south, in Marion, Kansas, was where the quarry was robbed of the explosives that Terry Nichols and Timothy McVeigh needed for the bomb.

And over here to the west, in McPherson, Kansas, was where the 4,000 pounds of ammonium nitrate were purchased.

And in the center of all this activity is Terry Nichols. Terry Nichols in Herington, Kansas. Right in the middle of all the bombing activities.

Out of anywhere in America, ladies and gentlemen, virtually all of this activity was occurring right around Mr. Nichols. Terry Nichols was there not by chance and not because of coincidence, but because he chose to attack his country and kill his fellow Americans. In the face of this simple but overwhelming picture, Terry Nichols asks you to

believe that he had no idea what was going on. When you consider all of the evidence and you look at all the facts that support the charges against Mr. Nichols, you will see one clear picture. You will see that Terry Nichols knew exactly what he was doing. You will see that Terry Nichols had a plan. This was a plan that he believed in, that he was committed to, and that he carried out.

Early on the morning of April 19th, the citizens of Oklahoma, located just south of Herington, Kansas, had no idea of what tragedy was about to befall their city that morning. Helena Garrett rushed off to work to drop off little Tevin at the day-care center in the Murrah Building, having no idea what Terry Nichols and Timothy McVeigh had done in central Kansas. Nor did Agent Luke Franey who had worked late into the night on April 18th and had come in early on the morning of the 19th to write up an arrest warrant. None of the people in the Alfred P. Murrah Building, none of the innocent men, women, and children had any idea what Terry Nichols and Timothy McVeigh had planned for them that day.

As Timothy McVeigh drove south on I-35 towards Oklahoma City from central Kansas and Terry Nichols was safe at home with his family, far from the target of their massive ammonium nitrate bomb, Terry Nichols waited. Terry Nichols knew what was about to happen to Agent Cindy Campbell-Brown, to Paul Broxterman, and Agent Paul Ice, Donald Leonard of the Secret Service, Mickey Maroney, Kenneth McCullough, Claude Medearis of the Customs Service, and Secret Service Agent Alan Whicher.

Terry Nichols knew that many, many lives would be lost in Oklahoma City on the morning of April 19th, 1995. Just the way he planned it.

THE COURT: Members of the jury, we're going to take a few minutes' recess here in between to give an opportunity to rearrange things and prepare for hearing arguments from defense counsel. And of course, during this time, you will continue to keep open minds, recognizing, as I said, that you've heard only from one side now on arguments, so please wait till you've heard it all, including what I'm going to tell you about the law. So we'll expect maybe five or ten minutes. Will that be sufficient to rearrange things?

MR. TIGAR: Yes, your Honor.

THE COURT: All right. And we'll let you know when we're ready to proceed. So again, please keep open minds and avoid discussion of the case among yourselves and with all others. You're excused now. Be ready in five or ten minutes.

(Jury out at 1:58 p.m.)

THE COURT: Are you going to divide the argument, Mr. Tigar and Mr. Woods?

MR. TIGAR: Yes, your Honor. Yes, your Honor.

THE COURT: All right. Well, as I did with Government counsel, you let us know then when we're ready -- when it is an appropriate time to recess.

MR. TIGAR: Thank you, your Honor.

THE COURT: All right. We'll be in recess a short

THE COURT: All right. We'll be in recess a short time.

(Recess at 1:59 p.m.)

(Reconvened at 2:07 p.m.)

THE COURT: Be seated, please.

Ready?

MR. TIGAR: Yes.

(Jury in at 2:07 p.m.)

THE COURT: All right. Members of the jury, we'll hear from the defense. Mr. Tigar.

CLOSING ARGUMENT

MR. TIGAR: May it please the Court, Mr. Nichols, Counsel, members of the jury.

I want to thank you for listening to us, for taking time away from your lives and work over the past several months to listen to the evidence; and now I'm going to ask you one more favor, if I may. It may be that you, after three hours and a half or three hours and 45 minutes of Government counsel's summation, looked inside yourself and said, well, how in the world are they going to answer that? And I'm going to ask you a favor. I'm going to ask you to let me start with a clean page.

You know, I -- when my two older kids were younger, sometimes they'd fight and I'd go into the next room and I'd turn to John, and I'd say, "John, what happened?"

And he'd tell me some version, and then I'd turn to Katie and I'd say, "What happened?"

And she'd start to tell me, and I'd start to interrupt her, say, "Well, that's not what I heard."

And then I realized that I wasn't really being fair to John or to Katie unless you heard each one of them out right from the beginning before I tried to unravel whatever it was was the difficulty. So I'm asking you that favor as Ron Woods and I try to talk about the evidence that's been received here.

I'm going to talk for a while, Mr. Woods will talk for a while, and then I'll try to sum up. But one of the things that we're going to emphasize here is that we don't have a burden of proof here.

The Judge is going to instruct you at the end of the case that if there are two possible interpretations of the evidence, you must of course choose that which results in an acquittal. And throughout this talk that I'm going to have, I may refer to things the Judge is going to say. Well, let it be understood that we have some idea of what the Judge will tell you. I'm going to paraphrase. What the Judge is going to say is what the Judge is going to say. So you'll hear it from him.

But this concept of reasonable doubt will run throughout. Another way, by way of introduction, is watch that exhibit list. You'll have when you go to deliberate all the list of exhibits. Now, some of the description of exhibits are done by lawyers. The exhibits themselves are what's evidence, not the description.

And then when you look at how to reconstruct what happened, ask yourself, was that lawyer guessing, does that lawyer have evidence, does that lawyer have evidence that

something happened, or is that just a guess, is that a leap, is that speculation?

And I will say that when you look at the testimony of the 92 witnesses that we brought, those witnesses were selected by Ron Woods and me. If there's a personal attack to be done here, which was made by the prosecutor, it is a personal attack on us. We, as lawyers charged with a certain responsibility, selected witnesses and we brought them here, just as the Government must bear responsibility for the witnesses that they brought and for what those witnesses did or didn't say.

We have this idea of reasonable doubt because it seems as a country that it's served us very, very well. The people who founded this country were no strangers to controversy, and they were no strangers to social danger, having created some of it, themselves. They knew that the surest and best way to guarantee the liberty of citizens was that make sure if the Government brought charges, they had to prove them. If there was a doubt, there had to be an acquittal.

It must be difficult in this case, as I said in the opening statement, to get -- to get one's mind around that. The enormity of what was done in Oklahoma City that morning, the sense of loss, the sense of devastation, of tragedy is so great that there might be a temptation to overlook it. I'm sure you won't, but there might be. After all, you are the jury. The Judge will give his instruction; and after that, you'll have the power. You'll have a power that is unknown in any other civilization in the world to be given to a group of citizens: the power to decide. That shows how important this is. More important, too important for me to decide, too important for the prosecutor, too important for the Judge. It's for you.

And having lived and taught as a law teacher and practiced some in five countries, where in every one of which except our own this system doesn't work, they don't have it, I think that we appreciate on our side of the aisle the power that you have in your hands and the responsibility.

The evidence in this case -- the Judge is going to tell you about it and tell you about how to choose when it seems to point both ways. Circumstantial evidence -- that is, evidence that somebody checked in a motel or made a phone call or did this, yes, even fingerprint evidence as we'll discuss -- that circumstantial evidence, Sherlock Holmes once told Watson, is kind of like a stick on the ground. If you stand here and look, it seems to point there just as sure as could be; but if you walk around the other side and look, it points to exactly the opposite direction.

So let me -- let me begin. During this summation, we're not going to use any demonstrative evidence; that is to say, we're not going to use any charts or diagrams or summaries. Why not? Because I tell you frankly that those charts or diagrams or summaries can mislead you, because they represent selections by lawyers, not in bad faith, but as advocates, trying to advocate a position, as to what you ought to pay attention to.

We're going to try to show you some of those exhibits

that you'll have the opportunity to look at. For example, do you remember during the testimony of the witnesses about Kansas, when you saw pages from -- pieces from the Yellow Pages and arrows and phone calls and so on, all being made? These were demonstrative exhibits, those were charts. And you saw some other charts and diagrams of phone calls. Well, in your jury room, when you go to look, you'll have Government Exhibit 553. That's every single one of the 600 and -- let me put my glasses on here. I thought it was 684, but I'm wrong -- 685 calls made on the Daryl Bridges telephone card, every single one, so that you can look at them.

Now, you recognize that, as the man said from The Spotlight company, that they might have missed some, their computer could miss some. You recognize if you see a 3-second call, that 3 seconds is a tick in there, so maybe it was 6 seconds. It might even be zero seconds. There could be a mistake there. But that summary shows you all the calls that the Government is able to trace.

And why is that important? It's important because the demonstrative exhibits the Government showed you had somebody calling from Terry Nichols' house in Marion, Kansas, to places that might sell racing fuel. But they didn't show you page 51, which is for October 7, 1994; and here from the home of Michael Fortier are calls to VP Racing Fuel and Coogle Trucking made at a time when Terry Nichols was not there, made to VP Racing Fuels.

Now, you've had a witness from VP Racing Fuels -- we from the defense called him -- who was Glynn Tipton; and what did he say? "I got a call," he said, "and then thereafter, the man who called and said he was John showed up at a race and came up to me and that he was Tim McVeigh and he wanted to buy racing fuel."

So if all you had were calls that supposedly were made from Terry Nichols' house, you might get the idea that maybe Terry Nichols might have some knowledge of that. Of course, if you looked at the whole pattern of calls that were made during that time that McVeigh was staying, you would see that even that is an inference that wasn't supported by the evidence. And why not? Because all of the calls were made during times that Mr. Nichols were expected to be out working for Mr. Donahue. As soon as it gets close to the noon hour, the phone calls stopped, and Mr. Donahue says and Marife Nichols says that Terry Nichols worked pretty much from 8:00 in the morning till the sun went down.

Is there another illustration of how the overuse or misuse of an exhibit might lead you to the wrong conclusion? Well, I think there is. Let's look in 553 somewhere.

Here is September 24, 1994. This is a call from Mr. Nichols' house in Marion, Kansas. There it is, Terry Nichols' house, but the times are 11:59, and then it stops and starts up again at 1:38. And who's being called? William McVeigh, Greg Pfaff, Brooklyn Deli, Brooklyn Deli, Brooklyn Deli.

Now, Greg Pfaff, who also owns the Brooklyn Deli, came in here and testified. Who called Greg Pfaff? Timothy McVeigh

in here and testified. Who called Greg Pfaff? Timothy McVeigh called Greg Pfaff. Did he say anything about Terry Nichols? Did he say anything about a plot? No. Timothy McVeigh called Greg Pfaff. And what did he call him for? He wanted to buy det cord from Greg Pfaff. So looking at these records and putting it together with the witnesses who testified who can remember about the calls, you can see who did what. No leap of faith is required. No imagination is required. No speculation is required.

Here's another one. Here is from 1:51 p.m. on the 28th of September, 1:51 p.m., the home of Terry Nichols, but it's the afternoon. Terry Nichols is working. Who gets called? Rosewood Signs, Tonawanda? No, no. Who is Rosewood Signs in Tonawanda, New York? That's Tim McVeigh's friend, Dave Darlak. And Tim McVeigh is looking for racing fuel. So what we ask you to do, if you will, is to consider the real evidence, not the charts, not the summaries, not some advocate's view, not my version, even. I don't ask you to take it from me. Don't take anything I say or that Ron Woods says without looking in the evidence to see if it's there and making up your own mind about whether it fits.

There's another example of that. You might have wondered why in the world somebody would ask Agent Jasnowski, "Did you find something in Terry Nichols' trash?" Well, you found out.

Here is Government Exhibit 352, which in a chart, was put up on here as though that's a map of downtown Oklahoma City that was found in Terry Nichols' trash. That's what counsel said. Well, let's take a look at that assertion. First, are there fingerprints on it? No. Yet it was wadded up and bound up and so on. There aren't even finger smudges on it. Does it match the kind of diagram that Terry Nichols made when he drew a chart of his house? No. Is there handwriting on it? Yes. Does it match Terry Nichols' handwriting? No.

And most important of all, Government counsel referred to this, but I'm going to turn it around, zoom in. This says 18th. There is no 18th Street in downtown Oklahoma (sic). All the streets are 5th and 6th and 7th. Then over here it says 24. There is no 24th Street in downtown Oklahoma (sic). And you'll have this. It's Government Exhibit 352. You'll have it in evidence. You were told that this deal, whatever it is, which is not in Terry Nichols' handwriting and which doesn't have anybody's fingerprints on connected with the case and which was found in a trash can in an alley behind his house all wadded up, somehow is a route.

Well, first, here's an arrow. Look right here. Here's an arrow, but it only goes one way. The street happens to be a two-way street. Here's another arrow. It goes one way. That street happens to be a one-way street, according to the Government. So one arrow means two ways on one, but it means one way on the other, if we take the Government's interpretation.

There's more.

Here they say, follow the arrow around and there's a place and that's supposed to be, they say, a sign on their deal that said that's the Murrah Building.

Well, the problem with this alleged routing is -- and

you'll see it when you look at this exhibit. I know it's hard when you see it on the screen. But isn't there something missing here? How about the Regency Tower building, which is -- would be off the map if this was a map of downtown Oklahoma City. And how do you know that the Regency Tower building was the real route? Because a television camera took a picture of the truck.

Doesn't work. Doesn't work. The evidence doesn't meet what the lawyers claim for it.

Now, when you look at the telephone card exhibit -- that's Government Exhibit 553 -- you will see 685 telephone calls. You'll see that it was purchased in the name "Daryl Bridges"; and talked about this in opening statement, way back in 1993 before anybody says there was a conspiracy to do anything. It was bought at a time when James Nichols was hosting in Michigan. At his house was living Mrs. Nichols, Marife, and Terry Nichols; and Timothy McVeigh had come there and would stay and work for a while and then leave.

You can start with the very first call that Mrs. Nichols was shown. She called the place in Palm Desert where her aunt was working, and that was done while they were leaving the Nichols farm on their way back across the country. Then you can start to see Timothy McVeigh using it to make calls of his own. You can see 117 calls, which represents by far -- even though there's 685 -- the majority of the time and a majority of the money, to the Philippines. When Mrs. Nichols was out of the country, this was the card that Terry Nichols used to keep in touch with her. The Nicholse and the Torres family -- that's Marife's parents -- they don't have a phone. So every phone call you see to the Philippines is somebody down the street, one direction or another, where Terry Nichols would call or somebody else would call to get a hold of Marife and say, "Can you get them to the phone?" And you'll see those calls as well as attempts when The Spotlight card didn't work to make the call when it didn't go through.

You might notice, then, that this document, Government Exhibit 553, will help you to see what Timothy McVeigh was doing when Terry Nichols was out of the country, because you'll see the last call Terry Nichols made on November the 21st, 1995 -- 1994, and you'll see him come back to the United States.

What happens to The Spotlight card? Calls 222 through 300 on The Spotlight card show you Timothy McVeigh calling David Paulsen over and over and over again, and why? David Paulsen's testimony was read to you because he was unavailable as a witness. But what he said was that Mr. McVeigh was calling him. Mr. McVeigh wasn't saying, I've got a friend Terry Nichols. Mr. McVeigh wasn't saying anything except, "I've got blasting caps I want to sell you for between 3,000 and \$5,000. I want to trade TNT for those blasting caps. How about it."

And Paulsen went so far as to arrange a rendezvous which he says he never intended to keep.

Then you see all of the calls made from the Nicholas's house. Why is that significant? It tells you something about

Timothy McVeigh. I mean it was represented that it was unusual for Timothy McVeigh to stay with people. Miss Nicholas pointed out -- she said, "Well, he came. Kevin was neighborly. Kevin went and got him when his car had problems and towed it back. Here's a picture of the car." It's all right for the Nicholases to be neighborly when somebody called, apparently, and then Tim stayed for a month. Stayed for a month. They weren't particularly good friends, but I guess we've all had houseguests like that. But he sure did outstay his own welcome. And while he did so, you can see he used the telephone over and over and over again, principally to call David Paulsen and other sources of supply. This is at a time when Terry Nichols is in the Philippines.

So once again, I urge you to look at this evidence because it's going to help you see who was where when and what they were doing.

The next thing that I want to ask you to look at:

The Judge is going to instruct you -- and you'll have copies of the Judge's instruction in this case. He's going to tell you the elements of the offenses; that is to say, what the Government has to prove beyond a reasonable doubt. And he'll tell you that if the Government's proof fails as to any element of any offense or charge, you have to acquit as to that. He'll also talk about reasonable doubt, and he'll give you some instructions on how to view the evidence.

This is not . . . it's not an unguided determination; that is to say, you have all the power. No question you've got the power. But you also took an oath. I'm not insulting you when I say that. I took one to be a lawyer. You took a couple. You know, that's what we do.

And in the instructions, the Judge will say in essence, when you get back to the jury room, there's certain ways to look at certain witnesses and certain kinds of evidence. For instance, he'll tell you how to view the evidence of Mr. Nichols' encounter with the FBI during the nine-and-a-half hours. He'll tell you how the law makes allowance for somebody who might be in unfamiliar surroundings during those nine-and-a-half hours, what you're supposed to do with that. You know, I'm the last person in the world that has any right to upstage. Those instructions will be there and you'll have them.

The other thing the Judge is going to tell you is when you have somebody like Michael Fortier, there are special rules that apply to what he says; and with very good reason indeed.

So let me turn to Michael Fortier. Michael Fortier came here. He admitted that he never heard Terry Nichols say I'm going to blow up a building. He never heard Tim McVeigh say that Terry Nichols was going to blow up a building at a time when Terry Nichols was standing close enough to hear it so that he could deny it.

I wonder what you have to do to have a prosecutor stand up and call you a truthful person. We have heard the prosecutors tell you that you shouldn't believe anybody who didn't come forward, having seen a Ryder truck at Geary Lake,

until the FBI set up a roadblock and then stop people and ask them. Well, what is the purpose of a roadblock to interview witnesses if, after you've interviewed all of them, you're going to say that because you stopped at the roadblock, that you're not to be believed?

You have heard the prosecutor tell you that if somebody had the opportunity to read something in the newspaper and then later came in and testified, that you can't believe them as much because, after all, they might have read it in the newspaper.

You have heard the prosecutor say that you shouldn't believe somebody because, after all, everybody might want their moment of fame and maybe they're doing it for that.

What do you have to do to gain the prosecutor's approval as someone whose words can be believed by a jury?

Well, let's see what Michael Fortier did, because the prosecutors have said that you're supposed to believe Michael Fortier. Now, Lori Fortier did not testify. That's all right. They have the option.

And I want to say as we go through this that the Judge is going to say over and over, we never -- we do not have a burden of producing any evidence or calling any witnesses. Not our burden. It's their burden of proof. And if somebody gets back in that jury room and says to you, well, by golly, why didn't the defense explain this, why didn't the defense explain that, I hope that you'll be able to turn to them and say, well, wait a minute, you've got it backwards, the question is can the Government prove this and did they prove it beyond a reasonable doubt.

Michael Fortier is the only witness who says he ever heard anybody say that they wanted to bomb the Murrah Building. As I said, Terry Nichols wasn't there.

His testimony was bought and paid for. It was bargained for, not with money but with a coin that only the Government has the ability to print and to hand out; and that is immunity from punishment. Not immunity from all punishment, but you heard him say that he expected to be out -- the guideline sentence for him, he doesn't know what it will be, but his guideline sentence is under three years. You heard him say that he had seen on the television and the radio that there was a death penalty involved here maybe. You heard him say that it was the most important thing in his life to go home to his children.

This is a man who you also found out who would lie on an application simply that he could own a gun.

On redirect examination, when the prosecutor asked him, "You didn't have any barrels, did you," he said, "No, except for the three 55-gallon barrels that I had in back of my house." Barrels that are never tested by the Government. Nobody cut a piece out of his and sent them up to Tony Tikuisis in Canada. This is a man that had this Primadet that Mr. McVeigh gave him that we'll talk about more when we talk about fingerprints -- this is a man that had guns that Mr. McVeigh gave him to sell. This is a man that has ammonium nitrate. This is a man that has blasting caps. This is a man who helps Mr. McVeigh get false ID. This is a man who heard

who helps me, never get caught. This is a man who heard about the plan. This is a man who, contrary to what the prosecutor said, never told you that there was a test blast involved, never used those words. He said Tim and Terry were going out in the desert, said they were going to do something, never called it a test blast. This is a man who was offered \$10,000 and then lied to by Tim McVeigh 'cause he never got his 10,000 to drive and case the building and get the guns, this is a man who says he saw Storage Unit No. 2 in Herington, Kansas; and when the door was opened, he looked inside and all he could see were mattresses, mattresses.

Well, he cleans up pretty good. You saw his picture before. But even after they cleaned him up, I asked him, I said, "How about this fellow Jason Hart? Isn't he your dealer?"

"No, he's not my dealer. I bought from him a few times. He's not my dealer." Mostly Hart gave it to him. And then we had Hart's testimony summarized, and he said, "No, no. I was his dealer, and I stopped after a while because he was using more than he was selling."

Now, his lies to you on that score were not the first lies that Michael Fortier told you. Let's take a look at how Michael Fortier was made into a witness to come before you. Marine Corps builds men. The FBI builds witnesses.

First, in the wake of the bombing, on the 21st of April, 1995, according to Patty Edwards, whose testimony was presented to you through a summary, an affidavit that she had signed, Mr. Fortier came out of his house and went next door to James Rosencrans's house, another one of his dope-dealing friends. You remember Rosencrans. He and Michael Fortier had been up all night the night of the 18th and 19th and saw the pictures of the Oklahoma City bombing shortly after it happened because they hit the wrong button on their video game that they had been playing and it switched over to the regular television. On the 21st, Fortier goes over to Rosencrans's house, and Patty Edwards hears him say, "Tim's the one who did it. Tim's the one who did it."

Now, after that, Michael Fortier begins to hear his name, and he begins to get a lot of newspapers. We're not talking about somebody who heard about a terrible event and bought all the newspapers at their local store. We're talking about a fellow who for days and days and days and weeks and weeks and weeks is able to follow on newspapers and television exactly what law enforcement is doing, who's been arrested, what the evidence is, all of that information, gathering it bit by careful bit.

And what's he doing while he's gathering all the information bit by bit? Is he going to the police station to tell them what he knows? Well, he's going to the police station, but he's bragging to his friends that he stands toe to toe with the FBI agent and tells them things, and on his phone that the FBI agent had a tap on using all those colorful methamphetamine-esque language and four-letter words and so on. And then as he talks, he begins to see that there's a future for him in this, not a future going to law enforcement and telling them what he knows, not a future telling about some storage shed in Arizona so they could maybe test that in any

kind of a hurry, not a future telling about any guns in his house, not a future telling about Primadet, not a future telling what he knows about Tim McVeigh because he wasn't telling that. No, he's got a future.

And he told you what that future was. "I'd sit there and pick my nose and flick it at the camera, flick it and then kind of wipe it on the judge's desk. Yeah, really, ha-ha; or 'Wait, just a second, pull my finger,' to the lawyer asking me questions, 'Come here, pull my finger. I'm the key, the key man, the head honcho, Colonel Klink.'"

Well, you heard the tapes. I don't have to replay those, and I don't intend to. This is a man who speculated about getting a cool million. This is a man who had bad words to say about CNN because he (sic) didn't pay them (sic). This is a man who talked about book contracts and movie contracts and all the rest of it. And this is a man who the Government says is the witness that you're supposed to believe. Because why? Because he's the only one who ever says that he heard Timothy McVeigh say, "Yes, I'm going to go and bomb that Murrah Building." And he's the only one who ever heard anybody attribute to Terry Nichols the desire to bomb the Murrah Building, not talking about heard Terry Nichols in some kind of political talk, however radical.

That's another thing the Judge is going to instruct you. Political talk, I can stand out here 500 feet from this courthouse and say from now until next Tuesday that "I think the Government should be overthrown." And that's a part -- that's a part of America. And I can stand over in the City Park and I can say that "I think there should be civil unrest." I can even say that "I hope that somebody that took -- that has a gun might use it." You know, that's a part of the tradition, the history of our country.

No, we're not talking about that sort of thing. You know, back in 1800, John Adams, who was the President of the United States, was on his way up to a meeting in New Hampshire to dedicate a ceremonial cannon, and there was a guy that said he hoped it would go off and scorch the president's pants. Well, that fellow was prosecuted, and the Senate of the United States was so outraged, they almost impeached the judge that had convened the grand jury.

No. In America, we're used to wide-open discourse; that's not what we're talking about here. We're talking about the fact that Michael Fortier was presented to you as a witness who says he heard something. Now, in order to believe what Michael Fortier says, you have to believe two people. One is that Michael Fortier ever heard it. And second of course, you have to believe that Timothy McVeigh, the person he says said it, was telling the truth.

Well, what motive would Michael Fortier have? Well, I told you about the conversation Michael Fortier admitted that the FBI told him on May the 17th, 1995. "We don't need you to get Tim McVeigh."

What was the relationship between Fortier and McVeigh? Why was Fortier so anxious to ingratiate himself once he felt the noose tightening? Well, McVeigh had lived in his house for

weeks and weeks and weeks, repeatedly. McVeigh had made free with his phone. The two of them had called Walter Bassett about forming a militia.

When Fortier was first asked: "Who might have been accomplices to Timothy McVeigh," he said, "Well, Bob from Arkansas, or James Rosencrans."

Now, I'm not going to spend a lot of time talking about Dr. Michael Abrams. You heard him. He's treated thousands of patients with methamphetamine usage. He can tell you what the symptoms are. And the Judge is going to tell you that you look at the testimony of somebody who uses dope or uses methamphetamine, this particular drug, this drug that keeps you up all night, this drug that causes you to hallucinate, this drug that causes your perceptions of reality to be distorted.

He does tell us -- and we know because we can corroborate it -- Timothy McVeigh lied. He helped him get false ID. Timothy McVeigh, he says, he thought was a thief. Timothy McVeigh, he says, wanted to max out credit cards and not pay them back. Timothy McVeigh was a junk-food addict. Timothy McVeigh used the Fortiers as a place to stay and a place to use their phone. Timothy McVeigh, Mr. Fortier knew, had tried to recruit Rosencrans. Now, that's corroborated by Rosencrans himself, who says that McVeigh wanted Rosencrans to do some driving for him.

Don't make a mistake here. Who is it that's being selective? Michael Fortier says that Timothy McVeigh says that he and Terry wanted to do something violent, blow up a building. Are we supposed to believe Timothy McVeigh when he says that and not believe everything else Timothy McVeigh said? What is there that corroborates Mike -- that version of events? Nothing. Nothing. Not even any evidence that Terry Nichols was in a position to hear any such things, had it been spoken.

And what is it that contradicts it? What contradicts it is that in March of 1995, Fortier says McVeigh was getting desperate. How desperate? So desperate that Fortier and Mrs. Fortier were scared and Michael Fortier carried a gun whenever he went to see him.

How desperate? He tells Michael Fortier: "Terry Nichols won't go through with it; I'll have to force him to do it." "Terry Nichols won't go through with it; I'll have to force him to do it." Well, if you're going to take what Timothy McVeigh said to Michael Fortier, let's take the whole thing.

And there's something else that you can use as an -- in an effort to find out who's telling the truth and who's not. Let's go back to Government Exhibit 553, page 65, and watch what happens.

Do you remember what Michael Fortier told you about sometime before October 31? He said Tim McVeigh came by his house and said, "I'm waiting for Terry."

"Doggone it, he's not here."

The prosecutor referred to this episode in closing argument. "When he gets here, you tell him to take the stuff out of the shed and meet me in New Mexico." Michael Fortier told you under oath that was at 20 minutes after 4. It was about 4:00 when McVeigh left and it was about 20 minutes later

about 4:00 when McVeigh left, and it was about 20 minutes later that Terry Nichols arrived. And Fortier says, "I gave him a key that McVeigh had given me."

Here's a call in the morning. This is the 29th of October. It's the only relevant date. Here's a call in the morning at 9:52. Michael Fortier's house to Lana and Leonard Padilla. Now, Lana Padilla is Terry Nichols' former wife. It's a place where he sometimes would stay when he was visiting his son, Josh.

Then there's another call from Las Vegas, Nevada, to Michael Fortier's house. The only person in Las Vegas, Nevada, who ever is shown to call the Fortiers' house, because he was at that time working with Timothy McVeigh in the gun show business, is Terry Nichols. It's the only one.

And that call is made at 5:58 p.m. Central Daylight Time. And Las Vegas is 90 miles away from Kingman, Arizona.

There's no way that Michael Fortier's time works, and the telephone calls prove it.

Michael Fortier? Michael Fortier? I asked him: Michael -- or Mr. Fortier, you went to the FBI, you stood on the balcony of the motel in Oklahoma City. You had an epiphany, sir -- I don't know that he knows what an epiphany is, so I didn't ask him if it was a epiphany; but he had some kind of a conversion -- and you told the FBI that you wanted to tell your story. And then you went back in the room and you talked about it some more, and the FBI agents left afterward. Then they came back, and then you turned to your wife and you said, "You tell yours first," and he told his. And when he told his, he admitted he didn't put Terry Nichols in it. Here's a guy who claims to have had a conversion.

Conversions should be made of sterner stuff. And when asked, he said: Well, I decided I'd keep on lying about that.

Michael Fortier. The Judge is going to tell you that a reasonable doubt is a doubt that would cause you to hesitate in the more important affairs of your everyday life. Words like that. Let's think about it. You open your door. There's Michael Fortier. "Good morning," you say.

"Good morning," he says. "I'm Michael Fortier. There's been a car accident down at the end of the street. You really ought to go look."

"Well, I'm sorry, sir, but I've never met you before. And besides that, I've got my kids here."

"Well, that's all right. I'll take care of your kids."

Well, that's an important decision. "Tell me a little bit about yourself."

"Well, I certainly won't fall asleep while I'm taking care of your kids, because I've been up for three days under the influence of methamphetamine, and I have actually learned about a plot to blow up the Murrah Building. But I haven't really sold my story on that yet. I'm waiting for my million, which means I'm a solid citizen, because when I get my million, I'll be a qualified person. I know I'm talking a little fast, but it is the influence of the drug that I am taking."

And I don't have to go through the rest of the

conversation. Would you do it?

In that important decision as to whether to leave your house for 20 minutes with that guy in charge of your kids, I submit, members of the jury, that no sensible person would do it. Hesitate in the more important affairs of one's everyday life indeed.

And yet, you know, he hasn't been charged with conspiring. He's got the ammonium nitrate. He's got the caps. He heard about it. The Government said they were going to charge him with every single thing he did. And he's not charged with conspiring. Neither is Kevin Nicholas, of course, in whose house McVeigh stayed for all of that time.

Did Mr. Nichols ever say he was going to rob anybody?

No, sir.

Did he ever say he'd robbed anybody?

No, sir.

Did Mr. McVeigh ever say within earshot of Mr.

Nichols

that Mr. Nichols was going to rob anybody?

He did not.

Did Mr. McVeigh ever say within earshot of Mr.

Nichols

that Mr. Nichols had robbed anybody?

No, sir.

Mr. McVeigh never said in earshot of Mr. Nichols that Mr. Nichols planned to explode anything in a way that was going to hurt anybody; correct?

That is correct.

And Mr. Nichols never said that he was going to explode anything in a way that was going to hurt anybody; correct?

Correct.

That's just a part.

I want to spend a few minutes and talk about the scientific evidence. The Judge is going to tell you that in many, many cases, we hear from scientists. We hear from people who are experts, and you're free to disregard their testimony if it doesn't make any sense. And I want to talk a little bit about that, because when I'm through with topics -- and Ron and I have talked -- then I want to put together some chronology, but I want to talk about the science because the Government spent so much time on it.

Now, we all know what science is. In our daily lives, we know what science is. We rely on it. I mean, for heaven's sake, we go to the doctor. The doctor takes a blood sample or a urine specimen. Hey, we rely -- hey -- the container's clean and it's the right kind of container. The needles are clean; we rely on that. The sample is handled in a way to make sure it's not altered before it gets to the lab, because if it's mishandled, then we might be called back. We rely on the lab to do a good job, to handle it right. So that's a part of what we think of as science.

Then there's a whole 'nother part, and that's science is supposed to assure us that when we see something, it's not

accidental. All right? That is to say that it is based on something. If you step on a crack, you'll break your mother's back. Well, maybe you will and maybe you won't. If a scientist wanted to prove that if you step on a crack you'll break your mother's back, we'd have to observe many, many mothers and many, many people stepping on cracks, and then we'd have to have some -- some scientific, reliable statistical way to show that those two events were connected to each other.

It is not our burden to disprove anything. When a prosecutor tells you that somehow we are to be taken to task because, well, we didn't present evidence about who makes a barrel, we didn't present that, that's got it exactly backwards. And I am going to make a claim to you now, and then I'm going to try to show where the evidence will support it when you go back there.

And the claim is this: that the Federal Bureau of Investigation laboratory and every other scientist and expert brought before you flunk every test. Every conclusion that they have is either flawed or meaningless; that the observations and measurements in every case are filled with serious doubts.

Now, let's begin and see if I can show that, to show those doubts. Let's start with the something that ever since we read "Dick Tracy" in the Sunday comics we knew was real. That's fingerprints. The science of fingerprints is a well-established science. But if you claim more for your science than it's worth, then you reach wrong conclusions.

First you want to ask: When and where was the fingerprint left, when? We've learned that a fingerprint once deposited on a porous surface can last for years. We also know that if I take a fingerprint and put a finger imprint on a piece of paper and then I move the piece of paper from one end of the country to the other or from some other place, well, the fingerprint stays there. We need to have some witnesses to show us where that thing went.

Now, in a usual case, we can trust the fingerprint examiner. I'm going to talk about Mr. Hupp and point out there's some problems there.

Now, there's another thing we know, before I start. Mr. Hupp said that some people are dry people: They don't leave fingerprints. Mr. Nichols is not a dry person. When he touches things, he leaves fingerprints. Mr. McVeigh is not a dry person. When he touches things, he leaves fingerprints. And so it's the presence, the placement, the absence, the location that we got to look at here.

Now, if you had to count the minutes for the -- in terms of time taken in summation, you would say that the Wal-Mart receipt would perhaps win the prize as the exhibit that the Government counsel wanted you to think about most. So I want to look at what Mr. Hupp did with the Wal-Mart receipt.

The Wal-Mart receipt -- I'll put this up -- is Q772. Wal-Mart receipt dated 4-13. See that one? That's what it is. It's called "Q772" in FBI Laboratory terminology. Now, Mr. Hupp testified to you that there were latent fingerprints of Timothy McVeigh, ten developed on certain items. Ten. There's ten. Turn the page. Two were on Q772, the Wal-Mart receipt. Got it?

receipt. Got it?

Then he says there are ten for Terry Nichols, three on Q772, the Wal-Mart receipt. That's his report in evidence as Defense Exhibit E129.

Here, E130 -- you may remember this cross-examination -- is Mr. Hupp's chart. He makes this in the laboratory. Here is Q772. And here is Terry Nichols' name. What do we have? We have four Terry Nichols fingerprints and one Timothy McVeigh fingerprint, for a total of five.

Terry Nichols and Timothy McVeigh were sharing many, many things, but fingers? I don't think so, members of the jury. How is it that Lou Hupp tells -- makes his conclusion on the 20th of May that there are four Terry Nichols fingerprints and one Timothy McVeigh fingerprint? By May 24, he's typing a report that says no, it's three and two. And then he's coming in here and testifying that it is three and two. Surely, surely, just an accident. A man with so many years experience as Mr. Hupp wouldn't make an elementary mistake like that. Must be one of those, you know, bonehead errors that just creeps into everybody's things, like making a mistake in your arithmetic.

Well, let's take a look. Here's Q775, a Boots U-Store-It agreement for Unit 37 bearing the signature "Ted Parker." And sure enough, he's got two on Q775 for Terry Nichols. That's his report.

But in his lab notes, four days earlier, Q775, he's got one for Terry Nichols, for a grand total of one.

Now, we know where Terry Nichols was between the 20th of May and the 24th of May, 1995. He was not in Mr. Hupp's laboratory putting extra fingerprints on Mr. Hupp's exhibits. And yet Mr. Hupp comes in here and essentially tells you that the final report is one he can rely on and that his lab notes made at or about the time are meaningless.

Is that the only one? No.

There is a storage unit receipt -- rental. Now, this is a very important storage unit rental. It's the one for Shawn Rivers. Watch the first name, watch the last name. Shawn Rivers. That's Timothy McVeigh. He's the one that goes into Herington. He rents a storage unit, it's Unit No. 2 in the Herington Industrial Park. He rents it under the name "Shawn Rivers." It's the one that has the cement floor with the rust marks on it, which I'll talk about in a little bit. That's the one he's got. So that's an important document.

That is 770 -- Q770-1, the storage unit agreement. And he says he's got eight fingerprints on it in his report. He's got eight. And you can look on the previous page and see that those are eight out of the ten of Timothy McVeigh.

Four days earlier, on Q770-1, he's got six prints. Six. For a total of six. He comes in here and he testifies, Well, it's eight.

What's going on here? What's wrong with a Federal Bureau of Investigation with 35 million fingerprint files in -- on hand and plus 20 -- of the criminal ones and 20 million more, and the agent that they send for the most important case in the FBI's history can't count fingerprints?

Members of the jury, that is inexcusable. But it is

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not incomprehensible. It can be comprehended because, members of the jury, I submit that the evidence shows what's going on in the FBI fingerprint laboratory in this case. Mr. Hupp, when he appeared the first time, told us that he had 1,034 unidentified latent fingerprints. 1,034. He had a bunch more palm prints and other impressions. But let's take the thousand-34.

At the time that he started his examination, the FBI knew that Lea McGown had heard several people talking in Timothy McVeigh's Room 25 at the Dreamland Motel on Friday or Saturday night. Lea McGown is another one of these selective ones. The Government wants you to believe -- and it is true -- that she saw Timothy McVeigh leave the hotel with the Ryder truck early one morning. They want that evidence. Hard to know why they want it. They didn't call her. We did. But they can have it.

But they don't want to accept the evidence that she heard of several people in Mr. McVeigh's room with Mr. McVeigh being next to the window. They also had had an opportunity to talk to Jeff Davis, who delivered the food. I'll talk about him in a while. They had also gone to the Ryder Truck Rental place where Vicki Beemer -- and Ron Woods is going to talk about this -- had seen two people. So you've got 1,034 unidentified prints. That's taking Mr. Hupp's words.

You know, Mr. Hupp's fingerprint counting ability is not his strongest suit. But they decided not to use their computer. They decided not to investigate the possibility that Lea McGown was telling the truth; that there was somebody else in that room, the possibility that Jeff Davis was telling the truth.

Well, why not investigate it? You knew that it took two people to run a barrel of nitromethane up a ramp. You knew that mixing the bomb alone might not be possible or might not be easy. They knew that it was a gray pickup and not a blue one out at the lake. So it didn't match Terry Nichols' pickup truck.

Mr. Hupp, when he appeared here first, said: I didn't submit these fingerprints to my computer to try to retrieve out of my 35 million. I didn't do it. It was to be done later. Remember that? Going to be done later.

And then later it was decided: We've solved the case; we don't care anymore.

That's not good science, and it's not good law enforcement, and it's not fair, and it's not right. Mr. Hupp came back. He said, Well, out of the 25 prints at the Dreamland, only one really was suitable for putting in my machine. And besides that, I didn't really say it right the first time. I'd have to know what state -- each state is a separate search. Each race type is a separate search. You remember all that he said.

Well, so what? What else does he have to do for a living? It's been two-and-a-half years, and nobody ever submitted a single one.

And then I asked him, Well, suppose you didn't want to

use the machine, sir. Did you ever take a look at the thousand-34 and see if any of them matched each other? That's called an intercomparison. You don't need a machine for that. All you need to know is how to identify a fingerprint and how to count. And you can ask somebody if you have trouble counting.

But he didn't do it. With all of their resources, they chose not to see if fingerprints at the Ryder rental place would also match one at the Dreamland; if fingerprints of Michael Fortier's stuff would also match one at the Ryder, would also match one at the Dreamland; if fingerprints on things that were recovered here and there, literature, would also match. They chose not to do it.

And they had every -- they have the burden of proof. They have the responsibility, with enough agents to do 30,000 interviews in the field and to field a team the like of which law enforcement has never seen. They had the resources and the power to do it.

Now, there's been more talk about the Primadet -- excuse me -- about the Wal-Mart receipt. And it's clear that Terry Nichols touched that receipt at some point. And it's clear that he had to have touched it before or on the 15th; that is to say, the Saturday, because Marife remembers that he took it in for \$2.90 to try and get the refund.

But what is the evidence that Timothy McVeigh handed it to him along with an oil filter? Somebody told you they had to stand face to face? And they even did a little drama handing a piece of paper, one to another. Other than knowing that that fingerprint had to get on there after the filter was purchased and before it was traded at the Wal-Mart, there's no evidence of any face-to-face meeting.

What there is is evidence that Timothy McVeigh took that old, burnt-out car Friday morning into the Firestone store in Junction City. Please remember that day. Timothy McVeigh buys an oil filter. I think that's a fair inference from the evidence. Somebody buys an oil filter. In addition to Isuzus, GMC Jimmies, and Jeep Cherokees and a few other things, it does fit the car he's driving then. Okay. Let's assume that's what you think.

Friday morning he's in the Firestone store at Junction City. I'm going to come back to this. Where did he spend Thursday night? Where did Timothy McVeigh spend Thursday night? Not at the Dreamland, he didn't check in till Friday. Not at the Nichols' house. Marife Nichols says he wasn't there.

Talk about that more. Friday morning, he goes into Tom Manning's store. He makes a deal for a car, and he goes out and he calls Terry Nichols. There's no evidence what the subject of that call is. We do know that Terry Nichols was in and out all that day with Josh and Marife and Nicole. There is nothing to say in this evidence that's inconsistent with Tim McVeigh having dropped that oil filter and receipt on the porch in the mailbox, out behind the shed, somewhere else. And there's no evidence of a face-to-face meeting.

And you might look at me and say, "Well, wait a

minute, what's the evidence that there wasn't a face-to-face meeting?" Well, I look back at you and say, "Who's got the burden of proof here?" The point is that if the circumstantial evidence, if the evidence points in either of two directions, the law says which way to cut.

Finally with Mr. Hupp. It's true that there's a print -- well, it's as true as Mr. Hupp can count. That Terry Nichols' print is on a sleeve that's wrapped around this Primadet. What does that corroborate? Well, where's the Primadet found? It's found with Michael Fortier's brother. It's found in Arizona. Well, how did that print get there, the same kind of Primadet they say is also in Terry Nichols' house? How did Michael Fortier get his Primadet? Remember? Timothy McVeigh after February 1, in that time frame, came to Kingman and gave him an ammo can that had explosive things in it including Primadet.

Where had Timothy McVeigh just been? He'd been at the Sunset Motel with Terry Nichols. They'd been -- they were handing out stuff: Here, some for you, some for you, some for you. It goes in the ammo can; and after that -- and then it gets in Fortier's hands. It is not Primadet from that so-called episode at the Northern Lights Storage Shed where Michael Fortier's testimony is that he didn't see Terry Nichols touching anything.

Your Honor, could I take a break here?

THE COURT: Sure.

MR. TIGAR: All right.

THE COURT: We'll take our afternoon recess here, about 20 minutes, I think, as is our usual practice; and of course, please remember that you will hear more and more in connection with the arguments. After the defense arguments, there's an opportunity, as I told you this morning when we started for the Government, for rebuttal arguments since the Government has the burden of proof, and the instructions. And so once again, in this recess, as always is the case, please keep open minds, wait till you've heard it all and the case is given to you for a decision before talking about it in any way, and avoid anything outside of our evidence, of course.

You're excused now, about 20 minutes.

(Jury out at 3:11 p.m.)

THE COURT: We'll recess, 20 minutes.

(Recess at 3:12 p.m.)

(Reconvened at 3:29 p.m.)

THE COURT: Please be seated.

(Jury in at 3:30 p.m.)

THE COURT: Please continue, Mr. Tigar.

MR. TIGAR: Thank you.

Well, we were talking about the FBI and science.

The next group of people you saw were Mr. Cadigan and Mr. Krivosta. Mr. Krivosta, you will remember, is the one who said "textbook picture perfect" but admitted that there was no textbook except the one that he hoped to write some day, his total experience in publication having been one article that taught you not to drop a firearm when it's loaded because it might go off.

There is no science of drill-bit identification: that

THERE IS NO SCIENCE OF DRILL BIT IDENTIFICATION, THAT is to say, it's not like ballistics. And they didn't even try to prove that it was; that is to say that as a matter of basic science, they cannot prove to you that the similarity is not a result of chance. Nor, as we saw, can they account for the differences; that is to say, as you move around the center of a circle made by a drill bit, you see differences in the scratches. But they played with the image until they got something that they said was scratches to match, but the matches don't go by any means across the whole surface of the tool.

Now, the second problem with Mr. Cadigan and Mr. Krivosta is that they admit that the drill bit they measured, which they said was one-quarter inch, was instead about 17/64. Remember, it's smaller (sic) than a quarter of an inch; that Mr. Cadigan says he measured the hole in the drill (sic) with a ruler, nothing more precise, and he said, "Well, that's about a quarter of an inch."

You can look at the pictures. The most important question about that drill bit came up when William Tobin of the FBI testified. Repeatedly on cross-examination, I asked Mr. Cadigan, "Well, do you care about where it was between the time it was found and the time you got it?"

"Well, not really."

"Do you know where it was?"

"No, not really."

And then we heard from Agent Tobin. The FBI Laboratory had a plumbing problem. It flooded the shed in which the forensic evidence in this, the most important case in FBI history, was kept. And before this drill ever got to Agent Cadigan, that flood had happened.

Here's the box. It's 151, 151A, 151C; and you have it in evidence, and you can take a look at it.

Now, there is an amazing thing about this box. One would believe that water affects everything the same that it comes in contact with; that is, water is water. It falls everywhere, falls on the just and the unjust. It floods the evidence of this case and that case. Certainly, it flooded the manuals. Look at them. Entirely different from the pictures, all moldy and corroded.

It floods this Phillips driver bit that's out in the box. It takes this drill bit, which is one they're not interested in, and gets corrosion all over it.

This is not a watertight case. Inside it was, as the photographs show, a screw; and it's got rust on it. But all the drill bits are polished clean; the drill bit they tested, polished clean, although the pictures in the recovery show that it was all sitting right in that box.

One of the things that a responsible investigator has to do is to tell you that the thing they tested is in the same condition that it was when it was recovered; otherwise, the results are meaningless.

You already have a problem, because this whole package wasn't recovered from Mr. Nichols' house until May of 1995. And the allegations about the lock being drilled at the quarry go back clear to, what, October -- September, October, 1994. So we've already got a period of months in there, seven or

eight months, during which time this particular drill bit in this particular case, this being some standard-size drill bit, one of the most popular sizes that could be used, is used for a number of things, such as Mr. Nichols' doing work on his house, which we know from other witnesses he was doing.

So right away, you have to wonder whether the tests on the lock and the tests on the drill are reliable anyway, because the drill bit has been out there being used.

But when you hear the thing was flooded, you know, one might have a further doubt.

And when one looks and sees that everything else that didn't get cleaned up is all corroded but that the drill is not, there is a substantial reason to say that Mr. Cadigan and Mr. Krivosta are not playing fair. They're not doing this in the way that a responsible crime laboratory should deal with evidence.

Now, we made much of -- made something of -- the fact that Mr. Nichols told the FBI, look, I know that McVeigh had a shed. He had one in Herington, Kansas. And contrary to the Government's assertion, he also told them about Council Grove. Within days, they were out there. They were at the Council Grove sheds, both of them in both of those names, because they had the names; and they were at the one that Mr. McVeigh had rented. There was never any evidence in this case of anything allegedly connected with any bomb being stored in any of those sheds. Nothing, no ammonium nitrate, no nitromethane, no nitroglycerin, no, you know, Tovex residue, no this or that or anything. And yet they had the full resources of the FBI to do it, and they were being directed by Steven Burmeister.

And what was the answer to that? The answer was: Well, how in the world would ammonium nitrate ever leak out of sealed bags?

Well, one answer as to how ammonium nitrate -- we're talking -- The Government allegation is that there were 80 bags of ammonium nitrate purchased that Terry Nichols had control over in some sheds that he had access to. That's the allegation. That's what they charge here. That's their chart. 80 bags stacked up high.

Now, if they were kept in the Herington shed, if they were purchased on a shrink-wrap pallet, they weren't on a shrink-wrap pallet any more because a shrink-wrap pallet couldn't go through that 32-inch door in that shed. So the Government's theory has to be there are stacks of ammonium nitrate bags there.

What happens to stacks of bags in the normal use? Here is a picture of Mr. Schlender, the Mid-Kansas Co-op -- this is his floor. It is a mess. It has stuff all over it that fell out of the various little bags of chips and things. Look at all the junk in there. Look at all the dirt, things that fall out of things.

More than that, they showed you a picture of a bag that they said was an ammonium nitrate bag from ICI. That was Mr. Rydlund, if you'll recall.

Well, this is Government's Exhibit 70. This bag has

some plastic that is folded into or is a part of the multilayer in the bag. But when you look closely at this picture, you'll see that that plastic is not heat-sealed-crimped at the top. It has no plastic heat-seal crimp. It's not even sewn. You know how some bags of fertilizer are sewn across the top? No, the paper is simply folded over and glued at the top, and; there was a place right up here at the top where it's tucked.

For demonstrative purposes, the Government actually gave you the bag. Well, you remember when I talked to Mr. Rydlund about the bag, and we noted that there is stuff coming out of it. There is prills. There is little things that have adhered here; and look, because of the water, of course, they're starting to break down and then they -- because of the coating on them, they stick.

It defies imagination to believe that for all of those months -- all of those months and not a single prill; all of those months, not a single bit of residue.

Oh, the Government says, there are circles on the floor. Circles on the floor. Circles on the cement floor.

And here in Government's Exhibit 2054 are circles of rust on the floor. And that's the Herington shed. There they are: One, two, three.

And so they sent someone out -- now, they don't have any evidence that the circles weren't there before the Shawn Rivers person that was Tim McVeigh rented the thing. They don't have any pictures. But they say, "Let's compare the circles on the floor with the barrels from VP Racing Fuel."

Let's do. Here's a barrel. This stuff, this nitromethane, comes in a VP Racing Fuel barrel. And you can see the lip of it, how it's been rolled around. But basically, the top of it is mostly painted.

VP Racing Fuel likes to keep their barrels apparently in pretty good condition because otherwise, who knows? Maybe the stuff would come out of them.

So we have to first believe that over a period of from October 21 of 1994 until the shed was entered late in April of 1995 that there was enough moisture in that shed to cause the barrel, paint on the barrel to come -- to be penetrated by the moisture and for the rust to get out and to leave a mark that that -- that that's significant. All right. We are asked to believe that conditions were sufficiently moist to do that.

If conditions were sufficiently moist to do that, then what about ammonium nitrate, which absorbs even more water than table salt? What about the fact that that ammonium nitrate would begin to do things that would make it much more likely to leave traces? But we don't rest there.

The FBI actually sent someone out to measure the barrel; that is to say, they measured these ammonium nitrate (sic) barrels, and they found out that this inside measurement here, the inside diameter, is 22 3/8 inches. Okay? That's the inside diameter. The outside diameter is 23 inches.

Now, we have -- if we're asking the difference between an inside and an outside diameter -- this is my one and only

an inside and an outside diameter -- this is my one and only one demonstrative exhibit, so please forgive me.

The difference between an inside and an outside diameter is the inside diameter plus 2 times the width of the lip. Right? You have to count it twice because you're on both sides of the diameter.

So that would give us a lip of 5/16th of an inch; right? 23 inches -- this is 22 3/8 here. The total outside distance is 23. The distance between -- difference between those is 5/8 of an inch divided by 2 is 5/16. Right? You can do the math back there. I don't claim I know how to do the arithmetic here. Please check me when you get back to the jury room.

Well, then Agent Witt went and measured the circles; and he found that the circles were somewhat irregular but that the diameter of what he measured was 22 1/2 inches measuring the inside -- okay. So his number was -- all right -- 22 1/2 inches. All right? Okay so far.

Then he said: How much -- wide a mark did the rust pattern leave on the floor? How wide? Oh, approximately, probably, 5/8 of an inch.

5/8 of an inch in width?

The rim, the so-called rim area. Okay.

Now, let's add 5/8 over here and 5/8 over here. What's 5/8 plus 5/8? That's 10/8, or 1 1/4 inches. So we add 22 1/2 plus 1 1/4 -- correct? We can do that. And we get 23 3/4 as an outside -- as the very outside. And nobody is saying that it was the "outside" outside that leaves the mark. Presumably the lip of the barrel is slightly rounded, so it's going to be something a little less than that. But the outside diameter is 23 inches of the barrel.

This barrel, outside diameter is 23 inches.

This mark -- these marks are 23 3/4 inches.

Now, this is a steel barrel, too. It's not a cartoon barrel. It's not a Roger Rabbit barrel. It pretty well kept the same diameter as it did when it was manufactured and sold.

Now, in addition to no evidence from the shed, we know that soil samples were taken. We know that the FBI had the ability to look for tire tracks. We know that they had the ability to look for residues from the bomb scene; and they found nothing, nothing that was introduced in evidence here.

They did bring to you, however, two people, Mr. Burmeister and Ms. Jones, to tell you something about the bomb and the composition of it. Now, we spent a great deal of time talking about that, in part because we hoped -- and it turned out to be true -- that the record would show us that the -- the -- that they don't know what this is made of. And if they don't know what it's made of, then -- then it becomes impossible to say that if anybody bought or had or stole or transported any particular thing that that was the thing it was.

But let's start: Government's Exhibit 664. That's Q507. It is a piece of the Ryder truck body. Here it is.

You remember the picture.

There it is.

A very important piece of evidence. Only piece of evidence on which Agent Burmeister with all of his laboratory says he found any ammonium nitrate. The only piece.

Thousands and thousands and thousands of pieces of evidence were picked up. Tons of debris were sifted. And yet that is it.

And from that, Linda Jones wants to tell you this proves there was certainly ammonium nitrate in this device.

Well, how did the FBI handle it? We had Steven Burmeister on the scene, the FBI's most senior chemist that had been assigned to this case. We had Mr. Kelly assigned to the scene and working for the FBI for many years, and we had Agent Wilson.

This is not just a story about a piece of evidence. It is a description of how the FBI chose to handle the most important evidence in this case; that is to say, evidence that they believed would be able to show us exactly what this thing was made of. And so Agent Wilson and Mr. Kelly report to the crime scene. And here in E89, which we had to introduce, is the map they made. The little rectangles are cars. Those had already been drawn on it when they got the map. They were simply supposed to record each piece of evidence as they recovered it.

This exhibit we're talking about is called Government's 664, also known as Q507, also known as 6 or 06 in terms of when it was picked up. It has all three names.

Here is the official report, E89, of Wilson and Kelly.

And we zoom over to the area here, and there is no No. 6. There is a 4, there is a 5, there is a 7, there is no 6.

Now, Agent Kelly testified that this particular piece of evidence was photographed in place. But you recall that some were photographed after being picked up and moved, some were photographed in bags. And you remember the confusion about that.

Then Mr. Kelly says, "I gave it to Mr. Wilson." He didn't write down and mark it.

And when the log came to be made up, it wasn't identified -- 01 was identified as wood panel, yellow and red. 06 was just identified as wood panel, even though it is yellow and red supposedly.

Kelly says, "I gave it to Wilson."

Wilson says, "I took it to the Evidence Control Center."

You remember the Evidence Control Center, the pictures of it. A big mess.

Burmeister says, "No, no, no, no. I got it at the scene and I took it to the Evidence Control Center."

The most important piece of forensic evidence they found at the scene, and they can't even tell you who took it to the Evidence Control Center.

But it gets curiouser.

When they asked Linda Jones from the United Kingdom, who is an internationally renowned expert on these things -- there is no question about that. She's worked many cases

before, both sides of the Atlantic, in other countries. They supplied to Linda Jones a version of the map where they circled everything, and somebody wrote in "06." So by the time the notes get to Jones, they've doctored them to make up for the fact that they have no record on their notes of where they found this thing.

Now, where was it found? Let's go back. Let's just forget everything we just found and let's assume that it's right: Kelly found it in the parking lot. The parking lot. He found it on the morning of the 21st, after there had been an Oklahoma gullywasher rainstorm and after Government's Exhibit 964 -- this -- had happened.

There is a fire hose. There is a fireman. They're putting out the fires with water. Squirt, squirt, spray, spray, fire-hose-strength water covering the vehicles in that parking lot, fighting those fires.

Look at the smoke. Look. You can't even see through it. Visibility is down to, what, Danny DeVito's inseam? Some distance, very short. And water is being sprayed on this.

Ammonium nitrate attracts water. Ammonium nitrate crystals disappear in humid environments. Ammonium nitrate crystals are very sensitive to those environments.

Mr. Burmeister next reports that he sees it. In his lab report, he says it was a "glaze" of crystals. Then he told Linda Jones they were embedded. Well, if they're embedded, how do they disappear? Embedded things don't just kind of slough off or disappear in the humidity.

Nobody does a background soil sample to see if there is ammonium nitrate in the dirt perhaps from a spill when they pick it up to see if it picked it up from the ground.

Moreover, Burmeister doesn't do any tests on the crystals. He says the crystals look funny, but he doesn't bring you a book on crystals to show you that those crystals look any different from any other crystals.

So in the end, their most important piece of evidence -- that is to say, this Q507 -- really doesn't work for them very well. But not only that, you remember Paul Rydlund? Paul Rydlund from the Imperial Chemical and that group of companies, a man that has spent his professional life manufacturing ammonium nitrate to mix with fuel oil to blow things up, did a master's thesis on it, holds a patent on it -- did all of that. What does he say? He says that if a bomb, a device, operated efficiently, you would not expect to see any ammonium nitrate or fuel oil particles. Inconsistent with Burmeister.

Burmeister did not find any HMX in any crime-scene residues. Burmeister admits that ammonium nitrate is hygroscopic. Burmeister admits that the explosive device could be ammonium nitrate and fuel oil, not necessarily nitromethane, could be dynamite, could be slurry, could be a water gel, could be an emulsion, could be any of a number of ammonium-nitrate-based explosives, and I didn't even go through all of them.

He said he'd have to pull out a reference text to find out about that.

Then when Linda Jones got on the stand, she confirmed it. They can't tell you it's Tovex, they can't tell you it's

Primadet, they can't tell you that it's anything at all; and that is the sum and substance of what the Government's evidence on this subject is.

Not only that, Linda Jones and Steve Burmeister both conceded that these are random events; and if they're random events, they cannot be subjected to any reasonable scientific analysis.

Linda Jones herself had also written an article in which she pointed out the dangers of leaping to conclusions from insufficient forensic evidence. You remember the article that she wrote in which she hypothesized -- she had a story about a number of people who shared access to a lock-up garage like a storage shed.

But there is more. Paul Rydlund: Millions of pounds a year of ammonium nitrate and fuel oil are sold for commercial purposes, and he knows about it. If you want to make an ammonium nitrate device and mix fuel oil with it and blow something up, well, you've got to join a large group of people. Farmers do it. You can use Primadet, the witnesses say -- Rydlund says -- to rig through water, if you want to blow a trench, for example, in a place where there is water.

You remember the witness who said -- Mr. Farley, who said: Back when I was a boy, we used to use it to blow ponds; you know, it was an agricultural use. Mr. Rydlund has been supplying this market for many, many years. He knows about it, and he tells that there are two kinds of ammonium nitrate, low density and high density. The low-density prills are the ones his company manufacturers, and they're the ones that absorb fuel oil or whatever else you want to mix with them, some hydrocarbon, to make an explosion.

But the bags are not labeled "low density" or "high density," and the high density doesn't absorb it. Whoever it is that walked into Mr. Schlender's co-op on the 30th of September had no way to know whether the ammonium nitrate that that person was buying was suitable for manufacturing an explosive device. There was no way to know that because it isn't labeled on the bag; and there is no evidence in this case, not a bit, not a whit, not a whisper, that shows that anybody was aware of that distinction.

Now, Rydlund also told you something else. Might as well just put it out right here and talk about it. There is a lot of aspects to it. It's a book, Hunter. Hunter. I asked -- well, first Mr. Hupp talked about it. He said there are fingerprints of Mr. Nichols in Hunter. Okay. 13 of them.

When I read a book, I usually touch more pages than 13. If I'm just riffling through, I might touch 13. And the copy in Mr. Nichols' house had a sticker on it that said he got it for sale at gun shows. And it is something people buy there. So the fingerprints, we can leave aside.

Next, we have the FBI agent who introduced it. And the FBI agent said: Oh, yeah, this is a book. Well, it is a book. It's not a very good book. As a matter of fact, it's a lousy book; but whatever else it is, it is a work of fiction. The FBI agent conceded that on the stand. He said there had never been an FBI senior official such as Mr. Ryan, the FBI senior official portrayed in this book, who praised Hitler's SS legions as being dedicated to their cause but just there

regions as being dedicated to their cause but just there weren't enough of them to pull it off.

He conceded that the FBI has never hired somebody to blow up something with an ammonium nitrate bomb, because that's chapter 28 in this book. I don't recommend you read it. But if we're talking about, as Government counsel did, what's in this book, why don't we look?

Let's see here. Oscar -- that's the guy that blew up the thing -- he spent the day looking without success for a delivery van or a light truck -- not a Ryder truck. So that's different.

But he found one. And you know how he got it started? With a master key that the FBI gave him. A senior official of the FBI gave him the master key to get the truck to put the bomb in.

Okay. We could continue this forever. It's a work of

fiction.

I asked Mr. Rydlund about it because there was some allegation here that if you read this book, you'd know how to make a bomb.

Well, the bomb that's talked about here is one in which they use 40-gallon plastic trash barrels; that is to say, from a hardware store. So different-sized containers.

Then the night -- "the ammonium nitrate is emptied and stirred with fuel oil." Rydlund said you don't have to stir.

"Then the barrels were grouped around a 50-pound case of Tovex." That's 50 pounds of these sausages in the middle of the barrels. And I asked Mr. Rydlund, "Didn't you write a master's thesis on ignition delay? Don't you want your booster close to each clump of ammonium nitrate?"

He said yes.

So whatever else this is, this is not even an efficient way to make a bomb.

Well, let's don't be silly. Everybody at gun shows can buy books that show you really how to do it. This whole Hunter thing: It's a dodge. It's silly for the Government to introduce this document which is sitting over in a box over in somebody's storage shed. Doesn't have anything to do with it. You want to talk about things, talk about the fact, yes, everybody that goes to gun shows can buy books from a company in Boulder, Colorado, with funny titles that tell you how to do these things. That's one of the interesting facts about this case.

But Rydlund told us something else: A bomb in a place blows up and all around the center, 360 degrees out in every direction, out flows what? The blast wave. Out comes from the center of that enormous heat, heat enough to ignite the cars, to blow up the gas tanks, heat enough to burn and char and scorch. Yes, this terrible devastation in a 360-degree radius.

Heat enough to volatilize, to melt plastic.

And then Mr. Rydlund was challenged on redirect:

Well, you don't mean it would melt the plastic?

Well, if it was efficient, it would.

Well, what if it was inefficient?

Well, if it was inefficient, it wouldn't.

In Mr. Rydlund's opinion, an efficient ammonium-nitrate-based bomb would volatilize the plastic barrels in which it was contained.

And so now, we get to barrels. 50 million pounds of high-density polyethylene is sold by Nova Chemical in a single year. Smurfit alone makes 2.5 million barrels during this time. Smurfit alone. There was some attack by Government counsel on our analysis of the evidence. So let us review what we believe and what we say the evidence is and let us see what you recall.

The one thing that we do not concede is that we have any burden here. All the burden we had was to cross-examine, to show that the Udell study was nonsense; that it was rigged by the FBI; that it was limited to a few manufacturers of polyethylene; that it was done in a slipshod and unreliable manner; that it was unscientific; that it was misleading, and that finally, when Mr. Udell was challenged under oath on the stand, "Sir, if we saw your notes, would I see there the questions you asked?" and he said yes, that that was a lie.

The FBI builds witnesses. Why does Mr. Udell need to lie about that?

But let's disregard that. Maybe that's his problem.

Mr. Tikuisis says that he tested the piece of plastic they sent him. Well, where did that piece of plastic come from? Mr. Udell says there was a time when an FBI agent came to his office at the Smurfit company and on a conference table, they spread all the pieces of plastic, hundreds of pieces of plastic. All they found from all around the bomb. And Udell said: Well, I think we made that one.

And the FBI said, well, that -- We've got some barrels from Mr. Nichols house that's also that kind; let's see if they match.

Well, why didn't they test the barrels in Michael Fortier's house? Why didn't they test any of the other hundreds of pieces of plastic? Well, it's just like Agent Hupp's 1,034 fingerprints: Because they didn't care. They didn't care. And so they tested that piece of plastic.

And you were told that Mr. Tikuisis found this formula that Smurfit used. No, he didn't. Remember when he came back? Oh, he found Tinuvin 622; but Tinuvin 622 used to be patented and isn't anymore and can be made by a whole lot of people.

Well, he found some antioxidant package. Well, yeah, but the antioxidant package that changes from month to month even inside his own company.

He found a certain melt index. Okay. That's consistent with heavy-duty polyethylene. That narrows it. Now we're talking barrels and milk crates.

And on his first appearance here, he said, "I found calcium carbonate."

Then we brought him back and I said, "You didn't find calcium carbonate, did you, sir?"

"No, I didn't."

He had performed an elemental test. He could only find calcium. Could be calcium stearate, it could be any kind of calcium compound. Doesn't have to be calcium carbonate.

The chemistry doesn't work.

So what else do we know about barrels? Well, look at all the barrel manufacturers in Government's Exhibit 553. Mr. Nichols' barrels don't come from any of those barrel companies. Mr. Nichols' barrels are recycled barrels from a certain company that makes stuff to wash dairy barns. Those barrel companies -- that's not those barrel companies. There is no evidence -- there is no evidence in this case that his barrels come from any of those companies that were called. Not a bit.

Moreover, what did Mr. Killam tell you? You go out to Pure Country Recycling and see the two old boys out there; they'll tell you about their barrels. They'll say: We got two kinds. One kind we sell if you're going to put water in them, and those are kinds that did not contain caustic chemicals. Now, the other kind we sell used to have chemicals in them, and we don't recommend you put water in them. They're for trash.

Mr. Nichols' barrels are the kind that used to contain chemicals.

Well, let me ask you this: If you were a bomber and you were going to build a device, would you use barrels that had already contained some kind of caustic chemical that might interact with whatever you were going to put in them? Doesn't seem real likely. And the one fact about Mr. Nichols' barrels is that Mr. Nichols still has his barrels. Is there any trash in Mr. Nichols' barrels? No. Has he finished moving into his house? No. Are those barrels suitable for storing the various picks and shovels and all that stuff that's all around his basement so that they can be transported from one place to another, all those picks and shovels that are still laying out there in various stages of unpacking from having been purchased at the DRMO as a part of an entrenching kit? Yes.

Even Linda Jones will not tell you that the barrels contained the bomb. The most she'll say is, well, they were either in the truck or else they were close by.

And so we come back to the fact that these barrels are not proven to have had anything to do with the bomb that blew up the Murrah Building.

At this point, I'm going to sit down for a while, and Ron Woods would like to talk about some of the events connected with Junction City, the Ryder rental, and Terry Nichols' trip to the Herington police station.

CLOSING ARGUMENT

MR. WOODS: May it please the court.

THE COURT: Mr. Woods.

MR. WOODS: Counsel, Mr. Nichols, members of the

jury,

I must confess to you that I'm scared to death today in summing up this case. I've been doing this for over 30 years; but the stakes have never been this high nor has there ever been a

stakes have never been this high, nor has there ever been a case where the Government committed their full resources to investigate and prosecute a case like this.

This is the largest case in the FBI history. There are over 30,000 interviews. There are thousands of lab reports and examinations. They've utilized all the tools that they have, search warrants, wire-tapped conversations, interviews, photos, soil analysis, tire track analysis, etc.

And what I'm afraid of is that I won't be able to articulate and remember all the things I need to say about the weaknesses in this case in the short time that I have.

The -- in a case such as this where the consequences are so very high and so dire upon conviction, then the strength of the evidence should be in proportion to the accusation that the Government is making. And it's not. The Government has jumped over a lot of the holes in the case and asked you to speculate. She just skipped over a number of holes; and we'll go back over and try to bring those out; but she was asking you to speculate on a vast, vast majority of the evidence and speculate to the meaning of it.

They've got to prove this case beyond a reasonable doubt, and they haven't.

The strength of the evidence should also match the intensity and the size of the investigation, and it doesn't. It's woefully lacking.

As I told you on the opening statement, the FBI started off for a day and a half doing an excellent job in this case. They were able to find that axle, get the VIN number, trace it back to Ford, down to Ryder in Miami, and then back to Eldon Elliott's within that afternoon, April 19. That was excellent investigative work. And they sent the closest agent, Scott Crabtree, who was in Salina, Kansas, told him to get over there immediately to Eldon Elliott's in Junction City. He did. He called and said, "Put the documents aside. I'm going to need those documents, and I'm coming over there. Don't talk about the case amongst yourselves."

He got there right away, 30, 40 minutes, and he separated the witnesses, the three witnesses that observed the Ryder rental. And he got detailed statements from each of them, and he then called in the forensic artist from the FBI lab that night. Ray Rozycki got there like at 4 in the morning, came to the CID post there in Fort Riley, and sat down with those three witnesses, Vicki Beemer -- actually sat down with Tom Kessinger first because Kessinger actually had the best opportunity to observe the people and got a detailed description and did a detailed drawing of John Doe 1 and John Doe 2.

He then showed those drawings to Vicki Beemer and Eldon Elliott, and they could not add or subtract anything from those drawings.

The FBI then took those drawings, mass-produced them, and went out in the Junction City area and started going to all the motels, the filling stations, to the restaurants, to any public place where these people might have been, since it was only two days previous.

Remember that the truck was rented on April 17. When Crabtree got there and started interviewing them, it was on the

afternoon of the 19th. So the memories were still fresh with these people.

So they launched out in the area with a lot of agents and a lot of police, a lot of area CID people, helping them; and they came across the Dreamland Motel. And Lea McGown says: Yes, there was a person that looks like John Doe 1 that was here from April 14 to the 18th, and he had a Ryder truck in his possession during that time. And here is his registration. It's Tim McVeigh. He gives an address of 3616 North Van Dyke in Decker, Michigan.

The FBI immediately had their Detroit office start investigating the Detroit -- the Decker, Michigan address; and they found the local sheriff's office knew something about that address from Kelly Langenburg. So they set up a meeting with Kelly Langenburg and the sheriff's office in Decker, Michigan, early, early, the morning of the 21st. Kelly Langenburg told you about that. She had to go in there like at 6 in the morning or so. She told them what she knew about: Yeah, Tim McVeigh was here in 1993, and I'm the ex-wife of James Nichols who lives at the farm now. We have a son named Chase, but Tim McVeigh stayed at that farm in 1993 and he was a friend of Terry Nichols from the Army.

So they had that much information.

She then went on to say: Now, Terry Nichols was married to my sister; and my sister, Lana Padilla, lives in Las Vegas. And here is her two phone numbers, her work number and her home number. Terry Nichols left here somewhere like in December, '93, and I think he was going to Las Vegas to be near Josh. I don't know where he lives now.

The FBI immediately gets in touch with their Las Vegas office; and the Vegas office gets in touch with Lana Padilla, and they find out from Lana Padilla that yes, Terry Nichols is in Herington, Kansas. I just got off the phone with him, Lana tells them. I was talking to him this morning 7:00 my time, 9:00 their time; but here is his address in Herington. And he was there, you know, a few minutes ago when I talked to him.

So that's excellent, excellent investigative work that the FBI did.

Then they jump to conclusions. Their conclusion is, well, James Nichols and Terry Nichols are involved in this bombing; and we're going to arrest them and do. They launch their forces out of Kansas City to go to Herington to arrest Terry Nichols. And the problem with that is they don't have any evidence that he's done anything. They don't have one single fact to put in an arrest warrant in order for a judge to sign: Yeah, you've got probable cause to go arrest this person.

So what they do is they decide what we'll do is arrest him on a material witness warrant. That way, we can take him into custody and then build our case from there.

Now, jumping to conclusions is a -- it's not unknown to the FBI. But it's a huge mistake to theorize before one has the facts, because insensibly you then start twisting facts to match the theory. And what investigators should do is gather the facts and then match the theory to the facts that you

gather. But the FBI did it backwards in this case.

They issued or they sent their forces out of Kansas City. And you've heard that evidence from Steve Smith, who was there initially and setting up surveillance and noticed where Mr. Nichols was. And the surveillance team got there, and they followed him to Surplus City and then to the police station.

And we've all heard that testimony about what happened at the police station. I'm going to come back to that later, but I want to talk about a few other things first.

But remember that he walked into the police station at 3:00, and there was a stipulation offered into evidence that there was a material witness warrant obtained in Oklahoma City at 4:30, well after the time all the FBI knew that he was in the Herington police station. And if you recall, Agent Steve Smith said when I was questioning him on cross-examination he had looked at that material witness warrant and it stated on it that Terry Nichols had attempted to flee the jurisdiction of the United States.

And you know from the testimony of Marife Nichols that is not true. Yet that's what they obtained to get his arrest.

Now, what I want to talk to you about first in the topics is the rental of the Ryder truck. The Government didn't bring that in. We had to bring that. Probably the most important fact in the case linking McVeigh to the truck and to the bombing, the Government didn't bring that in. And why not? Well, you know why not, because there was a second person there. And anything that differs from the Government's theory that they came up with originally on noon, about, April 21 -- anything that differs with that, they discount, they put aside, or they ridicule: "These are Elvis sightings." Well, these aren't Elvis sightings.

You heard the testimony of Vicki Beemer. You heard what she said. She got a call Friday morning from a person named Bob Kling who wanted to rent a Ryder truck to go to Omaha, and he needed a certain size and they decided on a 20-foot size. And Vicki Beemer gave him a quote and said, "That quote is good for 24 hours. We're not open on Sunday, but we are open a few hours on Saturday morning."

And Mr. Kling told her he wanted that truck for Friday, April 17, at 4 p.m. And she told him, "Well, you know, the quote is good for 24 hours."

She didn't work Saturday. She told Kling that the shop is open for a couple of hours on Saturday.

She didn't work Saturday, but she came back in Monday morning and she noticed that there was a reservation form that had been filled out by her boss, Eldon Elliott, for a Bob Kling who had come in on Saturday and paid the full amount of \$280-some-odd for the rental of the truck and had reserved it for Monday, April 17, at 4:00.

So she writes that on the board, showing the reservation for 4:00 to make sure they have a truck available at that time.

And she then testified that sometime after 4:15 that afternoon, two people walk in the office together. And you saw the photos of that office. It is so small and the counter is right 3 feet from the door. There is no mistaking when two people come in together

people come in together.

She told you that the two people came in together and they -- John Doe or Bob Kling identified himself as the person who had reserved the truck for 4:00; that sometime between 4:15 and 4:19 -- because when she accessed the computer to pull up his name, the computer read out 4:19. So we know what time the two of them got there in the shop. She took his driver's license and was typing in the information into the rental contract and noticed that Bob Kling had a birthday on April 19, two days away, and she mentioned that to Bob Kling.

She said that Kling turned then and mumbled something to the person that was with him. She couldn't hear what was said, but he mumbled something to the person.

She filled out the contract, finished it up, and it was finished at 4:22. She then asked Eldon Elliott to do the inspection; and Eldon Elliott came into the shop, got the sheet, and went out and did the inspection and then came back in and gave her the sheets.

She said she saw Bob Kling sign the documents in front of her, and the Government has stipulated that that was McVeigh's signature on those documents.

She stated that she saw him sign the rental contract and the inspection sheet.

She also stated that Tom Kessinger was seated to her right nearby eating popcorn, sitting at a chair that whole time.

She said that she observed the two people leave together shortly after the transaction was completed, and she further told you that there is no doubt in her mind that the two people were together.

The Government didn't want to put her on. We had to put her on.

You also heard from Eldon Elliott. And there's people, of course, that would never talk to us. This is the first time I was able to talk to them -- was on the witness stand. But you heard then from Eldon Elliott who told you that he was in the office on Saturday morning, on April 15, when a person came in, Bob Kling, who he later identified in a photo lineup as Tim McVeigh. The person came in by himself Saturday morning and said, "I've made a reservation. My name is Bob Kling. I've got a reservation for a truck to Omaha Monday at 4:00, and I'd like to pay all of the money now."

And Eldon Elliott asked him, "Well, do you want to take out insurance on the truck? Because you're responsible for any damage to it."

And Bob Kling said, "No. I'm real experienced in driving these large trucks" -- called them a "deuce and a half" -- "I'm real experienced in driving these large trucks on Fort Riley; so I don't have any problem driving this truck, and I don't want to get the insurance."

So Eldon Elliott spent about 5 to 10 minutes with the man, he testified, took his money, wrote up the reservation form, and that Mr. Kling signed the reservation form. And the Government stipulates that that signature is McVeigh's signature.

He then got -- Eldon Elliott was on the phone when Kling walked out, and he heard Kling get in a car and drive

away. And Kling told ---excuse me -- Elliott told you that his shop is a mile west of town. It's just on a road leading out of town for a mile and that very few, if any, people walked there; that people usually drive a car or get a ride. I think he even mentioned some people ride a bicycle.

He then further told you that -- he filled out the reservation form and left it for Vicki on Monday morning; and then on Monday morning he was asked to go do the inspection on the car (sic) shortly after 4:22. He thought it was about 4:25. He said he walked into the shop and he saw these two people standing there; and he immediately recognized Bob Kling, and he asked Kling, "Have you rethought anything about the insurance?"

And Kling told him, "No, I still don't want insurance on it."

And he noticed a person standing next to him, and he noticed that Kessinger was seated over in the chair eating popcorn on his right. And he said, "Well, okay, I've got to take this inspection sheet and go out and walk around the truck. Do you want to come out with me?"

And Kling told him no.

And Elliott told you that it was slightly misting, slightly raining at that time. So he went out and he did the walk-around, put on the diagram where the scratches were on the truck, and walked back in. And when he walked back into the office, Kling and that second person were talking. He couldn't hear their conversation, but he heard them talking. And he noticed that the second person was shorter than Kling but didn't pay any attention to him because he was dealing with Kling and talking with him.

He said that when he was outside doing the walk-around, he noticed that there was a light-colored, medium- or full-sized sedan parked in front of his business. He did not recognize it as a customer, did not recognize it as an employee's car. In fact, there were no other customers in the shop.

He testified further that that car was not there after 5:00 when he closed up the shop and left. The car was gone. He further testified that McVeigh or Kling, as he knew him at that time -- his face or head or upper shoulders was not wet as if he had been walking from McDonald's to the shop. He was not wet. So you can reasonably conclude that he did not walk there for a mile in a light mist and a light rain.

Now, you heard also from Ray Rozycki, who testified that he was asked to come in and interview the witnesses and draw a diagram. He met with Kessinger and got the most detailed description he could from Kessinger and drew John Doe 1 and 2 and that those were then later passed around, as we've stated.

Now, why did the Government not want to prove this? They certainly weren't ignoring the Ryder truck. We had all of that testimony, and you saw all of these agents -- they have squads of agents that will do anything. You saw all these bent and twisted pieces brought into the courtroom, and then you saw the reconstructed Ryder truck brought into the courtroom. And Mr. Paddock testified that yes, this piece is this piece and

this piece -- and it was interesting to watch, you know. They had taken the next truck off the line and had bought it, the one that was manufactured right after the one that was blown up -- they bought it and they cut it apart, totally disassembled it, painted it nicely, and then reassembled it so they could bring it into the courtroom.

And why did they do that? Because what they are trying to do is to show you that they have addressed every question about this truck.

They're playing a shell game with you. They want you to look at that and not pay any attention to the fact of who rented the truck. They didn't need to rebuild that truck. When Dawn Hester of the FBI, young photographer who took the picture of the key and found the key down the alley -- we stipulated that key fit the ignition of the truck that was rented from Eldon Elliott's. They didn't need to rebuild it for you.

But what they did were (sic) trying to play a shell game with you to take your attention off of what they're not proving. And they're not proving up who rented the truck and who was with McVeigh because it doesn't match their theory. They committed themselves to a theory on April 21 and have stuck with that ever since that this is Tim McVeigh and Terry Nichols. And they belittle and ridicule and discount anything that shows any difference.

Now, you also saw the video and heard the testimony about the -- Mr. McVeigh's being in McDonald's right before he went to Eldon Elliott's. You heard the taxi driver say that he got a call, he picked up McVeigh near the Dreamland Hotel (sic), and he took him to McDonald's restaurant on Washington, rather than to Eldon Elliott's.

Why didn't he go to Eldon Elliott's? He went to McDonald's. And you saw the video of him in the line to order; and then you saw -- it's a time sequence as the cameras move around. Then you saw later on right before 4:00 McVeigh exiting a seating area and walk toward the exit right under the camera and was looking at his watch as if he had an appointment.

And the next thing you have is approximately 15 minutes later, he drives in -- or rather he walks into Eldon's Elliott's with a John Doe No. 2. And there is a car outside. There is a reasonable conclusion that he met John Doe No. 2 at McDonald's and that he was driven to Eldon Elliott's and John Doe 2 went inside with him.

Now, this Dream -- this McDonald's restaurant is an interesting place in this case, because that's the place McVeigh always wants to be dropped off or picked up. You recall that Terry Nichols told the FBI that when he came back from Oklahoma City with McVeigh, he was asked to drop him off at that McDonald's, which was closed at that time. But McVeigh told him, "I've got friends here. I'll give them a call. I'll get a place to stay."

And we know he must have friends there, because when Marife Nichols testified that yes, Tim McVeigh came to visit us in Marion, Kansas, in August and September -- but he was always in and out. He never stayed there. He'd be there for a couple

days, and then he was gone and then he was back.

Well, why did he go up to Junction City, a long ways away, to sign up for a Blockbuster Video rental application, unless he was spending a lot of time in Junction City with other people?

He can rent videos in Marion. You can even rent them in Herington, which has got, what, 2800 people? You can rent them at Catlin's Video.

Why did he need or why was he in Junction City in August, '94? He was seeing other people. He's familiar with that area. He served in Fort Riley. He's lived in that area before. He has other acquaintances there.

He has told Terry Nichols on two separate occasions: "I've got friends here. I may be able to borrow a car so I can go on East to visit my relatives. I've got friends here. I may be able to get a room."

There is absolutely no suggestion that -- even the Government has not even tried to make that speculation -- there is no speculation that Terry Nichols was with McVeigh Monday afternoon when the truck was rented. Terry Nichols was home watching movies with his son, Josh, and his family; and they left at 5:00 to go to Junction City to Sirloin Stockade and then drove to Kansas City to the airport.

Now, the next block of proof that the Government didn't want you to hear that we had to bring is the Lea McGown and the Dreamland Hotel. Why didn't they want you to know about that? That was an important piece of the evidence, how the FBI originally got on to Tim McVeigh.

The reason they didn't want you to hear about that is because Lea McGown, Herta King, Hilda Sostre, Renda Truong, and Shane Boyd all testified that there was a Ryder truck there before Monday at 4:30. That was the earliest that he could have gotten there at 4:30 on Monday afternoon with the one rented from Eldon Elliott's. And they also -- you'll recall Hilda Sostre's statement that she saw a person walk toward that truck. You heard the testimony that McVeigh was seen driving that truck on Easter Sunday. The truck was there on Easter Sunday. They certainly don't dispute that.

Herta King said she brought her son Easter dinner there, and the truck was right in the middle underneath the sign.

There is no dispute that there was a Ryder truck there and that McVeigh had been seen in it.

Now, why is there a Ryder truck seen before April 17 at 4:30 when McVeigh rented this particular one? Well, keep in mind that McVeigh had been in the Army and that he was classified an excellent soldier by every witness who came in here that knew him in the Army. And keep in mind that in the Army, they often -- and he had been in Desert Storm, been in combat. He did combat training. But keep in mind that in the military, they often do dry runs and practice runs. And if McVeigh had other people working with him, which appears to be obvious to us, the truck was out at Ryder -- out at Geary Lake on several days prior to the day the Government claims it was out there to build a bomb on the 18th. It was there several days before and it was there at Dreamland before. And those

guys before, and it was there at breakfast before. And those people that testified aren't incredible. They're not Elvis-sighting people, as the Government wants to dismiss everybody who disagrees with their theory.

Those are questions that the Government couldn't answer, so they just ignored it. They didn't want you to hear about it.

Well, we had to bring that; and we had to bring the Ryder rental.

Now, let's look at -- you know, the Government has got a theory about building this bomb. Their theory is that it had to have been done on Tuesday morning because they know where Mr. Nichols is Tuesday afternoon; and their theory is since the truck was rented on Monday afternoon, then -- and it ends up in Oklahoma on Wednesday, then it has to be built on Tuesday morning.

So they then start gathering facts to match that theory. And the fact that they're so dependent on, that they like so much and told you about over and over in opening statement, is Richard Wahl. They like Richard Wahl's testimony because he puts the Ryder truck and the pickup together at Geary Lake.

Well, let's look at -- you recall when, at the very next-to-last witness that we had in this case, Chris Budke testified, FBI Agent Chris Budke, he talked about meeting Mr. Wahl at the Burger King on April 26 and when Mr. Wahl came up to him and said, "You know, you're with the FBI. Can I talk to you? I called the 1-800 number and never got a response, and I've got some information."

So Budke took the information down, and what I -- we then saw that information for the very first time. We had never been provided those sheets. They're called "information control sheets." And Mr. Tigar asked for that at that time, and you saw Mr. Mackey dig it out of his briefcase and give it to us.

We had never seen those sheets before, which are the rendition of what the witness is telling the FBI when they talk to them.

What we get is the 302 that is typed up after the FBI talks to them and then writes up the 302 the way they want it to read. But we don't have these verbatim extemporaneous remarks that the witness made.

And we got this one for the first time; and then you also heard this morning that it was offered into evidence -- the other one when he called the FBI on the 1-800 number.

What I'd like to show you first is the one that -- let's see if I can get this focused so we can read it.

This is the record of his 1-800 call on April 22, '95,

at 3:57. That's Saturday -- Saturday afternoon; and it shows -- it's called "information control." Source is Rick Wahl, W-A-H-L. Phone number is such and such in White City, Kansas. And it's a telephone contact, as you can see here.

Special Agent Jolene Jameson is the one who filled it out, and her narrative is that the "Caller heard news & advised on the morning of April 18 he was fishing at Geary State

Fishing Lake -- Fishing Park, parentheses, (between Junction City & Herington). While fishing, he saw a Ryder truck parked at the end of the road & alongside it was a late-model Chevy

truck. Did not see any other vehicle or any individuals."

And they then make a decision, lead set, yes or no? They made a decision to disregard this one by saying no.

So Mr. Wahl then sees the FBI agent at the Burger King

and he goes up to Mr. Budke and says, "You know, I've got some information I'd like to give you."

And Budke takes it down and says, "We'll get back in touch with you."

Now, the information that he gives to Budke on April 26 at 12:45 p.m. states that he ". . . was fishing at the Geary State Fishing Lake on Tuesday, April 18, between 9 and 12. Wahl observed a Ryder truck and a gray Chevy pickup truck parked in a somewhat remote area. Wahl never observed any people associated with the trucks. Wahl advised the lake is located between Junction City, Kansas, and Herington, Kansas, on Highway 77. Wahl has called the 1-800 number and reported this and was never contacted by the FBI.

"Lead set? Yes."

Now, you heard Mr. Budke testify that he went back and gave this information to his supervisor and that a lead was set out and that Schaefer went out and did the interview.

When they do the interview, they come back in and they complete the information control sheet. And what is put on there that very same day, April 26, '95, by Schaefer and Carey concerning interview with Rick Wahl -- they put here -- let me see if I can get it where everybody can read it -- "SFC Richard N. Wahl, B Battalion, 23d ADA, Fort Riley, Kansas, interviewed. Wahl was fishing at Geary State Lake 4-18-95, 9 . . . to 12 p.m. Wahl said he saw a Ryder rental truck and a blue or brown Chevy Blazer or GMC pickup parked next to the Ryder. Wahl did not see any people near or around the truck during time he was fishing. He left just after noon. Wahl was fishing at same location Monday evening 4-17-95 and did not see any trucks or people."

Now, you notice that this reflects that the lead has been completed and that it is 4-26-95. But the problem is here that the FBI notices he -- well, he's describing it as a Chevy Blazer. And if it's going to match our theory that it's Terry Nichols -- this is on the 26th. Keep in mind that they've got Terry Nichols' truck since April 21. They've made up their mind who did this and don't confuse them with the facts.

This Blazer doesn't fit the theory; and so rather than this interview being completed, they send the agents back out to interview him again.

And we know that from the 302 that they type up, which is D1898. And you see here that it is a -- an interview of Richard Norman Wahl. And I want to show you on the front of the FBI 302's, they always put the date that the investigation is conducted. And this investigation was conducted on April 26

and April 28, '95, in Junction City, Kansas. And here's our case number that we'll always remember except for the agents who wrote it down wrong when they searched Terry's house.

But Walter Schaefer and Francis Carey dictate a report on April 28, '95, and a redacted portion of it has been admitted into the evidence by the Court. And you'll notice that his -- the way the FBI now writes it up:

"Wahl said one of the trucks was a Ryder rental truck, and the other truck was a pickup. Wahl said the pickup truck was a Chevrolet (or possibly a GMC), dark blue or brown in color. Wahl said that the truck could have been anywhere from a 1980 to 1986 or '87 model. Wahl said the pickup appeared to have some white on the rear of the truck. The pickup could have been -- The pickup could have had a shell or camper top, but he could not see clearly from where he was located. Wahl said that he and his son did not go all the way into the area."

Well, it's gone from a late-model truck now into the mid 80's. This is in '95 when he's telling them that. It's now the mid 80's.

Well, they asked Wahl to go to the grand jury; and on the 9th (sic) day of July of '95, the testimony of Sergeant Richard Wahl, Defense Exhibit 1892, which has been admitted into evidence, Mr. Wahl states:

"There were two trucks. There was a Ryder truck and a pickup parked next to it, and they were both facing the same direction.

"Question: How much of the pickup were you able to see from where you were?

"Answer: From where I was at I could see the front of the pickup. And I couldn't distinguish at that time if it was a pickup or if it was a Blazer-type pickup. I just knew that it was a pickup, if I could say, by the front end.

"And on top of the roof I could see white like either it was a camper shell on the back, something white loaded on the back of the pickup or a Blazer-type truck. I couldn't distinguish" (sic).

Further states under question:

"And you said the other vehicle --

"The other truck was parked next to it. And I'd say it was a --

"Well, let me ask you, what color was it?

"It was a blue or a brown, dark colors. I couldn't tell which. I just knew it had some tones of both.

"And it appeared you were looking at it --

"From the front.

"-- from the front, and over the cab you saw --

"I could see white.

"You could see white over the cab, I should say?

"Over the top of the roof, the cab, right. I could see a white line that went all the way across the truck like a camper top on the back or something of that.

"Did you observe anything about the headlights that you remember?

you remember:

"On the truck it had single square headlights with a parking light under it. It was definitely a General Motors product."

I'm going to show you pictures of Mr. Nichols' truck that were admitted into evidence when we were questioning Mr. Elliott, who was the FBI agent that was in control of the Evidence Control Center where they had the horse trailers and the total mess at the Evidence Control Center. And they put evidence in bins.

Well, the bins were duct tape on the floor. That's the Evidence Control Center.

This is Mr. Nichols' pickup, clearly exhibiting a GMC emblem in front; and keep in mind, Sergeant Wahl told you that he spent 14 years in the Army and his job is maintenance of the vehicle pool. If there is anybody that's familiar with vehicles, Sergeant Wahl is.

But he just couldn't remember if this was a Chevy or what it was. But do you see any white line in front of -- excuse me -- over the top? When you're looking at this vehicle from the top (sic), you cannot see a white line because the camper top is below the cab level, as you will see in F4.

See how the camper top is slightly below the roof of the cab? You won't see that if you're looking at the vehicle from the front.

Here's another picture, F3. No white line.

And here it is in the garage next to McVeigh's truck (sic). You see there is no white line. That's the chrome molding around the windshield which -- but you don't see a white line if you're looking at this truck from the front.

Now, remember what Mr. Wahl testified to when he got here, though? When he got here after being worked with by the FBI and the prosecutors for two-and-a-half years, the truck was pretty much Terry Nichols' truck.

We didn't have these prior descriptions that he gave when it was fresh on his mind. He gave this on the 22d, four days after it was fresh on his mind. He said it was a late-model truck; and then on the 26th, he said it was a gray truck. That's eight days after the event of seeing it. A gray truck.

We didn't have those to cross-examine him with, or we certainly would have, to question his recollection two-and-a-half years later.

But after working with the Government, he comes in here and tells you -- gives you such a description that it can only be Mr. Nichols' truck, yet he did tell you that he didn't see anybody there. Nobody has seen any individuals around the truck in Geary Lake. There is no proof that Terry Nichols was there. They have no proof.

What the other witness that they offered -- they have two witnesses that can place a dark truck that's -- it's gone from gray to dark -- but they've got two witnesses that can place it there that morning at Geary Lake.

The other witness was Bob Nelson, who, as you remember, worked at Eldon Elliott's. But he lived down south of Junction City, and he drove by there every morning. On that morning at 7:15 to 7:20, he drove by and noticed a Ryder truck

over at Geary Lake because he works at a place they rent them. He would notice it.

But what he saw was a dark-colored pickup backed up to -- with them back to back of the Ryder truck, and he says he cannot remember if it had a camper shell or not.

So what you've got is two descriptions of a dark truck, and there is no camper shell on the second one, or he doesn't remember one. And Wahl can't see when he's looking at it head -- can't see a white line over that.

So we really don't know what was there because we've got those two witnesses and that's all; yet that's the Government's key, as Ms. Wilkinson told you -- that's the most important day in this conspiracy -- April 18 is the most important day. And that's their proof that Terry Nichols built a bomb on Tuesday, April 18?

If -- in a criminal case, if they come in with evidence that slight, you just disregard it, especially in one where the consequences are so dire like this one. If they can't prove beyond a reasonable doubt what they're alleging -- and they are alleging -- She told you Terry Nichols built that bomb Tuesday morning. That's their proof? You don't -- you don't convict somebody on proof like that. You certainly don't execute somebody on proof like that.

MR. MACKEY: Objection.

THE COURT: Mr. Woods, we're not talking about punishment at this stage.

MR. WOODS: Yes, your Honor. I withdraw that.

That's their proof for building the bomb on Tuesday morning.

THE COURT: It's almost 5:00.

MR. WOODS: That's an excellent point to break, your Honor.

THE COURT: Okay. We will.

So, members of the jury, recognize, of course, that we want to give a full and fair opportunity to the lawyers on both sides of this case to advocate their positions and to suggest to you how you may analyze the evidence in the case; and so we will, of course, do that, return to the arguments in the morning. And of course, you recognize that following the arguments I'll tell you about the law in some detail. So again, we're going to recess now, let you go home now and ask of you that you really put this matter to rest even in your own minds. I know, you know, it gets harder when you get closer and when you have heard a part of the argument. But once again, please wait for us to complete the trial.

And of course, do not discuss the case among yourselves or with any other persons, and be very careful about all that you may read, see, and hear to avoid anything which could in any way affect your decision on the issues in the case, recognizing once again, as I will tell you in detail

tomorrow, under the law you have to decide on the law -- follow

the law and on the evidence that's presented to you at trial.

You're excused now till 8:45 tomorrow morning.

(Jury out at 4:59 p.m.)

THE COURT: We'll be in recess, 8:45.

(Recess at 5:00 p.m.)

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Item

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CLOSING ARGUMENTS

By Ms. Wilkinson (continued)

By Mr. Tigar

By Mr. Woods

* * * * *

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 15th day of December, 1997.

Paul Zuckerman

Kara Spitler

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