

closing arguments.

Mr. Woods.

CLOSING ARGUMENT CONTINUED

MR. WOODS: Thank you, your Honor.

Good morning. When we broke last night, we were ending up talking about Richard Wahl and his testimony about seeing the two trucks at Geary Lake on April the 18th. I wanted to show you part of his grand jury testimony when this is fresh in his mind.

He testified to the grand jury July 19, '95. And describing the truck, he said that on the truck it had single square headlights with a parking light under it. It was definitely a General Motors product.

Well, the photos of Mr. Nichols' truck show that it's dual headlights, stacked headlights, and the parking lights are inside, as you can see on these two photos. So the description that he was giving does not match Mr. Nichols' truck. That was at grand jury. Of course, at trial when he testified, he didn't mention that at trial.

The prosecutor mentioned to you that "We don't have any witnesses that saw Mr. Nichols and Mr. McVeigh at the lake building the bombs because they were so careful that they avoided being seen." Well, 300 years ago in Salem, when they tried women for witchcraft, the prosecutor's argument was, "These women are so clever that the proof that they're witches, there is no evidence of witchcraft," and that's pretty much her argument, "Well, we don't have any witnesses, but that's because they were too clever to be seen."

Let's look at two other witnesses the Government brought you, important witnesses that they wanted to show prove that Terry Nichols made the purchase of the ammonium nitrate at the Mid-Kansas Co-op. The first was Rich Schlender. And if you recall, Mr. Schlender stated that his memory of Mike Havens -- and keep in mind that, you know, these purchases occurred in September, '94, and October, '94, and the FBI is coming to them at the end of April of '95. So that's been four -- seven months -- six months of constant customers through there, and they're asking them to recall.

So Schlender's testimony here at trial is that Mike Havens was 5-foot-8 to 6-foot tall, he was driving a late 70's, dark-colored pickup with a light-colored topper, towing a Ford cutoff-pickup-bed trailer with white-type lettering on the end gate. It's a cutoff pickup that you make a trailer out of, and he testified they're fairly common in Mid-Kansas.

Well, under cross-examination, he admitted that when he was first approached by the FBI, he told them it was a late 70's Dodge, had a four-wheel drive, was a three-quarter-ton pickup, had Kansas license plates with a Marion County tag on it. These facts didn't fit the Government's theory because they knew that Terry Nichols still had his Michigan plates on his pickup at that time, so that testimony was dropped when Mr. Schlender testified here.

He also admitted under cross-examination that he told the FBI when he was first approached that Mike Havens was 6-foot tall. Now to get around that, his testimony when he got to trial was, "Well, what I meant was it was 5-foot-8 to 6-foot tall."

tall." 4 inches difference? He didn't say that to the FBI when he first approached; but to get it into the Government's theory, it became 5-foot-8 to 6 foot.

Now, he told when he was interviewed by the FBI, "Give me a lineup of pickups, and I could probably pick out the pickup it was." So what did the FBI do? They gave him a lineup, all right. It was all the photos of one truck, Terry Nichols' truck; and not surprisingly, he was able to pick out the truck. And the FBI kept pushing him to identify the Donahue trailers, those low, flatbed trailers that were at the Donahue farm because that was going to be their theory, that Terry Nichols was using the Donahue trailers. But to Schlender's credit, he wouldn't be pushed that far. He said, "No, I described it as a cutoff-pickup-bed trailer," and he was sticking with that.

Now, it's interesting to note he didn't from the witness stand say Terry Nichols is Mike Havens. Some witnesses can be pushed just so far, and they're not going to come in a capital murder case and say, yes, that's the man. They give the FBI what they wanted by going, "Well, I'll give you the description and I'll conform the testimony to close to the description, but I'm not going to come in and identify the man."

Well, what about the other one? Well, one other thing he added for the testimony here, he said that he talked to Mike Havens and Mike Havens said he was farming over near Durham. I asked him on cross-examination, "Weren't you asked that question in grand jury? Didn't they ask you that same question and you said, 'I didn't have any conversation with him about where he was farming'?"

He admitted, "That's true, yes, that's what I said in grand jury under oath." He added the Durham because it's right next to Marion where Terry was working.

But he didn't identify the person.

Now, Showalter -- remember Showalter? He was the person who wrote up the September 30 tag. Not tag, but receipt for the ammonium nitrate. Now, see, the FBI has found this receipt in Terry's house by then. They found that on Saturday. They unwrapped it. When it's wrapped up around coins, you can't see what's inside. The fingerprints on the outside are McVeigh's, not Terry's. You heard the testimony. There's no fingerprint of Terry Nichols in there. But the FBI has found the receipt in Terry Nichols' so they're going to match that receipt to Terry Nichols, come what may.

They come to Showalter. Showalter says, "I don't recall the thing." They came to him in late April of '95. He just tells them, "I don't recall the transaction." He tells them that all the way through '95 and up to October of '96; and he admitted under cross-examination, "Well, the FBI started meeting with me, Mr. Hersley and Mr. Mendeloff -- a prosecutor who is no longer here -- started meeting with me and had a number of meetings with them in October of '96. And then in '97, I started meeting with Geoff Mearns, a prosecutor, had four meetings with him. And now here's my recall."

And his testimony was, Mike Havens was in his late 30's. early 40's. 5-foot-9. 5-foot-10. average build. with

00 0, early 10 0, 0 1000 0, 0 1000 10, average 0000, which dark, short, well-trimmed hair and wearing slacks and a sports shirt. He, after being worked with, came up with a description, fairly specific, as to a September 30, '94 transaction, after being worked with by the FBI and prosecutors.

But you notice also he didn't in court say Terry Nichols is Mike Havens because some witnesses just won't be pushed that far in a capital murder case. They're not going to say, yes, that's the man. But they'll give the FBI what they want and come up with a good enough description.

Now, you may think, well, is this the FBI that I've seen on TV shows? I think you've seen and understand that the gap between the reality of the FBI and the myth of the FBI is as big as the Grand Canyon and is growing daily. You saw these people. They're ordinary people like you and I. They take them right out of college, give them -- what was it -- 14 weeks of training. Eight weeks are spent on firearms, so that leaves six weeks to train them to be the investigators for the best law enforcement agency in the world. Six weeks.

The Denver police officers that ride around in patrol cars get more training than that. These people are not infallible. They're not flawless. But the difference between them and you -- between you and them and I is they're operating under incredible pressure to maintain the myth of the FBI.

This case was solved right away. In two days, we had the suspects in custody. You heard from Budke that Louis Freeh, the director, was there one week later on the 26th giving a speech. What do you think that speech was? Congratulations, you solved the case. We look good in the press.

They've got to maintain that; and to maintain it, they've got to get the conviction that goes with the early arrest, and they made the decision to make the arrest with no evidence. They've then got to start putting these square pegs in round holes, and that's what you've seen here. And you've seen a lot of speculation in the summary, just jumping over these gaping holes, telling you this, this proves his guilt, this proves the guilt.

The one I really liked was Miss Wilkinson said, "Terry Nichols went out and bought three newspapers on Thursday afternoon. That proves he's guilty because you only buy three newspapers if the story's about you."

Well, putting aside her personal experiences, most people on some large event want to get as many sources of information because the press is so notoriously inaccurate, you try to get a number of sources, put them together, and maybe you can filter out what the actual facts are.

Keep in mind that he didn't have television at that time. At least on television you can see the visual image. And when they interview witnesses, you can hear the live witness being interviewed. You don't have to take a reporter's version of that.

He didn't have television till Friday morning. But Miss Wilkinson tells you, "Because he bought three newspapers, that proves he's guilty because he wanted to read about himself."

That's the kind of summation that she gave you and asking you to speculate and just jump over things. And what we're going to ask you to do is carefully weigh and look at all the evidence when you get back there. You'll have all the documents. Carefully remember the testimony that you heard.

Now, it was interesting to watch the treatment that these witnesses got who didn't agree with the Government's theory. Jeff Davis, the person from Hunam Palace who delivered the Chinese food, he tried to help when he told the FBI, "Look, I don't think that guy that I delivered the food to at the Dreamland on Saturday night, Room 25, was McVeigh. I've seen the picture in the paper, and I don't think that's him."

Did you see the treatment that he got? You recall how many times he was interviewed by the FBI. They kept going over and over and over, repeating the same question. What do you think the point of that was? They were trying to get his testimony to conform.

And you heard Nancy Kindle, the waitress from Denny's. She did identify McVeigh, but he didn't fit the Government theory because she said on Easter Sunday, when he came to Denny's, he was with two other guys. Well, you heard her testify. She said when she got back home after testifying in the McVeigh trial, two agents called her up, and they were badgering her so that she put it on speakerphone so her family could hear it.

And Mr. Ryan got up and very pointedly in front of you jurors got up to talk to the two agents to let you know which one it was because you certainly wouldn't suspect these two fine agents of doing that, very pointedly doing that before starting his cross-examination. It was done for a point.

She told you they harassed her, and she finally said, "I'm not going to answer questions anymore," simply because she was trying to help. But her testimony didn't meet the theory.

And they dismissed all the others with insulting comments that they're similar to Elvis sightings.

Let's talk about the DRMO for a second. Terry Nichols told the FBI in his statement -- and we'll get to that in a minute -- that McVeigh wanted to borrow his car on Tuesday morning and that he, Nichols, picked up McVeigh at McDonald's, drove to DRMO, was dropped off, told McVeigh to pick him up about noon, and that he went outside to view the items outside. We know from the testimony that there were over 100 items outside as part of this sale. Some of them were in large lot sizes.

Now, the Government has made a big point with a number of witnesses about how meticulous and how careful and how fact-gathering Mr. Nichols is.

Mr. Nichols knows he's there until noon, and he's looking at items to buy and resell. You've seen his photos of everything in his garage. He says he went through and looked at a number of items outside in order to determine which ones to make a bid on. He testified that at noon, McVeigh wasn't

there so he went in the inside portion, which as you saw was down the building to the other door. And the Government made a point, we didn't bring you the video. We didn't need to bring you the video, because they had shown so many charts and diagrams of the place, you had a picture of it.

He went in the door and, there's where he had to sign in. He told the FBI that on the statement. You'll see it, I'm going to read it to you in a minute. He told them he went in there right before 1:00 to sign in because to view the items inside that's what you have to do. And then he submitted his bid at 1:37, which is approximately 40 minutes later from 12:50, 50 minutes later.

And you'll see on the catalogue all the items that he's looked at, that he's circled and put prices on. And he bid on ten items, and seven of the items were outside. And you saw that from Miss Garza who testified. This is pretty dirty from fingerprinting, but I'm not sure -- well, it's too difficult to read. But you heard Miss Garza's testimony that the three items on top are the inside items, and the seven below are the items that were viewed outside. And you can see the catalogue.

Now, she testified as to how strict they are on their sign-in procedures. I'm going to show you what is in evidence as Government's Exhibit 1956. You'll have this back there to look at. Look at all the signatures that are signing in. They're all different; right? Look at the sign-in. It's all in the same handwriting. It's the same handwriting on that page. The same handwriting on this page. You'll see all these different signatures. Look at the sign-in sheet, the time wrote. That's all the same handwriting. Same on this sheet. All the different handwriting of people signing in. Yet the timing is all in the same handwriting. Pretty strict there, all right. They've got a clock that's been broken for unknown length of time that they can't get fixed.

And Mr. O'Connell told you -- remember him, he was the gray-haired gentleman that goes out there a lot to look for electronic things. He's the nurse from that -- nearby there. He told you he goes outside to view -- and he's on this sign-in sheet. You'll see that he attended that auction. There are over 130 people that attended that auction that day. And he told you that he goes outside all the time without signing in. He views the items that are on sale. It sometimes takes him a long time. He spends a lot of time just looking at one tent. He said he may spend 20 minutes looking at a tent. But he also looks at all the items that are not for sale, that are flagged -- there's a flag separating them. He said he's done that a number of times; nobody ever runs him off out there.

But he says one thing: "Look, when I'm out there, I'm looking at the items, I'm not looking at who the other people are." Well, the Government wants you to believe that Nichols wasn't there, because Carolyn Marin didn't see him when she went outside. She was there with her baby and her son -- or her child, I don't recall the sex of the child. She was with her husband and her child. She was there to look at two things and she spent over an hour doing it. She went inside

things, and she spent over an hour doing it. She went inside to look at dressers and she went outside to look at cars; and because she hadn't dressed and she said it was cold and chilly, she was carrying her baby and she was walking behind her husband, acting as a wind guard for her. Do you remember that testimony? She's not looking around looking as to who's around looking at other items. She went back to the back to look at a car, and they actually bid and got the car. She's driving it now, she said. Well, she wouldn't see anybody when she's -- walk out like that and walk back.

The Government makes a point to you how meticulous Mr. Nichols is in all of the things he does, but they don't want you to believe that he might spend some time there looking at the outdoor items.

Let me get my documents straight here for a second.

Now, Mr. Nichols told the FBI -- and we'll get to that statement in a minute -- that McVeigh came back shortly after he had submitted his bid and walked outside, he took McVeigh back to McDonald's, and went by and picked up his mail and went home. And Marife Nichols testified on direct that Terry Nichols came home about 1:30. Now, in cross-examination, when Mr. Ryan questioned her, she said, "Well, I remember he came home at noon and then said he was going to the auction." And I -- on redirect, I questioned her, "Did you understand the difference between going to and gone?"

And she said, "Apparently not."

And at that point, we were allowed to get into her notes that she made while she was in FBI custody. Remember her testimony that she went with her husband down to the Herington police station on April 21, Friday, 3:00? She and her child were separated and then taken by the FBI to Junction City and then moved around for 36 days and eight different cities, questioned over and over and over. And because she wanted to get it right, she, without consultation with Terry Nichols --

she's not in contact with Terry Nichols during this time -- she sets (sic) down and writes her recollection because they're asking her, "What all did you do in April." So she sits down and writes what's fresh on her mind at that time as to what I and Terry Nichols did in April.

Here are her notes that she made for April the 18th. Get them where we can all read them.

"April the 18th, Tuesday, 9:30 a.m. Joshua called from Las Vegas." Remember that Josh had flown home the night before. So he's calling back.

"11:30 a.m., I woke up. Terry is gone/'The Lion King,' Nicole watched the movie."

"1:30 p.m., Terry is home. He said he went to the sailed" (sic) "bid somewhere in Fort Rally" (sic).

"2:00 p.m., we eat Filipino food, broccoli with beef and rice.

"Terry made a phone call to a guy that's supposed to send the laser."

And you've seen the phone records, he's calling Quarton and the other business for the beam shot and the lasers. Those records are in evidence.

"I sit around, watch the rest of the movies. Terry was in and out the house. He took some big ammo cans into the house so that we can dust it.

"We went to the IGA movie store, returned the movies, and buy one Sing-Along movies, the 'Mermaids,' rent to tapes, a 'Girl to Kill,' western movies.

"Sleep.

"'Nice night, no arguments.'"

Those were the notes she was making when under FBI custody so they would be fresh on her mind. Now, the Government would make a big point that they confused her and she said, well, he came home at noon and then said he was going. These are the notes she made at the time.

You recall her testimony. The FBI said -- or not the FBI -- the Government lawyer told her after her second trip to Oklahoma City to appear before the grand jury, "We're not going to put you in front of the grand jury because we think you're telling the truth." And then they gave her her money back they had held for 36 days so she could finally leave their custody and fly back to the Philippines. The Government had had these notes for over two weeks because she left them there at her first appearance; and when she came back at her second appearance, they gave them to her.

Now, the other items that the Government mentioned in direct was the letter from Terry Nichols to Tim McVeigh which they say proves his intent. This is the clear letter of intent. First I want to show you the letter that he also left with Lana Padilla. There were two letters left. This one, the read-and-do-immediately letter, points out where the storage is, the access code. And then he says, "All items in storage are for Joshua. The round items are his when he turns age 21. All else now. Pickup can be sold, but money from pickup put for Josh to buy his own vehicle."

"Other storage, located in kitchen behind utensil drawer between dishwasher and stove. Remove drawer, there are two small levers, one on each side of drawer, on rail, pull drawer out till it stops, then flip levels down and pull drawer completely out. Then look all the way back inside, take and push hard against back panel. Both sides and back panels are glued, top not. After it's broke free, remove wood panel and then remove plastic bag. All items in plastic bag are to be sent to Marife for Nicole if for any reason my life insurance doesn't pay Marife. Otherwise, one-half goes to Marife and one-half to Josh."

Continuation of the letter. "Marife will know what is at storage and home. As of now, only Marife, you, and myself know what there is and where it is. I hope you will do as I have stated. Josh has just a few years before he's capable of being on his own. And Marife and Nicole have many more years of support needed. There's no need to tell anyone about the items in storage and home. Again, only the three of us will know. I have the most trust in you here in the U.S. to do as I have written. It would probably be best to wire the items to Marife 3M at a time over two to three months. You will have to contact Tim to get the title for the pickup. He should know where it's at. Write to his sister, Jennifer McVeigh, 6289

Campbell Boulevard, Lockport, New York, 14094. You can tell Josh after you finish with all the details. There are two stock powers of attorneys in the stock file signed but not filled out. You should be able to take care of them with the stock powers of attorney."

Now, it's clear from this letter that he is making provisions, basically a poor man's will. He didn't hire a lawyer to write a will, but he's making provisions in the event he doesn't come back for Josh, for Marife, and for Nicole and if his life insurance doesn't pay. So it's clear what the intent was as he was writing these letters.

Then the Government wants you to believe that his companion letter that's to Tim is a letter of intent to engage in the bombing.

And the letter states: "If you should receive this letter, clear everything out of Council Grove 37 by February 1, '95, or pay to keep it longer under Ted Parker of Decker."

Now, their theory, that's where the bomb supplies are located, the bomb components. Why did he need to clear it out? This letter is going to get to them in late January because the provision if he didn't get back in late January, Marife would -- not Marife, but Lana was to mail the letter to Tim late January. And he's saying clear it out by February 1, '95. Why do you need to clear out components, bomb components, if you're going to bomb something in April, '95? That doesn't make sense. Yet the Government says this is a clear plan of the bombing in April, '95, and it shows his intent.

The letter goes on: "This letter has been written and sealed before I left, 21 November, and being mailed by Lana as per my instructions to her in writing. This is all she knows. It would be a good idea to write or call to her to verify things." And it gives the numbers. "You're on your own. Go for it."

They say that statement means go for it, do the bombing.

He and McVeigh are splitting their business. They're not going to be in business anymore. Why can't that mean you're on your own in the gun show business, go for it? Yet the Government says, no, that is clear proof that that is intent to bomb the building on April 19. They're asking you to speculate. And you don't speculate at criminal cases where their burden is proof beyond a reasonable doubt. They've done that a lot. And when you analyze what she said and then analyze the evidence, you're going to see that she's asking you to speculate a lot on a lot of things.

Then he says: "Also liquidate 40." Well, now, 40 is the one that was rented in October, '94, and it's the Government's theory that that was rented at or about the time of the second purchase of ammonium nitrate. Well, why do you need to liquidate a storage shed of ammonium nitrate in February if it's going to be used for a bomb in April? That doesn't make sense.

One of these storage sheds is going to have Terry Nichols' furniture in it. You recall Marife Nichols' testimony that when she got back in March of '95, in the house there was

that when she got back in March of '95, in the house there was the bed, the couch, the table, and a dining room table that they had back in Marion. When Terry vacated the Marion premises on September 30, one of the storage sheds has to be for the furniture. But the Government wants you to believe that they're all for bomb components and stolen weapons from Roger Moore.

He goes on to say: "Have my mail forwarded to Lana but use my name and her address, 7160 Nordic Lights, Las Vegas, Nevada. Mailbox EtcÄÄ, Sherry, and a phone number, Box 197."

He goes on to say: "The Parker deal was signed and dated 7 November '94, so you should have until February, '95, plus five days' grace. If close or they disagree, then should pay another term period. As far as heat, none that I know. This letter would be for purpose of my death."

That's written in connection with this letter would be in the purpose for my death. That could mean anything in connection with his death or the Philippines. Yet the Government says, no, that means one thing, and they're asking you to speculate what that means. There's no proof that they've offered. They've asked you to speculate on a number of things. They said this letter, which you'll have back there and you can read over and over -- this letter shows his clear intent, even in death, to participate in an April bombing. Well, that's a big leap to make, but they want you to make it. And we ask you to go back and study the letter, look at it word for word. Does this letter show a clear intent to participate in April 19 bombing?

Now, Lana Padilla and Barry Osentoski testified about going and looking in the storage shed. Lana says she saw a bag that had a wig and makeup and a face mask in it. Barry Osentoski says, "I saw the bag that still had the price tags on it. It had a wig and makeup. I didn't see a face mask. I did see skis, saw a tent, saw a cooking stove, saw camping gear in there."

Now, on the last witness that we want to talk about here, let's talk about the testimony of Marife Nichols. As you could see, Marife does not speak perfect English. She speaks pretty good English for somebody who's been here such a short time. And it certainly has improved since '95 when she was interviewed by the FBI. You heard her testify about her 36 days and her writing these notes.

What she also testified about was that Tim McVeigh visited them in Marion, Kansas, when they lived there from March, '94, to September 30, '94. Remember that she left in (sic) September the 22d, '94. McVeigh had even taken her to the coin shop to handle the sale of coins so that she could leave. But she said during that time that when McVeigh came in August and September, that he was in and out. He didn't stay -- he would stay a day or two, and then he was gone. She didn't know where he was going to. One time he told her he was going to Kingman and another time he told her he was going to New York.

But we know from the documents that the Government has offered that he went to Junction City in August of '94 and got a Blockbuster video rental. So he was going to Junction City to see somebody. The Government hasn't shown us who he was

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seeing at that time.

She also told you that she made it a condition with her husband, Terry Nichols, after she went over in September, '94, to go back to school in the Philippines and when Terry went back in November, '94, to surprise her and obviously ask her to come back home, she told you that she made it a condition that "If I go back home, McVeigh's not going to be part of our life."

And that was the condition that Terry accepted, and he did bring her back. She came back in March, '95. And he told her, "We were going to have -- I'm going to do my separate -- my gun show business separately, and I'll be able to spend more time at home. I'll just go to the gun shows on the weekend. I'll be able to spend time with you and Nicole." And that was a condition she set and came back for.

She told you that when she came back in March, '95, she started going to gun shows with Terry. The first one was at the Salina gun show. You know where Salina is. She told you that she herself sold some of the ammonium nitrate that was in bottles. Some of it was ground, some of it was in prills; that she sold some there. She told you that they then went to Grand Rapids, Michigan, the first week of April and that she sold some ammonium nitrate there. And she told you about the meeting with Kevin Nicholas where that was discussed with he and his wife, Sheila, about why people would buy ammonium nitrate. And she told you that Terry reminded her, "Give this sheet when you sell this," and the sheet was the description of the fertilizer and that it was an explosive.

She told you about Terry Nichols coming home on Friday, April the 21st, and he was scared, he was pale, he was upset. They turned on the television set. They saw the news on the television set concerning the bombing, concerning the arrest. And that Terry Nichols then said, "I need to go to the police station." She stated that he was insistent on going to the police station and that she and Nicole went with him.

She stated they went by the Surplus City first where Terry had mentioned trading shingles for nails but then went to the police station because Terry didn't go in there at the time. There was some testimony about seeing perhaps somebody following them. But her testimony was, "We weren't fleeing. We weren't going anywhere. We were going to the police station. That's where Terry said he wanted to go."

And you know from the witnesses that were at the police station that when Terry walked in, they all described him as pale, scared, nervous, concerned. Barry Thacker, Dale Kuhn. We know that was his condition when he got there at the police station.

She further testified about, under cross -- under questioning by the Government that Terry never discussed Waco with her; but when Tim would come, Tim was always upset and agitated about Waco, but that Terry wasn't near as agitated about Waco.

The Government kept telling you in their opening argument over and over and over about how Terry Nichols hates the government, was obsessed by Waco. That's not the facts. You don't have anybody that says that.

Marife also testified that Terry told her the reason he was using aliases at gun shows was because he didn't want the customers coming back and bothering them if the items turned out not to work or not to be satisfactory. At gun shows you sell things as is.

Now, the FBI used aliases, as she told you. The FBI used aliases for her as they moved her around to the eight different cities. So the use of aliases can be, according to the Government, beneficial or incriminating.

She also testified that Josh and Terry told her that McVeigh should be coming through sometime that week because he had picked up the television set and that he was going to be going East to see his family. She testified she was expecting him through sometime that week.

Now, as to the interview by the FBI that Terry did on September -- on April the 21st, remember that the people that are interviewing him and taking notes are the ones that were sent to Herington to arrest him. Remember they followed him around, they watched him go into the police station. And what's their conclusion, what's their immediate conclusion when he went in the police station? He's held them up hostage. It's a hostage situation. Here's a man with his two-year-old daughter and his wife. They've captured the police station and they're hostages. That's the mind-set of the FBI when they went in to interview Terry Nichols.

And early on in the interview, when there were three people interviewing him at once, Scott Crabtree told him, "Stop doing what you're doing. Don't take time to think of these answers." Well, here's a man who's heard on television that he's wanted in the largest criminal case that's ever occurred and the Attorney General's seeking the death penalty, and he wants to take time to answer questions? The FBI, "Stop doing that. Don't take time to answer these." Three agents are firing questions at him.

Now, these notes that Agent Steve Smith took. Now, this is a disgrace. This is incredible. The top law enforcement agency in the world, the largest criminal case and this is their evidence of what they obtained from the suspect in nine-and-a-half hours of interview? This is it. If the FBI doesn't change their procedures after this case, then you can conclude they don't want the interview processes known to the public.

There is introduced into evidence at the same time Mr. Smith's typewritten version. And you can compare -- what I would encourage you to do when you get back there is read this. It's not that long. It's 24 pages. I would encourage you to read it, either have the foreman read it out loud or, you know, you can come up with however you want to do it, but read it word for word. That's the closest we can get to contemporaneous what Terry Nichols said and what they asked. They had nine-and-a-half hours to question him.

And I want to -- I'm going to go through briefly -- and again I encourage you to look at this in full context, but I want to go through briefly and read some of the statements that were put in these notes, and you can remember these when you go back and look at it. I'm not going to read it all. We

did that with Agent Smith with his totally illegible notes. I mean that -- that's a disgrace.

You know, look -- what did Luke Franey tell you, the ATF victim who was caught on one of the upper floors. A good law enforcement agent who says the first thing he did was start talking into a tape recorder so he could capture everything he saw and his observations and what he was seeing, observing, that's what you do. You don't make illegible notes like this. On something important.

At any rate, we have the benefit of Steve Smith setting (sic) down and typing up what he wrote. And I would encourage you to compare them, if you can read the notes.

But on page 1, the notes reflect: "Came to PD to see what's what. Do not want another Waco. Stopped at surplus store, need shingle, trade tools for shingle, got out of car, had a feeling that I was being followed, got back in car and headed to PD."

Page 2. "Saw McVeigh Sunday. Heard McVeigh is in custody on the news. Not see at any hotel in JC. Do not know if he rented a Ryder truck. Saw in Oklahoma City on Sunday. Picked him up there and my TV. He called me and said I got car problems and if you want your TV, come pick up. Last November, I dropped TV off with my wife and babies, Vegas. Two months ago, mentioned in a letter, if you are in the vicinity of Vegas, you can pick my TV up. I came back home. Dropped him off at JC McDonald's on Sunday night or early Monday morning. Apparently left car in Oklahoma City. He was vague on a lot of things, lot of small talk. Knew him in the Army and seemed like he was different when he got out."

Page 3. "Drove down by self (five hours) then five hours back with McVeigh. Said he got a room in JC. McDonald's was closed, but the Denny's was open. I dropped off and said that I would catch him later. He knew someone around JC where he could possibly get a vehicle. And head on his way back home, New York, see relatives in New York. Said he bought it cheap, did not know if it was worth fixing."

Page 4. "Last contact prior to Sunday was in November or January. Son, Joshua, TV, got call at approximately 3:00 p.m. after Easter dinner. I might not drop it off because I'm pressed for time to get back east. Assume call was from Oklahoma City. He was coming from out West to visit relatives East. Gave son TV in Vegas in November. Thought if I wanted TV back, then go pick up. Send letter to mailbox in Arizona, Kingman, told Tim if he was in the area, to pick it up.

"Left about 10 minutes after call. He gave me directions to go downtown, gave me the exits, go around block couple of times and I'll see you. Decided it would take approximately five hours. Circle the block and picked him up. Possibly Main Street exit (8th Street). Went past that building couple times. On phone (just keep between the two of us). Just repeat Omaha if your wife asks. Seemed private on other calls, my business, no one is to know his business, some private were trivial things.

"Make sure you come down 8th Street, make your circles (went south on 8th Street, possibly) drove around block for 15, 30 minutes. Could have been half hour. All big buildings.

30 minutes. Could have been half hour. All big buildings, went as far as a car dealer, and drove by a post office. Route of blocks were not always the same. Glimpsed down an alley to other street and saw that it was him when drove around block. Driving east (saw through alley) then drove north and back west, picked him up on a two-way street."

This is page 6. "He was not wet when he got in my car. It was raining when in Oklahoma City. Go down 8th Street. Came from Arizona, going back East to see family and bringing TV. Going to meet someone else in Midwest. He does not want people to know what he's doing. This is his nature, so he told me to tell wife that you were going to go to Omaha. I told wife that was going to Omaha to pick up Tim with car problems. Then told wife on way to PD today that I went down to Oklahoma City instead of Omaha.

Page 7. "Tim had TV setting on sidewalk, not see his car. Way he talked, it sounded like a larger model. Had a compact Chevy before. Went straight up to Junction City, got to Junction City, about 1:30 a.m. He said he knew somebody there where he could stay and get a car."

Page 8. "Got home about 2 a.m. Think it stopped raining when got into Kansas. McDonald's on Washington was closed. He said to 'drop me off' there and he'd call someone. He said he was hungry but not opened, but Denny's was open. Pulled in between McDonald's and service station. And then I got back on Washington Street. He was walking towards Texaco or Conoco. He had a little bag, solid green laundry bag like laundry -- like Army laundry bag with drawstring. 'Catch you on the way back.' Usually says this when we leave each other.

"He gave me a call on Tuesday morning, approximately 6 a.m., and would like to use your pickup a little bit. Fort Riley had a sealed bid auction, Monday, Tuesday, Wednesday. Knows a couple of guys in JC, find a car. Was just up when got call. 'Can I use your pickup a little bit? I need to pick up a few things and look at a few vehicles.' I said I want to go to auction today, if it's not going to take too long, you can drop me off at auction so I can review it. Then borrow it; then we would be going our own way, after that. He said he was not in a real hurry. Home for an hour, left home at seven, agreed to meet at McDonald's in Junction City at 7:30 a.m. Picked him up, drove up to Fort Riley. I got out and told him to be back at noon. McDonald's back on freeway, K-18, through Ogden and then to post to Fort Riley.

"He showed up after 1 p.m.; went into building and signed in before one and looked at items inside, then left. Went outside after bid and he drove up, dropped him off at McDonald's, and that was it."

Now, the Government will make a point that -- and has made a point that there was no call on Tuesday morning. The call was on Monday morning. And it's possible that Mr. Nichols made a mistake as to the day he got a call from Mr. McVeigh wanting to borrow the car. There is a call on Monday morning. Why couldn't the call concerning borrowing the car for Tuesday be on Monday morning? It's not impossible.

Remember, he's under a lot of pressure and being pressed by the agents, and he's saying what he recalls. He's telling them everything he's done with McVeigh on Sunday and

Tuesday. I mean, the most incriminating thing is that he went to Oklahoma City and picked up McVeigh. He's telling them that. Yet the Government wants you to believe, well, he's mistaken on the day that the phone call came in to borrow the car. So what? He made a mistake. How many other people in this case have made mistakes to the FBI?

Yet the Government says that shows proof of guilt. Well, he got a call on Monday to borrow the car. He returned the call Monday night, as you recall. He could have been given the number to return and made that call on Monday night to see if the truck still wanted (sic) to be borrowed on Tuesday morning. That's just as plausible as what the Government is asking you to believe and convict him on. There were two phone calls. And he tells you in here later that was the phone calls that we got that set up the meeting to borrow the truck.

Still on page 9: "Said he was looking at a couple cars. Assume that he bought a car. Got out of the car and not seen him since. I picked up my mail in Manhattan, and I got home."

Page 12. "My and my brother's mention in regard to OKC, two people from Michigan. Heard about OKC bombing yesterday at cable outlet in Herington. Got a paper last night and got three different papers. Read about it last night. Wichita, Salina, at home. No reception on TV till today at 9 a.m. Cable. Home to lumberyard, parked there and heard name, and did not go in.

"Ask her if she had heard about it. She does not believe it. Turned TV on a news station for 15 minutes. Janet Reno was on there discussing investigation. General lingo that they always give. It was a press conference. Then heard Tim's name on TV for first time. Said he was picked up for a car violation not far away from OKC. Thought and swore I cannot believe it was him because he was heading back to see his family and he was back there in OKC. When I heard his name on the TV, that is when I figured out why my name was on the radio, because I was his friend. I was feeling shock because heard my name. How am I involved? How am I connected to it? I must not have known him that well for him to do that.

"Friendship is about the same with him now as five years ago. We went our separate ways lately because he did not like all my practical joking and joking. Told my wife he did not like all that. I feel upset that I am involved in a sense because of him and knowing that I am not. I feel I cannot trust anyone any more than Tim (I have loaned him money in the past). I would be shocked if he implicated me. Tim takes responsibilities for his actions. He lives up to his arrangements. My wife said this morning that Tim lives life on the edge. I did say this morning, and it was before heard that Tim had been picked up, he likes to drive fast."

Page 14. "Heard on radio that two people in process of being arrested. Came into house and asked her if she heard it on TV. I said it was serious. She said not believe. She did not believe. Not headed out of town. Should not find clothing for going out of town."

On page 15, a question: "Looking back in hindsight, anything he said on way up make you think he had done it?"

"Answer: Yes. He said on way from OKC to Junction City, Tim, 'You will see something big in the future.'

"I was talking about what I was doing, going to military shows, selling surplus. 'I'm doing fine. I should get something going here shortly.'

"'You will see something big in the future.'

"'What are you going to do? Rob a bank?

"'Oh, no. I got something in the works.'

"Did not ask him what 'in the works' meant. Tim said 'in the works' in the past. This discussion ended when we got distracted or talked about something else."

Page 20, "Question: Any storage facilities, care, custody and control? No. 1, had storage in Las Vegas, November, '94 to 12-94 to January, '95. Personal items, stored pickup there when went to Philippines.

"2, one in Herington. I was asked to pick a couple things up from -- by Tim. At time not think much of it. Yesterday picked up. 'If I don't pick them up, pick them up for me,' told me on Tuesday. Those items are sleeping bag and rucksack in the garage. His rifle in box next to meter now. Combination, nothing left in storage. Across from the Pizza Hut, second up from south end on east side, it's a 5-by-10.

"Question: Are these your items?

"Answer: No.

"What about your fingerprints on any items in the rucksack?

"May have given some items to McVeigh in the past that are not rucksack.

"I had one that I stored my stuff in Council Grove, (furniture) (and guns, ammo in facility) stored there last fall (or October to March) (until I got home). Closed before I moved in. Nothing in house or truck that can be construed as bomb-making material."

Page 22. "I bought two 50-pound bags of ammonium nitrate about one month ago from Manhattan elevator (have receipts in the house) because going to sell 1-pound bags for 5 to \$10 instead of \$35 that a Tulsa guy was selling for. Read books, sell as fertilizer with sheet that says plant food/nitrogen and explain mixture for uses from plants. Plastic containers in basement, 8-ounce and 24-ounce. Sold at shows every weekend except Easter weekend. If I sell any more at shows, they will question me. Put it on lawn this morning. Did not say earlier because it makes me look guilty."

Page 23.

"Question: What are drums in the garage?

"Answer: Trash and other uses, bought in Marion.

Fuel meter to resell.

"Question: No knowledge of him Jim Boy being involved in OKC bombing?

"Answer: No.

"Question: What about Tim?

"Answer: I suspect it now. Not recall a call from Tim on Saturday morning at 6:30 a.m."

And you recall the phone records reflected that phone call was not answered. It was zero duration. But they were

call was not answered. It was zero duration. But they were asking him about that.

"Michigan militia equals big, we (Marife, Nicole and I) on 4-8 and 4-9, gone for a week, left on 4-9-95, and got back on 4-10-95. Went to a gun show, sold 30 cases of MREs in 15 minutes to people from Michigan militia. Never identified themselves. Heard that they bought stuff. Guys walking around with full BDU, and aware they from Michigan militia. Never went to any meetings. Sold ten cases right off the bat. \$30 then \$32 sold. Then sold two and three to 60-year-old ladies. I do not know anyone in the Michigan militia."

And then at 12:30 a.m., handed four pages of letters, notes. "I wrote it because I did not have a will. In case of event of death, this letter was going to be sent to Tim in January if I did not return. Ex-wife was instructed to mail it to Tim. Filipinos not like Americans, run over by car. She (Lana) had separate instruction, do not open until after 1-28-95. She opened it up beforehand. She said she opened it up shortly after I left because Josh started cry and she felt a need. Some personal effects in letter for Tim.

12:11, "Dan and Jack came in and left."

There's no mention in there that the FBI questioned him about the meaning of go for it or no heat that I know of. There's no reflection of a question or a reference of no answer. Yet the FBI wants you to believe, yes, we did answer -- we did ask that because it was so important. If it was so important, they would have put it in the notes.

It would make all of our lives much simpler had they tape-recorded that conversation. We would know exactly what was asked and exactly what was stated. But the jury's going to have to look at the notes and the typewritten versions to recall what was said there.

Your Honor, may I have one second?

THE COURT: Yes.

MR. WOODS: To find my note sheet.

Some of the things that Miss Wilkinson mentioned: She stated that Donahue told you that Terry Nichols was advocating violence and overthrow of the Government. You heard the testimony in cross-examination when Mr. Tigar questioned him. It was normal political talk you hear in the coffee shop. He wasn't alarmed by it, he wanted to keep Nichols as an employee. Yet they want you to believe this shows hatred of government to the point where he would bomb a building? They're asking you to speculate a lot.

They also brought up the phone conversation that Terry had with Lana, where Lana Padilla admitted on the witness stand she was irritated and upset with Terry when she got him on the phone because Josh was threatening to run away and she couldn't get a hold of Terry because he didn't have a phone. She wrote him a letter that said call me. When he called, she was upset. She admitted on cross-examination, yes, I was upset, I was giving him trouble. Terry like to avoid confrontations. He mentioned on the phone that he was concerned about civic unrest, civil unrest. He was concerned about citizens shooting each other. He wasn't advocating that. You can recall her testimony. The Government played it one way, and when we asked her on cross, she stated it the way she recalled it.

Well, I'm going to save those notes and let Mr. Tigar talk about them. He's much more articulate than I am, and he will be summing up for us. And I appreciate the time and paying attention to what I'm saying, thank you.

MR. TIGAR: Your Honor, may I approach briefly?

THE COURT: Yes.

If you want to stand and stretch.

(At the bench:)

(Bench Conference 127B1 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: Members of the jury, we're going to take about a 15-minute recess at this point, and again of course, we're going to give you the case today, but we haven't given it to you yet, so please do recognize that and avoid discussion of anything about the case now during the time of this brief recess. We'll be in recess about 15 minutes. You may step out.

(Jury out at 9:49 a.m.)

THE COURT: All right, we'll recess.

(Recess at 9:49 a.m.)

(Reconvened at 10:03 a.m.)

THE COURT: Be seated, please.

(Jury in at 10:03 a.m.)

THE COURT: Mr. Tigar.

CLOSING ARGUMENT CONTINUED

MR. TIGAR: Thank you.

Thank you, members of the jury, for your patience. This is our one and only one chance to address you. When I'm done, the prosecutor has a rebuttal, and we want to make sure we didn't miss anything. We probably did, but you'll have all the exhibits in there and you'll have your collective memory of the testimony; and so as the prosecutor talks at the end, you have to -- for the rebuttal that we don't get to answer, I'm sure that you'll think of the case in the way that the Judge says that it is your oath to do; that is, you could look at a defendant on trial and say let's take every single testimony, every single piece of evidence, and let's try to figure out what is the most sinister implication we could possibly attach to it; or you could do it the way that stood us so well with the centuries of our justice system piled so high and say no, no, no, let's look at it with the understanding that there is a presumption of innocence and it stays with that person throughout the case and that it is the Government's burden.

Let's view the evidence from that point of view. And in this final part of the summation, I want to do that for a few more of these items.

The Martin Marietta quarry: You heard Mr. Radtke. There was a report that a former employee, a disgruntled employee, had made some threats; and yet nobody ever investigated that.

There was no evidence that Tovex or Primadet was even used in the case. There was a picture of the quarry. The front gates were always locked, and those locks were undisturbed. This is Government's Exhibit 119. There is the

lock.

Whoever came into that quarry that night, therefore, either had to be somebody who had a key, or somebody who had figured out that there is maybe a back road across this field in there. That's Government's Exhibit 118. You'll have it.

And yet from the road, you can't see the shed where these items that they said were stolen are stored. This looks like an inside job.

And if you want to take Mr. Cadigan after all the water and the drill bit evidence -- Mr. McVeigh had his own car. Mr. McVeigh had access to Mr. Nichols' tools. The Government asked you: Well, why would Terry Nichols drive 1100-some miles to Kingman, Arizona? And the answer in the evidence is that he didn't. He was in Kingman, Arizona. Never went in the Fortiers' house. He has a son named Joshua in Las Vegas, Nevada; and that's where the phone calls are from.

When you see Terry Nichols crisscrossing back and forth across the United States, remember he has that family there, and we'll hear a little more about what happened with that in November.

Suppose we looked at the Roger Moore robbery not with a sinister eye but honestly at that testimony. Suppose we looked at Karen Anderson -- and the Government tells you they don't rely on a certain list that she made. This is Government's Exhibit 2103. Karen Anderson took that witness stand right there and took an oath and swore to tell you the truth and said that she had found this list and it was an old list and it contained the list of the guns that she and Roger Moore had.

And then we found out that there was a gun on here with a certain serial number, 189-57425. So we went to the Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms and found out in Defense Exhibit D1166 that there is a record of that gun, 189-57425, and that it was sold to a man named "Terry Nichols" back in Michigan.

Well, does it matter that the Government says they now don't want to rely on it? Where did Karen Anderson get that serial number to make a fake list? Did she make it up? Where did she get it? There is only one place in the world she could get it, and that's because the Federal Bureau of Investigation showed her a bunch of guns that had been recovered from Terry Nichols' house, told her what the serial numbers were so that they could make up this phony document and then pretend to find it and bring it in to you.

The Judge will tell you that if you find that a witness lied to you under oath from that witness stand, you're entitled to disbelieve everything that witness said.

The Moore robbery: Walt Powell got a Waco tape and a lot of political talk from Roger about black helicopters and NATO forces. Roger Moore denied that ever happened.

Walt Powell? He doesn't have an axe to grind. He's not coming in here as some buddy of Terry Nichols.

Mrs. Powell welcomed Mr. Moore. He made phone calls. They put in some phone records that show that -- well, there is no trace of Roger Moore's phone calls on his own phone, no trace of phone calls on the Powells' phone. He used a calling

card. Did they subpoena the Bob Miller card? Did they subpoena some other card Roger Moore had? The Powells heard him make two phone calls, and Mr. Powell had to remind him to call the sheriff.

Lance Powell hears him talk: "They got it all."

They got it all? Is that a reference to "they cleaned me out"? Hardly. Spivey has a picture -- and it's in evidence -- of silver coins left behind by the robber. "They got it all." That's Roger Moore talking to somebody, and we may be able to figure out who that was.

Then the police arrived. He says, "The feds did it." Then he makes a list for the insurance agents. One list, two lists, three lists. When Mr. Spivey comes, we're down to Version 3. And I asked Mr. Spivey to total up these numbers that he was claiming from his insurance company; and lo and behold, it's \$400 more than the amount of his homeowner's insurance contents coverage, and he has a \$500 deductible.

Roger Moore is hard of hearing but can hear footfalls on a carpet. He says a wood floor at first, but then it turns out his floor is carpeted. He's dragged; no, he's carried. Which is it?

He notes that the serial numbers of all his guns were hidden in his van, maybe in a cabinet, maybe in a door panel, maybe behind the glove box; but when the sheriff goes, the serial numbers are mysteriously missing but the money that was in the same place is still there, thousands of dollars left behind, while the serial number list is missing.

He tells Mr. Hethcox, the Little Rock police helicopter pilot, "The robber fired a shot in the air." Nobody heard a shot.

He tells Mr. Hethcox the robber forced him to open a safe. He doesn't have a safe.

He tells Mr. Hethcox that paintings were taken. He doesn't have paintings.

He tells Jan Dies -- you remember Ms. Dies and her daughter, Dana Priddy? They don't have an axe to grind. They're not here to support somebody. They come here because they were subpoenaed. "The feds did it." "Here's a badge, don't tell anybody." "I'll put explosives around my house to keep people away."

The Fortier tired-robber story -- that's what McVeigh told Fortier: that the robber got tired and then they helped each other, and so on. Nobody supports that.

Roger Moore knows racing fuel. He has a decal.

"The FBI blew my cover," says Rodney Bowers Roger Moore told him. Moore denies it.

He threatens Dana Priddy: "I'll spread her all over the counter."

He gives Jan Dies and Dana Priddy a description that doesn't include wire ties. Another person, he tells they're police ties. Well, you saw the difference between what Roger Moore said he was tied up in and real police ties.

Government counsel said: Well, of course you would call a private detective; that shows he wanted to investigate.

Well, if of course he would call a private detective -- and Chief John Brown testified -- why under oath

and when I asked him if he had done it did he deny it? And when I said, "Do you deny that?" he said, "Yes."

Nothing wrong with calling a private detective. What's funny is Roger Moore's credibility. On his homeowner's application, he says he has only a thousand dollars in jewelry and guns. Why does he say that? "Well, I was told once by an insurance agent not to buy insurance. And I was told not to buy insurance because if you buy insurance, somebody might tell somebody else and then you get robbed."

I was born at night, but I wasn't born last night. I mean, have you ever heard of an insurance agent that told you not to buy insurance because buying insurance was the most dangerous thing that you could do? The insurance salesman -- John Prine sings a song: "And all my friends are insurance salesmen." I mean, that's somebody at the end of their rope. I never met -- and I suspect you didn't, either -- an insurance salesman that didn't want to sell you insurance.

And Roger Moore also tells you a lie about how much it would cost. Jan Dies said it only cost a tenth as much as Moore said.

He offers McVeigh, so he says, \$100,000 to come and solve the case, doesn't remember getting a call at the Powells. Who knows to call him there? And yet Trooper Karchefski remembers that.

Karen and Roger both say Roger doesn't sell porn, but Roger has a sudden awakening and recollection that maybe he did sell porn tapes. That's his right to do it, but why deny it?

Roger Moore deals in cash, not the small amounts like Terry Nichols, but enough so he can pull \$100,000 out of the bank on a whim.

His phone records will show, the ones introduced by the Government, that he called Karen Anderson that day; but he told Spivey that he didn't know where she was.

He tells the cops and Spivey McVeigh is a suspect. When the cops interview him and say, "Where can we find this McVeigh," he says, "Oh, Fort Riley. New York." And yet he's corresponding with him at least four times a year in Kingman, Arizona, and knows it and knows it so well that he and Karen can put McVeigh in touch with Steve Colbern.

"Not a big enough closet for all those guns," Spivey says. Oh, the insurance company paid, yes. But Spivey says, "At some point we do make the decision to go ahead and pay the claim instead of investigating it further."

When Lance Powell goes to Moore's house, what's the first thing Moore does? He takes him around the back and says, "That's where the phone lines were cut." Well, how does he know? He told you on direct examination that he walked right out his front door, put a gun in his pocket, and walked down to the Powells. How does he know to go back and say, "That's where the phone lines were cut"?

Well, what did happen? Maybe Karen Anderson wasn't in the know. But Roger Moore's description, which looks very much like the picture that was in his van, sure isn't Terry Nichols, unless Terry Nichols grew 4 inches and 30 pounds.

No description of any pantyhose being used. Even Roger Moore didn't say that, and he didn't say a wig. He said a beard, a full beard; and everybody that saw Terry Nichols said he was clean-shaven at that time.

No, folks, it doesn't make sense the way Roger Moore tells it.

How does it make sense?

Terry Nichols told the Government he had the storage sheds in Council Grove to store guns and ammo and furniture. And that's right. And Michael Fortier saw guns. Tim McVeigh was handing things out that were -- came out of Roger Moore's house. There is no question about that. Tim McVeigh was handing those out and saying, "Sell them." And when Fortier sold them, he said, "You got to give me some of the money." He said, "I have to give it to Terry Nichols." There is no proof he ever did.

Tim McVeigh is in charge of distributing the goods and directing the goods out of Roger Moore's house because Tim McVeigh and Roger Moore have got a relationship; and Roger comes here and tells you that he wanted to trap Tim McVeigh, and yet he writes him a letter. And it's in evidence and you can read it, and I won't tax your patience with it. That letter is not the letter that somebody would write to somebody that you thought had robbed you.

And we can prove it. The Government says through Michael Fortier: "I got a call, or Lori did, that there was a code red from Tim McVeigh. And then I went to a pay phone --" pay phone "-- and I called back Timothy McVeigh. And if you don't believe me, here's a picture of the pay phone."

Okay. And that took place sometime November 14 or so.

The Government then brought to you a chart. And like all these other charts, maybe those charts got made before the evidence came in. Maybe it's like that racetrack where they put the numbers on the horses after the race is run, because the chart doesn't tell you what the real evidence is. The chart talks about phone calls on the 6th and 7th of November. Let's look.

On November 5, before Roger Moore has had a chance to fully elaborate and invent his story, from a phone in Kent, Ohio, where Terry Nichols is not, is a call to Michael Fortier for 11 minutes and 12 seconds. That's page 68 of Government 553. There it is. Michael Fortier. November 5.

That's the first telephone call of these records.

The page immediately before is November 1. There haven't been any calls on the 2d, 3rd, and 4th on this Daryl Bridges card, and those calls are clearly made by Terry Nichols. They're made to the Philippine consulate and other people connected with planning a trip to the Philippines. And you remember Terry Nichols had made -- Terry had made a reservation to fly to the Philippines from Wichita. That's November 5.

What happens, then, on November 5 and 6? Terry Nichols is in Junction City; and he gets a letter from Lana Padilla that says, "Your son is going to run away from home."

Now, this is the boy that Terry went up to Michigan to get to live with him when he was in the Army.

So let's look at the calls now, if we remember that fact.

Sure enough, Terry Nichols begins to call Tim McVeigh.

He's got the letter and he calls. And you can see that he's trying to call Tim McVeigh. First he checks The Spotlight balance. Then he tries to call Tim McVeigh but apparently leaves a message. This is the morning of the 6th. The very next call is to Esquire Realty where Lana Padilla works, to talk about Josh.

Then again that night at 5:24, he calls Padilla home, another 30-minute call to talk about Josh. And in between here, you're going to see a lot of calls back and forth in an attempt to reach Timothy McVeigh. Of course, you are. Concluding with, though, a call here, another one on the 7th, 33 minutes and 19 seconds, Travelers Motel, to Lana and Leonard Padilla, calling to talk to about Joshua.

And it's in those calls that Terry Nichols, who has this business with Tim McVeigh, is planning to not go from Wichita but to change his whole plans, drop everything, not meet McVeigh in the Midwest, get to Las Vegas as quick as he can, take Josh camping in Zion -- which is in the desert where it's cold at night and people might need to wear some head covering, by the way -- and abandon whatever plans he had with Timothy McVeigh.

During that time, he also rents another storage shed.

Now, if you look at this thing from the standpoint of let's try to recognize the presumption of innocence and not attach a sinister meaning, if, when he got to that storage shed, McVeigh has caused to be put there the things that McVeigh's friends have gotten from Roger Moore and they're talking back and forth, the distribution of what was obtained from Roger Moore begins right then. And Terry Nichols gets some, and Michael Fortier gets some, and Timothy McVeigh is in charge of that and sending the dough back to Roger Moore --

Roger Moore, who writes letters to Tim McVeigh and writes "burn" on them.

You'll hear instructions from the Judge about how to deal with the Moore evidence. But we submit to you that the Government's theory is riddled, riddled with doubts. This is a man on his way to the Philippines to accomplish a purpose that I'm going to talk about in a minute and on his way to see his son.

Yes, members of the jury, there are other names. But watch out. Shawn Rivers, Tim McVeigh. Joe Rivers, Terry Nichols. Tim Tuttle, Tim McEeige. Robert Kling. Why use other names if you're into the gun business? Well, Roger Moore told you why. It's because you store things under different names because you've got tens of thousands of dollars' worth of stuff in a storage shed sitting out there beside the highway; and in the gun business, apparently people use other names

and in the gun business, apparently people use other names.

I'll tell you something frankly that the evidence shows. The evidence shows that Terry Nichols doesn't pay income tax. The evidence shows he doesn't use a Social Security number. The evidence shows he doesn't use banks, doesn't trust banks. The evidence shows that he deals in cash. The evidence shows that he is that kind of a person. Maybe not the kind of a person that you are or that I am, but that's the kind of person he is.

And if you look at that not as being sinister but as one of those people who participates in a certain set of economic relationships in this country like Roger Moore does, it becomes clearer.

But what about Havens? Tim McVeigh is Shawn Rivers. Terry is Joe Rivers. Same last name. There is no evidence that Terry Nichols ever registered in a motel or ever filled out a form that said he was Mike Havens. Joe Havens, yes. Terry Havens, yes. No evidence he ever said he was Shawn Rivers. That was what Tim McVeigh said. Joe Rivers, yes.

When you get back in the jury room -- I made a great deal, you'll recall, with Mr. Mr. Hupp about that receipt, the ammonium nitrate receipt. Take a piece of paper the size of the ammonium nitrate receipt. Take a coin the size of a Maple Leaf and try to figure out how in the world you could get two fingerprints on it in the way that the Government testified.

1, 2, 3, 4 -- it was folded over the coins. And what are the prints? One thumb, one finger like this. There are only two prints on it. They belong to Timothy McVeigh, and it is folded with the writing side inside.

In January of 1995, Timothy McVeigh and Terry Nichols met in Junction City, Texas. They were there for several days, and Lana Padilla said after that she talked to Terry. Remember that? No matter what Terry said in that conversation back in November about whatever it was, Waco, she was willing to have her son -- their son go live with them. And he said, "I'm not doing gun shows with Tim McVeigh anymore." They had split their stuff up, which included coins and things and guns and ammo and all other sorts of stuff; and then Terry had begun to accumulate his own.

There is no evidence, nothing that shows beyond a reasonable doubt, nothing that would satisfy folks that looked at this without some sinister cloud over things, that Terry Nichols ever saw that receipt.

And that, put together with what Mr. Woods said about Mr. Schlender and Mr. Showalter, who don't identify Terry Nichols and who know what a three-quarter-ton Dodge four-wheel-drive pickup truck is, should solve the matter.

You see, the Government can't handle the truth. They can't handle it. Because if Lea McGown is telling you the truth that she heard voices in McVeigh's room and if that Blockbuster Video application that McVeigh made clear up in Junction City, when he was staying in Herington, showing that he's got business up there other than with the Nichols in Marion, and if Vicki Beemer, not exactly your Elvis-sighting, National Enquirer, front-page-cover person, saw John Doe No. 2 and McVeigh talking to each other and if the car was there like

Eldon Elliott said and if the truck wasn't there, that big chart "Nichols on the Road --" that must have been made before Sergeant Wahl's testimony disintegrated in the cloud when Christopher Budke came up with his note. And we don't blame that on prosecutors, by the way. They didn't even have until the day before. They didn't know it. It was the FBI that had it. But if all of those people are telling you these things and they are right, the Government can't handle that because then their whole theory that Terry Nichols mixed that bomb out at the lake disintegrates, and all of a sudden the FBI has got to answer some questions like why didn't you check the fingerprints and why did you stop looking and why didn't you do intercomparisons and why didn't you flag the fact that your forensic evidence wasn't adding up?

Terry Nichols had books in his house. Sure he did. Literature that Tim McVeigh gave him and literature of a radical character.

But are there differences? Did anybody ever say they heard Terry Nichols walk up and say, "Join me in a plot to bomb"? No. Did anybody ever say, "I saw him at Elohim City"? Elohim City. The name of the merciful God. Elohim City.

And it is the right of Mrs. Millar to have her family, the Millars, preside over it, I suppose, in America today and introduce their gospel of hate. And it is in her interest to say that that's all they do is introduce that gospel of hate. But there is a difference, we say in Texas, between preaching and meddling. And Andreas Strassmeier is not a preacher, and Tim McVeigh and Andreas Strassmeier were walking together.

They reached out, Fortier and McVeigh, to the National Alliance. They wanted to form a militia. They reached out to Mr. Coffman, and McVeigh reached out to Mr. Colbern.

Now, that letter, they say, was never delivered. Okay. It was written in November, '94. Roger Moore and Karen Anderson and The Candy Store -- they put those two in touch.

"SC: I'll try to keep this generic. What I am asking you to do, then," says McVeigh, "is sit back and be honest with yourself. Do you have kids? A wife? Would you back out at the last minute to care for the family?" A sentiment echoed in his conversation with Fortier, because in Timothy McVeigh's version of the world, there is no worse insult than "domesticated" and no greater glory than to be a desperado, not tied town, traveling with a rucksack, moving back and forth across the country. People that are tied down and have kids: Those aren't the ones that Timothy McVeigh wants. But the Government can't handle that truth because that truth matches up with what Lea McGown saw and Vicki Beemer saw and all these other people saw. They can't handle it.

And they even have the nerve to come in here and the FBI agents say, well, I didn't see a library in Mr. Nichols' house -- and I'm not going to put the covers of all the books up there that you saw at his house that he read, the things that he's curious about.

They can't handle the Ryder truck inquiry that Tim

McVeigh made at Lake Havasu City.

The FBI set up a roadblock near Geary Lake to ask everybody, "Well, Did you see a Ryder truck?" And then they come in here and tell you that if you stop at the FBI's own roadblock and didn't talk before, well, there must be something wrong with your testimony.

There are a dozen people or more came in here, almost 20 of them, saw a Ryder truck. And Mr. Kitchener in his creel survey contradicts only two of them, if you look at the time. Why did we put those on? To show that there are lots of Ryder trucks out there -- one reason. To show that if Sergeant Wahl saw a Ryder truck and a gray pickup that completely doesn't match Mr. Nichols' pickup truck that maybe, just maybe, if you looked at this from a reasonable doubt point of view, you'd say: That must not be it, because the truck doesn't match. That's not rocket science, that's just observation.

They can't handle the truth. They can't handle it; so what they do is they take Tim Chambers from VP Racing Fuels, a nice guy, and they bring him in here. And they want you to believe that that's Terry Nichols' pickup truck in Ennis, Texas, and that Terry Nichols is there. Nobody saw Terry Nichols in Ennis, Texas, ever. That's the evidence; not the speculation, the evidence.

What did Mr. Chambers see? He saw a truck that wasn't shiny. Wasn't shiny. See the pictures of Terry's truck at the Herington police station? He keeps it shiny. The ones when it's in the FBI evidence room after it's had dust all over it that it's not shiny. But his, he keeps it shiny.

Chambers can't identify the pickup truck as to make or model year. He says it had a camper shell but it's faded. He says that Terry Nichols is not the man. He cannot identify Tim McVeigh. The barrel rings don't fit.

When he was asked in front of you, "What did the guy look like that bought the nitromethane?"

He said, "Well, he looked like a possum." Pogo bomber.

That is not the quality of evidence that one would expect in a criminal case.

The Government can't handle the truth. They can't handle Tim McVeigh wanting money from Dave Paulsen and trading him blasting caps for TNT. They can't handle the truth that it was McVeigh that reached out to Darlak and Pfaff. They can't handle the truth that the Belle Arte Motel in Kingman, Arizona, had a group of people, one of whom resembled John Doe No. 2, acting up around McVeigh's room.

They can't handle the truth that when McVeigh showed Fortier Geary Lake, he drove him up on a mountain near Geary Lake -- that hill.

They can't handle the problem that it would be a strange bunch of bombers indeed that would mix their bomb in full view of a whole bunch of fishermen coming and going with boats and this and that, a story that begins to doubt when there is no evidence of tire tracks or soil samples.

They can't handle the truth of Mr. Farley with the beard with the mentally handicapped daughter who later on the

heard, with the mentally handicapped daughter, who late on the 18th sees a bunch of people with ammonium nitrate parked well away from the fishing area in an isolated place with a Ryder truck.

They can't handle the truth that there is no evidence where Timothy McVeigh stayed on Thursday night.

They can't handle the truth that it was Tim McVeigh who called Terry Nichols on the 11th and not Terry Nichols who initiated the conversation, exchange of telephone calls.

They can't handle the truth that there is a Denny's open by the McDonald's and a Texaco station where Ms. Kindle sees Tim McVeigh later at a time that fits because he can get to Oklahoma City at an average speed of 65 miles an hour from there after she says she sees him.

And they can't handle the truth about Oklahoma City on the morning of the 19th. Mr. Cooper says, "I saw McVeigh and the other guy, and he was with a car and I saw it."

Why does McVeigh need somebody to be with him in Oklahoma City the morning of the 19th when Terry Nichols is at home? Because the parking area in front of the Murrah Building at 9:00 in the morning is still being -- it's rush hour, folks. You see the pictures from the Regency Tower, and you see that the truck stops for 20 seconds and then starts again. Why do you have to stop? Because there is traffic. That little pull-out area in front of the federal building -- that's a no-standing zone. He can't leave the truck there for 20 minutes; a cop will come. And he can never be sure that there is going to be a parking place there when he needs it; and when he lights that fuse, you know, he better be on his way. There is no electric timing device found. Tim McVeigh better -- you know, unless he's going to be consumed in the blast, he better go; and so he needs somebody to scout it. He needs a car to run out there, and that's a reason why Mr. Cooper's sighting makes sense.

And then Germaine Johnston. They insult us for having brought her here. Well, it's 77 miles -- a little more -- maybe 80, up to where Mr. McVeigh is stopped by Trooper Hanger. There is a map in Oklahoma in evidence. Ms. Johnston sees him maybe around 9:25. He gets stopped around 9:20 -- or 10:20 -- 10:20; and you know that McVeigh drives like a maniac. Lead foot, everybody says. What, you think -- and Trooper Hanger -- he said, "It took me 70 minutes at a speed-limit pace."

Okay. Fair inference. Is he going to get out of there at a speed-limit pace? Is he going to get out of there at what he thinks he can do, best he can do?

He heads north to rejoin his comrades, not to be with Terry Nichols.

So suppose you did look at all the facts and you respected the presumption of innocence and you didn't start out saying that Terry Nichols must have done it. Suppose you saw him as secretive, as insecure. Suppose you saw him on the 21st as a citizen scared, as you or I would be if we went to the police station, having seen Janet Reno on the television and knowing that we knew this guy Tim McVeigh and had been in business with him and trying to remember it all and give them the leads: Go get those sheds; I don't know about a Ryder truck, but I do know about McVeigh; I can tell you details.

Suppose you looked at him as a man who loved his children and nurtured them. Suppose you looked at him even in the adversity that he did when Josh's mother wasn't around. Suppose you looked at him as married and having started another family. Suppose you looked at him as someone divorced and yet whose ex-wife was still saying, "Well, Josh can come and live with you." Suppose you understood that his marriage to Marife was rocky and difficult, a fact we did not try to hide from you. Suppose you understood that Marife had said, "No more McVeigh; I'm jealous, I can't stand it." Suppose you heard again the voice that morning on Friday when Lana Padilla had insulted her, "She sleeps too late. What's she doing?" As though it's any of Lana Padilla's business; but as the great American novelist Kinky Friedman said, "ex-wives will stay with you through thick." You know, she said it, and Marife was insulted by it; and she said she was going to leave is how bad it was. She even remembered in these notes on the 18th: "Nice night, no arguments."

Maybe a guy with all that wouldn't want to tell his wife, Well, I'm -- I'm going to go help Tim. Maybe he wouldn't level with her about that because he knew the tension and the stress that was. Maybe he'd say to his son Josh, who was 11, "A 10-hour ride in a truck ain't for you."

But what happened in November of 1995? Lana writes him a letter about Josh, and he calls right away, "What can I do?" And he goes to Las Vegas, changes his whole trip, takes Josh camping for a week. And what's he on his way to do? He's on his way to surprise Marife, who has said, "I'm leaving and I'm leaving for a year with our baby daughter." And she said he came there. And -- I don't know -- she was on the campus. She didn't think he was coming. And he said, "Come back," and he did what he said: "I'll buy a house. I'll get these things. We'll furnish the house. We'll go to these gun shows. We'll work them together. We'll do these things," printing up his cards in his own name, building his life, pulling these things together.

And when he heard it, not attempting to hide the Primadet, not attempting to hide any receipt because he didn't even know it was there, not attempting to hide the guns, consenting to a search of his house. If you looked at what he did and just focused on this or that and said he spread ammonium nitrate and looked at it with a sinister way, you might reach conclusions. But if you respected the presumption of innocence, you'd say: Well, we understand. He's human. He's human.

And then we'd understand, too, about Kevin Nicholas who Tim McVeigh drops in on; the Fortiers, who he drops in on and then leaves just as abruptly, using these people.

Well, we end where we began. It isn't just reasonable doubt. It is that to convict someone of a conspiracy, to convict someone of aiding and abetting in this country today -- and it's different in other countries -- you've got to prove more than mere association. You've got to prove more than presence at this time or place, and you've got to prove it all beyond a reasonable doubt.

They get a rebuttal, as I have said, and I will not have the chance to stand up and answer. So there it is. You'll think of it because the evidence will be there with you.

The charge is a conspiracy to blow up a building and kill children, Terry Nichols who had gone to the Philippines and said, "Come back with me," and he had started another baby, who then was born in December. A conspiracy is charged to blow up a building and kill children.

I have always believed that to make a decision to bring children into the world is a bargain. It is a -- it's a bargain with the future. It means that you are, in that word of Timothy McVeigh's, "domesticated."

The Court is going to tell you that the Government never loses a criminal case. A funny thing to say, but it is on the wall inside the inner courtyard of the Justice Department in Washington. What that means is that the Government wins when justice is done to one of its citizens.

168 people died in Oklahoma City. We have never denied the reality of that.

More than 30 years ago, I went to Washington, D.C., for the first time. And the very first public building I ever saw was the building of the Supreme Court of the United States. And I saw that where it said, "Equal Justice Under Law." And that means rich or poor, or neighbor or stranger, or a tax protester or not, or somebody who is different from us, or not.

And wouldn't it be terrible if a memory -- if a memorial -- if it was thought by anybody that the fitting memory, a fitting memorial to the 168 who died would be to go there some dark night and chop those words off where they are on the lintel above the Supreme Court of the United States?

Members of the jury, I don't envy you the job that you have. But I tell you this is my brother. He's in your hands.

THE COURT: Mr. Mackey . . .

REBUTTAL ARGUMENT

MR. MACKEY: May it please the Court.

THE COURT: Counsel.

MR. MACKEY: Ladies and gentlemen of the jury, the men and women and children inside the Alfred P. Murrah Building on April 19 are your brothers and sisters as well, and the justice that they demand is no more or no less in your hands. You are moments away from hearing the lawyers conclude, listening to his Honor provide you the rules of law and taking charge. That's when you step into control.

It is an awesome responsibility, and everyone inside the well of this courtroom has been most grateful for the attentive manner, personal sacrifices, and all that you have done to contribute to this process; but it's at a close.

When I stood before you some seven weeks ago and told you that in some fashion we would introduce to you each and every one of the victims of the Oklahoma City bombing, I told you how we would do it. And in the course of this trial in an understated and dignified manner, people, living people, came before you and said: These were my children, these were my co-workers, these were my friends.

And as Mr. Tigar and Mr. Woods told you in jury selection and opening statement, everyone would be cross-examined, and they were. And we heard many questions to those witnesses about smoke, about thick, black smoke.

Many of them said: Mr. Tigar, I couldn't tell you. My face was bleeding, my friends were dying. I didn't notice the smoke.

There was smoke that morning, and it engulfed the parking lot on the north side of the building, a result of an immense explosion that ripped that building apart. And in time, little time, that smoke cleared. The sky was blue for a moment. And all of America could see what Terry Nichols and Tim McVeigh had done: A nine-story building ripped apart. They could only imagine the death inside.

In the course of this trial, witness by witness -- because no one witness can tell the entire story -- document by document -- because no one piece of paper explains it all -- a new picture has emerged as vivid as the one that America remembers from the morning of April 19. The background of that picture is that building and that gaping hole and the lives lost forever.

And now, after this trial, in the foreground of that picture stand Terry Nichols and Tim McVeigh side by side, two men responsible for America's most horrific crime.

You have over these many weeks heard so many words from lawyers and from witnesses. And Joan Millar was mentioned earlier, and it brought back to mind one rule that you should apply as you discuss among yourselves the words you have heard and the significance you should attach to them.

There is no doubt about it that Ms. Millar lives among people who believe in a certain ugly way, and she cannot change the ugliness of that by telling you that her city is a village and not a compound.

You will see the truth through the words of each and every witness. You will see the truth emerge from your study of the evidence in this case.

"Burden of proof," may be the three most often-stated words in the course of the defense arguments to you. It means something to people in this business. It means something to you. We accept it. We have met it in the evidence of this case.

But it entitles you to ask the same hard questions of the evidence presented by the defense as that which was presented by the Government. And it is not and should not be used as some shade to be drawn down in front of you as you begin to peer in and examine carefully the evidence offered by the defense in this case.

As you do so, Rule No. 1: Use your common sense. Bring your life experiences to bear. Talk among yourselves. Ask the hard questions on each side of the evidence, and don't let the burden of proof become a shade to dissuade you from doing so.

One of the best examples during closing argument yesterday by Mr. Tigar about how if it gets too difficult we'll pull the shade of burden of proof down before you is his explanation to you about the Wal-Mart receipt. How could one

Explanation to you about the Wal-Mart receipt. How could one small piece of paper get so much attention in one long trial? We know why. It's so very important to what it tells. It answers the question about what is the proof of when Terry Nichols and Tim McVeigh first got together in Kansas in April of 1995. And Mr. Tigar suggested to you that you should stop and pull down the shade behind the burden of proof and don't answer any more questions or ask any more questions because who knows but that somebody, somebody named Tim McVeigh, dropped that oil filter and the receipt off on the porch at 109 South 2nd Street in Herington, an explanation for how it was that Terry Nichols might have the receipt and never say he had seen Tim McVeigh.

Well, test that suggestion against your common sense. Ask yourself questions like: Tim McVeigh to do so must have driven down to Herington and found no one at home, apparently didn't call in advance to be sure someone might be there. He was in too big a rush apparently to stick around and see if anybody is there, especially his long-time friend. He must have been in the neighborhood anyway, even though it's 50 miles round trip between Junction City and Herington; and he must have loved Terry Nichols to drive that far and give him a receipt and a filter worth \$2.54.

I mean no disrespect by this, but as Mr. Tigar suggested that that's one way that the receipt could have gotten to Mr. Nichols and his statement to the FBI still be true, I had a vision of the oil filter ferry cross my mind. It doesn't make sense; and that's the test of the evidence: Does it make sense?

And the real problem with that suggestion, the nuts and bolts, the bottom-line question, is if Tim McVeigh drove to Herington, left the oil filter and receipt on his friend's porch, never saw Terry Nichols, where is the television set? Remember the origin of the story? It begins with a letter by Terry Nichols to his friend and says: Please, if you're coming this way, if you're going west to east, Kansas in the middle, drop off that television set that has been sitting in my son's garage out in Las Vegas.

So Mr. McVeigh does so? He brings the TV? Drops off the filter but not the television set? It doesn't make sense.

It didn't happen that way. It happened just the way Ms. Wilkinson told you yesterday. It happened just the way that the evidence supports.

Terry Nichols and Tim McVeigh got together on Friday or Saturday of April of 1995, 14th or 15th. They met and they

talked about the plans to bomb the Murrah Building.

The reason the Wal-Mart receipt is so important, as I told you in the opening statement, is both cannot be true. Terry Nichols cannot have told the FBI the truth when he said the only reason I went to Oklahoma City on April 16 on Easter was to pick up a used television set. That can't be true if Tim and the TV are already in Kansas.

The television set was a cover for Marife Nichols.

It was a cover for you. It's a cover like aliases and all the other evidence in this case that points to deceit and less-

than-truthful conduct on the part of Terry Nichols.

You have a job to do, and it soon will be yours. And people inside the well of this courtroom have been going about their job for the past several weeks. And it is fair for defense counsel to comment upon the job done by the Government. It's fair for me to respond.

Mr. Woods has told you that the United States of America, the FBI in particular, rushed to judgment; that by April 21, 1995, with Terry Nichols in tow, all else didn't matter; that within 48 hours of the bombing, everyone's mind, from Janet Reno to me and everybody in between -- and there are many -- had all they needed to know. A rush to judgment.

Mr. Tigar said that man after woman after employee of the FBI came in here and did a sloppy, unethical, sometimes perhaps borderline-perjurious job before you. And he said the reason they did so is because they don't care.

There has been no rush to judgment in the investigation and prosecution of the Oklahoma City bombing. The survivors inside that building wouldn't stand for it. The victims wouldn't stand for it. The people of Oklahoma wouldn't stand for it. America would not stand for a rush to judgment in that case of all cases. There has been no rush to judgment. There has been 30,000 interviews. There have been thousands upon thousands upon thousands of documents gathered, only a small portion of which became evidence in this case.

What has emerged is a complete and compelling picture that it was Terry Nichols and Tim McVeigh together, side by side, who are responsible for the bombing in Oklahoma City and the deaths of those innocent people.

There were mistakes made, and we heard some of them -
-
a bit about that. But those mistakes were not the product of uncaring employees of your Government.

Before Terry Nichols and Tim McVeigh bombed the Murrah Building on April 19, 1995, this country had never seen a crime of such monumental proportions. And unfortunately, there are now scores of FBI agents around this country who know what it is to sift through thousands of pounds of debris looking for the smallest clue, any clue, that will help anyone decide what truly happened.

And I pray that what the law enforcement community has learned in the course of that experience will never be drawn upon again.

But I will predict one thing: Some things won't change. And when there are fires engulfing cars near a bomb scene, people are going to put the fires out. They're going to do that. They're going to make the situation safe, and they're going to step over truck parts and perhaps other important criminal evidence if it means pulling one more survivor out of a building.

Those were the priorities on April 19, 1995; and that's just the way they should have been. There was a cost to that, and we saw some of those costs; but in the long run, with more than 192 witnesses and scores and scores of documents, the truth has emerged. We know what happened on April 19 and who

caused it to occur.

There has been some FBI bashing for FBI bashing's sake, I describe it. Mr. Tigar gave you three examples of how Lou Hupp, the FBI fingerprint expert, was not a very good record-keeper; how on one report he would say there were X number of fingerprint identifications and there would be a handwritten chart with a different number. He gave you three examples, the Wal-Mart receipt, the Ted Parker Lease, and the Shawn Rivers lease. And the question is -- for you is does that difference make the difference?

Is there any doubt that the Wal-Mart receipt came out of Terry Nichols' wallet? Is there any doubt that both Terry Nichols and Tim McVeigh have their prints on it, whether it's two or more or one or more or three or more? Is there any doubt?

Is there any doubt who Ted Parker is? Why challenge Mr. Hupp about his record-keeping on the Ted Parker lease when they have stipulated and agreed that Terry Nichols is Ted Parker; that it was him and him alone on November 7, 1994, using that false name moments after the robbery in Arkansas to rent the storage shed?

And the Shawn Rivers lease? Has there been any doubt that it was Tim McVeigh in September of 1994 using that name to rent the Herington unit? That's the bottom-line question.

The smoke will clear, the answers will emerge, and the truth will be found.

There is a good reason, especially in long trials, why we have 12 jurors or more. There is a lot of information flowing your way, and not everybody is going to remember everything in the same way. That's why deliberations are so important, why you take your time with each other and you discuss and review the evidence that you heard.

You will turn to leaning on one another in different ways to be sure that when your verdict is arrived at it is unanimous among all of you.

And so it is, I'm sure, only accidental that Mr. Tigar quoted to you Lea McGown's testimony yesterday and said that the Government was being selective in her testimony. They didn't want us to know or you to know the truth about when it was that there was somebody visiting Tim McVeigh's room at the Dreamland.

He said it was Friday or Saturday. You'll remember the testimony. She said Saturday and probably Sunday.

Sunday night: What was going on on Easter Sunday, Sunday night, April 16, 1995? It's the tail end of a long drive back from Oklahoma City. Tail end of the trip by two men, Terry Nichols and Tim McVeigh, side by side, stashing the getaway car in Oklahoma City, driving him back to the Dreamland.

How did Terry Nichols know to call the Dreamland Motel? Because he dropped Tim McVeigh off there on Sunday night, late Sunday night.

It is an immense task for you, and you have to begin somewhere. And I have one suggestion: The place to begin is

somewhere. And I have one suggestion: the place to begin is the indictment. And his Honor will provide to you copies of the indictment, the written charges -- and they are only that -- brought in Oklahoma in 1995. It serves as a road map, much like the road map that Ms. Wilkinson displayed to you yesterday. It recounts many but not all of the critical events and dates that the Government alleged and that the proof has correspondingly proven.

And it also recites the names and ages of each and every one of the victims inside the Oklahoma City Alfred P. Murrah Building. You'll be reminded that Dr. Charles Hurlburt and his wife were the two oldest victims, age 73 and 67; that Antonio Cooper was one of the youngest, born six months before he died, about the time that Terry Nichols was sitting in a kitchen in Las Vegas and writing a letter saying, "Tim, go for it."

There are 11 counts in this indictment, and you must pass judgment on each. They draw into question four different violations of federal law.

And I'll speak just very briefly about those. His Honor will address them in more detail.

They charge that Terry Nichols and Tim McVeigh conspired together, made an agreement among themselves to use a weapon of mass destruction -- in this case, the truck bomb, a very, very big truck bomb -- to destroy the Murrah Building and to kill people inside it. That's Count 1, an agreement to do so.

Count 2 is that Terry Nichols aided and abetted Tim McVeigh in using that truck bomb against the people inside that building.

And Count 3 is that he aided and abetted Tim McVeigh in using that truck bomb against the building itself.

Counts 4 through 11 are first-degree murder, naming each of the eight federal law enforcement officers on duty performing their responsibilities on that day and who each died in the blast.

You'll see from the instructions that each crime, each of those four crimes has what's called "essential elements" and will become for you what in effect is a checklist, what it is you must satisfy yourself, each and every one of them, beyond a reasonable doubt before returning a verdict of guilty. And you'll want to guide your deliberations in that fashion.

As you study the crime of conspiracy, remember what it is. It's an agreement. Federal law makes it unlawful for two or more people to agree together to violate another law; in this case, to destroy the Murrah Building and murder innocent people.

And if you find that Terry Nichols intentionally and knowingly became a part of that agreement and did anything, any of those many steps along the road to destruction, then he is guilty of conspiracy.

You'll come to know a little bit more about aiding and abetting; and it's frankly one of those rare legal terms that meets common expectation. You could define it as well. It in essence means if you know what the plan is and you do anything further -- that is, to help to make it succeed -- then you can

be guilty as an aider and abettor.

Tim McVeigh was alone in Oklahoma City on April 19. Terry Nichols was not there. The law recognizes that the responsibility is just the same. If Terry Nichols knew of the plan and did anything to help make that plan succeed, he's guilty as if he were sitting side by side.

MR. TIGAR: Objection to misstatement of the law, your Honor.

THE COURT: I'll explain the law in detail to the members of the jury.

MR. MACKEY: One of the elements that you'll attend to is the question of premeditation. First-degree murder is different than all other murder because of premeditation. And his Honor will tell you in words and substance that what you must find is that the evidence proves to you that the defendant considered and reflected upon preconceived killing at least long enough to give it a second thought. That's the definition of "premeditation," and his Honor will explain it further to you; and in this case -- in this case, ask yourself if seven months is not long enough to give death a second thought, then what is.

There are going to be several pieces of evidence that will guide you to a verdict of guilty on each of those counts that have to do with interpreting and understanding Terry Nichols' state of mind; and that's important: Did he intend and did he know someone would die when that bomb went off?

Focus on the murder weapon in this case. This is a murder case, no doubt. But it's very in many respects different from other murder cases.

This is not a murder case that emanated from a fellow reaching under his coat and pulling out a gun and shooting somebody in a bar. This is a case where the murder weapon did not exist until Terry Nichols and Tim McVeigh decided it would.

In prisons across this country, inmates, angry inmates, will get a simple, innocent piece of metal; and over the course of time, long periods of time, one stroke after another, they will turn that piece of metal into a dangerous weapon, into a shank that can be driven inside the body of a prison guard.

And that's the kind of murder weapon that was built in this case, one that started with something quite innocent. And over time, with dedication, concentration, commitment, they turned what was innocent into something so very deadly.

When you think about whether Terry Nichols knew or intended that someone would die when that bomb blew up, think about the size of the bomb. This is a man who knows about ammonium nitrate, 8-ounce bottles that he labels for sale and marks "explosives." 8-ounces. Cleverly marketed under the business name of Ground Zero Impact.

Gun shows are lots of things, but I don't think of them when I think of lawn and garden. And yet that's what Terry Nichols, a man always looking to make something appear to be something different, intended to do when he said: My ammonium nitrate is fertilizer.

It was an explosive, just like the 4,000 pounds that

he bought in the fall of 1994. If you build a 4,000-pound ammonium nitrate bomb -- if you build it, it will kill.

No one expects -- excuse me -- no one would expect that Terry Nichols and Tim McVeigh would announce their coming in Oklahoma City on April 19. But think about it just for a moment from the perspective of the victims. It was a crowded Social Security waiting room that morning. It was Wednesday. Mr. Eric McKisick described to you what it's like to be in that business and to provide the services that he and his other employees do. It was a crowded waiting room with a glass window on the first floor looking out on 5th Street 1.

And to this day, we'll never know how many visitors stood there, looked out that window, and saw a Ryder truck pull up. One thing we do know is they'd have no reason to be afraid.

It's different now. It's different now. In America, in front of federal buildings across this country, if a Ryder truck pulls up, people get nervous. Those victims had no warning.

The weapon, the murder weapon that Terry Nichols and Tim McVeigh built, was intended to kill; and it was intended to kill without warning.

I want to devote the balance of my time, and will be relatively brief, not to answering everything that the defense lawyers have said but attempting to focus on those things that might most guide your deliberations. And the fact that Terry Nichols made lengthy statements to the FBI is something that must be given consideration, and Mr. Woods has talked about that.

He criticized the FBI, Steve Smith in particular, because on Friday afternoon after he had seen Mr. Nichols drive first to the Surplus City and then over to the police station, he decided he'd call in first to see if there was a hostage situation. At that moment in time, 3 p.m. on Friday, the work of recovering the bodies out of the Oklahoma City building was barely, barely started. It would take weeks. There was death everywhere, and the FBI took the prudent measure of making sure nobody else -- nobody else might get hurt.

It's easy to Monday-morning-quarterback. It really is. It's so easy.

But they did the right thing, and they made sure at least for the moment that hopefully the unpredictable, the absolutely unpredictable that had happened 48 hours earlier in Oklahoma City might not repeat itself even on a small-scale fashion.

What's important isn't whether he made the phone call to see whether there was a hostage situation. What's important is this testimony to you about what happened inside the police station that evening.

Agent Smith, in the FBI directory, if there were one, would be right next to the word "conscientious." You can make your own decisions about his manner and demeanor. But Agent Smith knew that it was important to write down what Terry Nichols said and to accurately report it to you, and he did that in his testimony.

Lots of things were said. And what's important in

this case are four things, I would submit to you, four false statements:

Terry Nichols lied when he said, "I didn't see Tim McVeigh until Easter Sunday in Oklahoma City."

Terry Nichols lied when he said, "The only reason I went to Oklahoma City was to pick up a used television set." A used television set, 10 hours drive, 500 miles. A used television set.

He lied when he said, "I was at DRMO all morning on April 18"; and he lied when he said, "I have no idea where Tim McVeigh was staying."

That's what's important about the Terry Nichols statement. That's what's important about Steve Smith's testimony. And there is no contradiction. Those were his statements. That's what he said. And we brought in to you proof after proof, witness after witness, that demonstrated that those were false statements.

Well, what do you do with that? Why is that important? Because it is the kind of window, much like the "go for it" letter, that allows you to understand what's going on in a man's mind at that time and what went on in his mind between September and April, the years or the months of the bombing conspiracy.

Yesterday there was some discussion about Michael Fortier, and I'll respond very briefly. And remember this -- and it's true in every criminal case, in every criminal case where another criminal gets on the stand and says I have information to share with this jury. And just like any other witness, they're under oath and they must tell the truth. And unlike other witnesses, this witness was bound by a plea agreement, a contract. The breach of the contract will lead to -- and you will see it -- very different results for Mr. Fortier.

MR. TIGAR: Object to vouching, your Honor.

THE COURT: Overruled.

MR. MACKEY: But remember this: The events that were set in motion, that led to December of 1997, when Michael Fortier testified, started many years ago, 10 years ago, in friendships born -- it's a common experience, a time in the U.S. Army, with Tim McVeigh and Terry Nichols. And before Michael Fortier ever came into this courtroom, it was Terry Nichols who had his name, his address, and his phone number in more than one of his phone address books. Those are relationships that existed long before the investigation discovered that Mr. Fortier knew something about the bombing.

You should consider Mr. Fortier's testimony. You should. It's part of the evidence in this case. But do so carefully. That's what the Court will tell you, that's what I will tell you, and that's what I will remind you of, in the opening statement.

Mr. Fortier is a witness who should be given credence where you find his testimony was corroborated; and in this case, one witness out of a hundred witnesses called by the United States, you'll find that corroboration on each key important element:

He said that Michael -- excuse me -- that Terry Nichols and Tim McVeigh showed up in Kingman in early October

Nichols and Tim McVeigh showed up in Kingman in early October of 1994; and there is the receipt for the lease in the Kingman storage shed.

Time after time, you will see, as you examine the evidence, that Mr. Fortier's testimony was corroborated.

He is like in many respects someone quite different from him. Remember Steve Hodge. Ms. Wilkinson talked to you a little bit about him. Steve Hodge is the lifelong friend of Mr. McVeigh from New York, a regular correspondent with Mr. McVeigh, 66-some-odd letters, all of which came to an end, an abrupt end. Years of a relationship ended in the summer of 1994, the same summer that words of hate evolved into a course of action leading to death and violence.

Michael Fortier is another example of Steve Hodge.

By the spring of 1995, by his own description, he made clear to all of us as, he did to Tim McVeigh: Tim McVeigh, I understand the difference between political rhetoric, between criticizing the government, and murdering its innocent employees. That's how Michael Fortier and Steve Hodge are alike.

That's how they're different from Terry Nichols, because in the spring of 1995, when Tim McVeigh left his

friendship with Michael Fortier and told him, "We're on different paths in life," his path, Mr. McVeigh's path, led right to Terry Nichols, right to Kansas.

Let me speak briefly to the Geary Lake proof. And I need to remind you of some things that defense counsel failed to.

Sergeant Richard Wahl, as he told you, had a reason to remember his sighting that morning. He told you he was with his son who was visiting on spring break. And he told you that he paused and gave caution to going further, to fishing at Geary Lake, because of his young son being along and because something was unusual, a Ryder truck and a second vehicle. But he told you that he went further, honored his promise to the son, backed his vehicle up to the lake, and went out on the boat ramp. And he showed you by way of picture the angle that he had as he got into the lake in his boat and could see the vehicles.

It's not a front-on view like Mr. Woods displayed to you. It was several hundred yards, not a distance you could read the GMC emblem on the face of the truck, but certainly an angle where he could see the side of the vehicle, certainly an angle where he could see there was something, as he described to you, that went beyond the cab of that second vehicle. And he told you, as he told the grand jury, it was either a camper top on a pickup or a Blazer-type vehicle where there was some extension of that cab. Any variation of Mr. Wahl's testimony is no variation that makes any difference.

What's important is time and place and the description of those vehicles that have been consistent.

The defense told you that it's important to know that there were other Ryder trucks out at Geary Lake on other days, and they suggested to you that that could be explained by a desire on Mr. McVeigh's part to do practice runs, as if

Mr. McVeigh would go into more than one Eldon Elliott and rent a truck, making sure for whatever reason that it could hold the components; that it could drive the right speed -- a practice run that makes no sense, ladies and gentlemen. If you're on the road to destruction, you're not going to increase the risk of detection by renting yet additional trucks.

There was only one truck that blew up in Oklahoma City

on April 19. There was only one truck. It was the same truck that Tim McVeigh picked up on Monday afternoon, walking in at about 4:22 in the afternoon, displaying a driver's license that showed a date of birth of April 19, the kind of detail, the kind of dedication to this crime that can't be overlooked.

Geary Lake cannot be evaluated by you, I suggest, without evaluating DRMO. They go hand in hand. They are linked together, like twins, for life.

And the defense either stands by what Terry Nichols told the FBI as to his whereabouts that day, or they don't. And his statement without a doubt is: I was there for six hours, dropped off before 8:00, and picked up by a friend who broke his promise and didn't come until almost 2.

You'll see the sign-in log there. There are 77 different names on that sign-in log that you can show from the time would have been there at the same time that Mr. Nichols was. You saw no witness -- no witness -- from that rich pool of possibilities who could say I was there and I saw Terry Nichols at the DRMO.

He was not there until 12:50.

And Marife Nichols is wrong in her diary when she says

that Terry came home at 1:30. We know that. We know that because his bid is time-stamped at 1:37. We also know it because there is a Kinko's receipt in evidence that afternoon, April 18, that's time-stamped 2:15. Mr. Nichols left the DRMO and went to Manhattan, where Kinko's is; and he conducted a business transaction at 2:15.

Mr. Nichols was not home in Herington until much later that afternoon. He may well have been, as Mrs. Nichols first said, home briefly around noon where he said, "I'm on my way to the sealed bid."

Mr. Wahl said, "I left around noon. The trucks were still there."

The question that remains about the Roger Moore part of the proof is how did Terry Nichols end up with the property. Mr. Tigar suggested to you this morning that he got it because Tim McVeigh gave it to him.

Well, one thing is absolutely clear, and that is that Tim McVeigh was not the robber. And the proof has shown that he was a long way away in New York for all of the month of November of 1994. You know that from Sheila Nicholas' testimony. You know that from Andrea Augustine's testimony and other proof in this case.

You know, for example, if he's in New York in November

of 1994, then how was it that he would have posted the "SC" letter in the desert in November of 1994? Who was in the West

in November of 1994? Who was in the West so that Mr. Pipins could have discovered that letter posted in November of 1994? The answer is Terry Nichols.

What does that tell you about the relationship between Tim McVeigh and Terry Nichols? It tells you it's all over again. This is all over again. It's Michael Fortier, who has already made well known his intention not to join this conspiracy. It's a letter to another possible co-conspirator. Tim McVeigh always wanted his cell to grow larger. He had Terry Nichols in hand, and he wanted others.

It was Terry Nichols who was in the West in November of 1994. He was the person in a position to help in that aid -- or aid in that recruitment effort.

If Tim McVeigh is in a position to hand out weapons stolen from Roger Moore to Michael Fortier in December of 1994 -- and he was -- the question is how did he get into the unit? How did he know? And who put it there first? And the only answer is Terry Nichols. The only answer is he's the man who robbed Roger Moore and who 48 hours later rented that storage shed and put inside all of the stolen property.

Mr. Tigar pointed out to you that there were some phone calls in early November, 1994, some of those November 1 to the Philippine consulate. Mr. Nichols was, in fact, just before the robbery, planning a trip out of this country, planning ahead, plans that he didn't bother to share even with his wife, Marife Nichols.

And when he made those plans, he did not include Josh Nichols in them. That's for sure, because as Lana Padilla described that conversation, in early November we were like ships passing in the night. I wanted to talk about our son. He wanted to talk about everything but: Waco, civil unrest, and the like.

There was no nurturing going on in Mr. Terry Nichols' heart in November of 1994, and Lana Padilla revealed that.

Mr. Woods suggested to you that the "go for it" letter, the letter that Terry Nichols drafted, could mean and should mean a strange way, if you will, of separating a gun show business.

This is one very short-lived partnership. On the weekend of October 1 and 2, 1994, that was the first weekend that these two men could have done any gun show; and within six weeks, Mr. Nichols is out of the country. That's one very short-lived partnership.

But what's most telling, of course, is there is no proof -- and you can look through all of the 192 witnesses -- these two men ever attended a gun show in the fall of 1994. That was a cover. It was a false statement. It was meant to conceal what the real purpose of their activities were in the fall of 1994.

This poor-man's will was a will written by a man who had stashed \$20,000 in cash in a kitchen drawer, who had \$38,000 of gold and silver in a storage shed, and who had lots of other valuables, including jade. And Barry Osentoski, with no more desire in his heart, I'm sure, than his mother, came into this courtroom and said, "I got a piece of jade, and I turned it over." And you now have it. And that's the piece of jade that started in Royal, Arkansas, among the possessions of

jade that started in Royal, Arkansas, among the possessions of Roger Moore and ended up in a storage shed in Las Vegas in November of 1994. The robber, Terry Nichols, put it there. His stepson brought it to you.

April 19, 1995, was the second anniversary of the events in Waco, Texas. And that date cannot be overlooked as you examine -- and you must -- the question why would anyone -- why would anyone do what was done in Oklahoma City. And the answer by the date alone is to seek revenge for a government that they despised because of the events at Waco.

It is not irrelevant. It makes a difference that Terry Nichols inside his home had videos and literature and other materials about Waco. It should not control your deliberations; but as his Honor will tell you, it is entirely proper for you to evaluate it in understanding motive, why it is that anyone would do what was done.

We heard discussion yesterday about the storage sheds and why, oh why, in this case would the FBI not find any residue of any kind, any evidence linked to this criminal case in all the storage sheds in all Kansas.

And here's the answer: The FBI got there after they were gone. Terry Nichols is no fool. And as he told the FBI: I went to the Herington storage shed the morning after the bombing when I knew Tim McVeigh was not coming back, and I cleaned it out. He literally cleaned it out. There was nothing left, nothing in the way of clues.

But what's important, what's most telling about what was once in those storage sheds, is how many storage sheds there were and all under false names. That's what's important.

The long list of aliases used by the storage sheds (sic), enough to field a baseball team, with Terry Nichols as the player/coach, is the real proof about what was inside those storage sheds.

As jurors, it must be frustrating at times because you're not in control of what witnesses come in the courtroom, you're not in control of the documents that are presented. But you are in control of your deliberations. We stand here silently and we wait. And in your deliberations, keep your focus on what's important in this case. And what's important is whether the Government of the United States has proved beyond a reasonable doubt each of the allegations against Terry Nichols.

What's not important is whether there were yet other co-conspirators, lots of proof, lots of evidence, and from many witnesses, quite frankly, with the best intentions at heart, who have put into question the existence of perhaps someone else.

The question to ask yourself is: If so, so what? What does the possible existence of yet another co-conspirator do to negate proof that I have heard from other witnesses that it was Terry Nichols who bought the ammonium nitrate; that he burglarized the quarry; that he rented the sheds; that he traveled across this country; that he robbed Roger Moore, and on and on and on? It's as if they would substitute -- the defense -- the possibility of a third person for all the proof about the conduct of their client.

So keep your focus on what's important, and what's

important is the sufficiency of the evidence about Terry Nichols.

But that area of proof does beg one question, and that is if there were another man, why didn't he have a car? Why is it that Tim McVeigh has to call Terry Nichols to come get him in Oklahoma City? Why is it that Tim McVeigh, according to his statement, has to call Terry Nichols to loan him his pickup truck? This third person, if they exist, must be as Darwin Bates described, a man riding on a bicycle.

It doesn't make sense.

What makes sense is the hard proof about Terry Nichols, the focus of the case that the United States kept, the conduct and activities of Terry Nichols.

And lead foot or no lead foot: Ladies and gentlemen, on April 19, 1995, all of the proof points in one direction: Tim McVeigh lit that bomb and raced out of town. He didn't stand down the street and ponder the destruction. He'd learn all about it soon enough.

When Charlie Hanger pulled over Tim McVeigh, remember this: He wasn't speeding. He didn't have a license plate. That's why Tim McVeigh was pulled over.

Tim McVeigh left downtown Oklahoma City at 9:02 1/2 and was arrested just as Charlie Hanger said, driving the speed limit, north of Oklahoma City on his way to Kansas.

We have heard in great length and heartfelt delivery about Terry Nichols, the family man, as if a family -- the family man can't be the terrorist.

In November of 1994, Tim McVeigh was in New York helping his father clean out his grandfather's home, working on the estate. We learned that from Ms. Augustine. And several months later, he put a truck bomb in front of a day-care center. Terrorists have families. The question is how they treat them, how they allow the dedication to a political principle to corrupt what should be important to them.

All of the witnesses -- and there were many in short fashion -- who came into this courtroom and said I'm from Herington, Kansas, and I helped Terry Nichols register his truck, or buy insurance, or the like, never answered the most important question; and that is, why is Terry Nichols in Herington, Kansas, in 1995? He was nowhere near his son, Josh, who lived in Las Vegas, and was certainly no place that Marife Nichols would have picked. She told you, "I don't like central Kansas," so he picked Herington, Kansas, to settle in over the needs of his son and the wishes of his wife. He picked Herington, Kansas, for one reason: That's where the bomb components were. That's where the base of operations of this plan existed. This choice had everything to do with Tim McVeigh and nothing to do with family.

The events of November, 1994, in Las Vegas, prove so many things about Terry Nichols. The "go for it" letter is just one of those.

But picture for yourself the morning that day that Lana Padilla described. Terry Nichols focused on the task at hand, spending lots of time to write very detailed instructions to a number of people, taking lots of time to prepare this package, to build the secret compartment in his drawer, to

write two different letters to Tim McVeigh and one to Lana Padilla.

All of that time because, as is clear from the evidence, he feared his death. This man was writing to the world that would survive him.

When you go back there and look through the writings that are in evidence, look for the letter to his son, Josh. You won't find it.

Terry Nichols in November of 1994 wanted Tim McVeigh to know what size the oil filter should be in his GMC truck. He took no time, no time at all, to write a letter to his son Josh to say: Josh, whatever you choose to do in life, go for it. Never bothered. Those words of encouragement he reserved for someone, something more important.

As many criminal cases, this is a case about intent. There is intent, and then there is intent. And Terry Nichols' intent throughout this long conspiracy was uniquely focused. It lasted month after month, step after step, on this road to destruction with Tim McVeigh. It was an intent to kill. It was an intent to injure. It was an intent to destroy; and like all acts of terrorism, Terry Nichols and Tim McVeigh also intended to terrorize the American people.

But Terry Nichols intended one other thing: He intended to get away with it. He intended to avoid responsibility for his conduct, for his actions.

Tim McVeigh and Terry Nichols unfortunately were partly successful. On that morning of April 19 in downtown Oklahoma City, their bomb blew up and people's lives were changed forever.

But they did not get away with it. And despite Terry Nichols' elaborate alibis, despite all of his attempts to conceal his conduct, despite attempts to shift blame and to look in every other direction except at his own conduct, Terry Nichols has not gotten away with it.

It's time. It's now time. 32 months since that truck bomb exploded, 32 months since 168 people ended their lives, 39 months since the time that Terry Nichols bought the first ton of ammonium nitrate, it's finally time. It is time for justice, and you're in control of that.

As jurors, it has fallen to you to render justice in this case, the most horrific crime in American history. We ask that you fulfill your oath and that you do justice.

On behalf of the victims in Oklahoma City, on behalf of the United States, I ask now that you return verdicts of guilty as charged in this case.

Thank you.

THE COURT: Members of the jury, we're going to take the noon recess before completing the trial, which will be the instructions that I give you regarding the law. And we do so because it is near the noon hour but also to avoid the need to interrupt the instructions, because, as I will be telling you in the instructions, you must consider the instructions as a whole as they are connected and related to each other, so I want to do that without breaking in between. And also, I will tell you that you will have written -- the instructions in writing as well as my reading them to you

writing as well as my reading them to you.

But I think we'll take an hour's recess, then; and we'll be coming back and I'll instruct you on the law. And that's the last thing before deliberations. But that last thing hasn't happened yet, so the trial is not complete; and therefore, you must not, during the time of this recess, discuss this case or anything about it among yourselves, or, of course, with any other person, or permit yourself to be exposed to anything outside of the evidence which could affect you.

So we have the last stage of the trial yet to come, which will be my instructions with respect to the principles of law that the jury apply.

Please hold on for yet another hour.

You're excused now for an hour recess.

(Jury out at 11:43 a.m.)

MR. TIGAR: May we approach, your Honor?

THE COURT: Yes.

(At the bench:)

(Bench Conference 127B2 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: We'll recess till 12:45.

(Recess at 11:44 a.m.)

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By Mr. Tigar (continued)

Rebuttal Argument By Mr. Mackey

* * * * *

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 16th day of December, 1997.

Paul Zuckerman

Kara Spitler

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