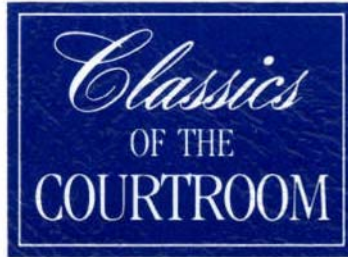


Trial Transcript Series



Michael E. Tigar's

Opening Statement &

Final Argument

(Trial Phase)

United States

v.

Terry Lynn Nichols

1997-1998

The Oklahoma City Bombing Case

foreword by Dominic J. Gianna

Volume XXV

Michael E. Tigar's

**Opening Statement and
Closing Argument**

United States

vs.

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Foreword by
Dominic J. Gianna

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Foreword

"Terry Nichols was not there..."

"Terry Nichols was building a life, not a bomb."

With a few simple words, the "schoolteacher" from Washington, D.C. began his defense of one of the most reviled criminal defendants in the history of the American legal system. With just 14 words, Michael Tigar sets the standard for the exquisitely powerful and persuasive opening statement. In a heartbeat, he involved the jurors in the life of Terry Nichols. Immediately, we - and the jury - are compelled to think about Terry Nichols the person, and about why Nichols was not in Oklahoma City on the 19th morning of April, 1995 at 9:02 a.m. We are compelled, in the first minute, to listen to Terry Nichols' plea.

Michael Tigar knows that a powerful and persuasive opening statement provides the jury with three things: 1) the *Will*, 2) the *Way* and 3) the *Why* to rule for our client and our cause. The opening statement is a critical first step in the persuasive process. Study after study shows that jurors need an orientation and, when given a good one, they look at all of the evidence from a dynamic point of view. Why not *our* point of view?

- ◆ The powerful opening statement drops the jury directly into the life of our client and the cause.
- ◆ The passionate opening moves them to look at the case from our point of view by motivating them to care about our client.
- ◆ The persuasive opening motivates the jurors to look at the case from our point of view.

Thus, the successful opening reduces the case to a simple theme, involves the jury in a very personal story, and anchors that theme in simple words or phrases.

As you read this COURTRROOM CLASSIC, notice how Tigar reduces a complex and difficult case to its core essentials. Listen as his words develop the theme and explain why it makes sense. Feel him begin planting the seeds of the hundreds of reasonable doubts. But most of all, sense how this Master Advocate identifies and embraces his jurors by describing the Oklahoma City bombing as "*an explosion as quick as a heartbeat, and a sadness as long as life.*" This marvelous opening infuses the will, shows the way, and offers the why.

Michael Tigar is a master weaver of facts, stories and words. He builds drama into his tale and weaves truths into a classic conflict between an innocent man building a life and a government determined to convict someone, anyone, of the crime. Tigar ties those facts into his theme, making it all so simple and so memorable with his anchor phrases, "*not there,*" "*building a life.*" Count how many times Tigar tells us that Terry Nichols "*was not there.*"

Michael Tigar is an honest, caring person. He proves this to his jurors by demonstrating sensitivity and compassion. "*To the living, we owe respect, to the dead, we owe the truth.*" But he also tells us that we are about to (and must) gain respect for the undeniable fact that all Americans are presumed innocent. He exposes the "*hundreds of reasonable doubts that lurk*" in the evidence. Tigar juxtaposes those doubts against details of the real life drama of Terry Nichols the man, the husband, and the father.

Tigar artfully contrasts this compelling, but seemingly every-day story with the hundreds of doubts about the government's evidence, the Federal Bureau of Investigation's motives and its so-called experts and, of course, the government's key witness, turncoat Michael

Fortier. He plants in our minds that, because of the FBI's sloppy work, the government has "*rushed to a very wrong and quite early judgment.*"

Imagine the faces, the eyes of these jurors, as this tall, slightly ruffled teacher begins one of the most difficult classes he has ever been asked to teach. You can hear him express his steady sincerity. You can feel him involve those jurors with his passion for the young man who was building a life in Kansas, not a bomb in Oklahoma City. You can almost see Michael Tigar settling in before that jury. Hear him smile. Feel his calmness. Watch for the humanity he reveals. Listen as he repeats his theme words and challenges his jurors. Watch as he takes them along with him on the journey through Terry Nichols' life. A truly great opening statement can indeed be seen while it is being heard.

This is a classic example of word pictures, a world created by language, storytelling at its best. It is literally as good as it gets in our profession. Tigar used no props, no exhibits, no tangible objects to illustrate his opening statement - not even his tool of trade, the chalkboard. He humanizes his client, dramatizes the plight, and removes the obstacles between Nichols and the verdict he wants this jury to return. He weaves the *"hundreds of reasonable doubts* into a simple but captivating opening. In short, this transcript has it all: an emotional story, simple themes, easy-to-remember anchors. It has an elegantly stated point of view, it teaches, it guides, it cajoles, it argues and it persuades.

It's time to go to that courtroom in Denver, Colorado. Let's learn and enjoy as one of America's finest advocates communicates with a modern American jury about the most abominable act of terrorism ever perpetrated on this country. Let's learn from the best teacher there is in the law today.

The bell has rung, the teacher is ready. Class is in session.

Dominic J. Gianna
New Orleans, Louisiana
October 1998

Editor's Note: Dominic Gianna is a trial lawyer and advocacy instructor from New Orleans. He is a principal faculty member of THE PROFESSIONAL EDUCATION GROUP, INC. (P.E.G®) and winner of the *Robert Keaton Award* for advocacy instruction from the National Institute of Trial Advocacy. He is a partner in the firm of Middleberg, Riddle & Gianna. He has been inducted into the International Society of Barristers and also serves as the Director of Trial Advocacy at LSU School of Law, Adjunct Professor of Trial Techniques at Tulane University, and as a commentator for Court TV.

**IN THE UNITED STATES DISTRICT
COURT**

**FOR THE DISTRICT OF
COLORADO**

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY LYNN NICHOLS,

Defendant.

REPORTER'S TRANSCRIPT

(Trial to Jury: Volume 59)

Proceedings before the
HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the
District of Colorado ... in Courtroom C-
204, United States Courthouse, Denver,
Colorado.

OPENING STATEMENT

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

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

Nichols was building a life, not a bomb.

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

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

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

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

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

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

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

Second, Ron Woods and I are going to tell you about Terry Lynn Nichols, born and raised in a farming community, married, the father of three children. Ron will tell you about what happened when Terry Nichols first heard on the radio that he was being sought as somebody who knew Timothy McVeigh,

how he went right to the police station and spent nine-and-a-half hours telling the truth -- yes, the truth -- to the FBI, even as the FBI agents lied to him, lied to his family, and lied to the court.

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

So who's on the Nichols team? Well, the first member is Terry Lynn Nichols. Me, I'm Michael Tigar; and I am a school teacher. I teach at the University of Texas in Austin, Texas, My co-counsel is Ron Woods, solo practitioner from Houston, former United States

Attorney for the Southern District of Texas and formerly special agent for the Federal Bureau of Investigation. We have some lawyers here, young lawyers helping: Reid Neureiter from Washington, Adam Thurschwell from New York, and Jane Tigar from Austin.

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

So let's begin by asking: What are those prosecutors charging that Terry Nichols did? What are they going to try to prove beyond a reasonable doubt? Well, you know there's an indictment, and there are 11 separate charges. When the case is all over, Judge Matsch will tell you what the formal, legal elements of each of these charges are; and he'll say to you, in effect, that if the Government fails to prove any element of a charge beyond a reasonable doubt, then it becomes your duty to acquit

on that charge and to say not guilty.

Now, the first charge is that Timothy McVeigh, Terry Nichols, and others used -- conspired to use a weapon of mass destruction against the Murrah Federal Building and the people in it. We do not contest that Timothy McVeigh did indeed conspire with several other people to blow up that building. We agree and understand and stipulate and concede that at least 168 people died from that crime, that the crime visited enormous harms on the hundreds of others. There's no dispute about that. The dispute is can they overcome the presumption in law that Terry Nichols had nothing whatever to do with it.

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

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

Now, there will be plenty of evidence that Timothy McVeigh promised to do violence and that he preached his gospel of hate, that he assembled the

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

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

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

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

And the charges in Counts 4 through 11 are murder, premeditated murder of federal officers working that day in the Murrah Building. They all were

killed; they all were on duty at that time. The bomb killed them. There will be many, many reasonable doubts that Terry Nichols knew there was a plan to kill and that he intended to kill anybody. Not guilty.

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

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

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

He gave away copies of books in which he had marked things, he gave away pamphlets and writings with racist messages and sent out mailings with violent sentiments. He sent copies of this stuff to dozens of people, including all his former Army friends, including Terry Nichols. And not surprisingly, some of Tim McVeigh's friends handled these things, they'd had them in their house,

they got their fingerprints on it. In fact, at one time Timothy McVeigh even borrowed Terry Nichols' copier to make copies of things.

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

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

So let's look at the crucial period here, from McVeigh's discharge from the Army, beginning of '92, until April 19, 1995, a little over three years.

During this time, McVeigh held all sorts of jobs. He was a security guard, stock clerk, a farmhand, and he discovered the world of gun shows, where all sorts of things are bought and sold. Now, once again, you know, there are millions of Americans, I think, trade at, go to, make their living at these gun shows, including Terry Nichols; and you're going to hear a lot about them. If you've never been to one, they're a little bit like a swap meet or a flea market or a craft show even, in some respects. A promoter, somebody like

Sertoma civic organization hires a space and advertises the show. And individual dealers can then rent tables to sell their wares. People sell guns, ammunition, military goods, and other things that would appeal to those at the show or to some of them. Roger Moore, for example, who you'll meet, made thousands of dollars selling porn movies at gun shows.

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

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

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

The McVeigh/Miller friendship provides the key to the so-called "robbery" of Roger Moore. The Government will not be able to prove that Roger Moore was robbed. Too many doubts, too many contradictions in Moore's own stories to different people, just beginning with one version in which he said his robber was a smelly guy who hadn't taken a bath for three months, weighed 180 pounds, was big enough to drag Moore across the floor, had a beard, and was extremely dark-complected.

Roger Moore has told six different stories at least about that robbery to as many different people. And whatever version he comes up with will be contradicted by the evidence. He never heard of Terry Nichols. No, there was too

much going on, as the evidence will show, between Timothy McVeigh and Roger Moore and between Timothy McVeigh and Roger Moore's girlfriend, Karen Anderson.

Within two weeks of their first meeting, McVeigh and Moore were partners at a gun show at Dinner Cay, Florida on February 27 and 28, 1993.

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

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

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

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

to his friends Michael and Lori Fortier and to Roger Moore -- but to Michael and Lori Fortier in Kingman, Arizona.

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

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

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

In order to believe that Terry Nichols ever planned or wanted any such thing, you would have to put your faith in the Fortiers, even though they never heard it and more. All they know is what Tim McVeigh told them. And the evidence will

be that what Tim McVeigh told them was a series of lies, provable lies. The evidence will be that the story told by the Fortiers here in court is just one more version that they've concocted, a story a day, a story a week, until they saw they were caught by their own involvement and made a deal. You'll hear about that deal. And you're also going to hear that the two of them were habitual users of one of the most dangerous drugs being peddled today, methamphetamine, speed. It makes you paranoid, it gives you delusions, and it makes you a liar.

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

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

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

This evidence, however, is going to show there is some reason to sympathize with the Fortiers' plight. There is no question that Timothy McVeigh used them and lied to them. He used their tools.

He used their house. He used their phone. He used their typewriter to make false identification. He got them to disguise bomb components; and we know these things from the Fortiers -- not solely from them but because there is independent evidence of each of them.

Every time that we ask you to accept something that the Fortiers have said, we're going to bring independent evidence to verify or corroborate it; and the independent evidence will show that Timothy McVeigh used the Fortiers just as he tried to use others, such as arms dealers Ed and Dave Paulsen, his boyhood friend Dave Darlak, his friend Greg Pfaff, the Nichols' family friend Kevin Nichols, James Nichols, and yes, Terry Nichols, too.

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

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

Indeed, the evidence will be -- and we might as well tell you -- that in 1976 and 1977, Terry Nichols and his brother James used dynamite on their family farm up in Michigan to clear stumps; and the evidence will be that in that part of Michigan that farmers have ready access to a formula for mixing ammonium nitrate and fuel oil to use (sic) explosions for

such things as ditching and trenching and clearing the land. In fact, you can go to the county agriculture agents' office in that county and you can get a recipe for ammonium nitrate and fuel oil for farm purposes, the same official government publication that you can get in county agents' offices all over the United States in farm country.

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

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

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

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

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

later.

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

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

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

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

In 1994, however, McVeigh had been living with the Fortiers before he came back to Kansas. He had been the best man at their wedding. In July of that year he was their housesitter when they

went on their honeymoon. He sold them explosive components when he left Arizona. McVeigh and Michael Fortier had even gone to a militia organizer in Arizona in April of 1994, and Terry Nichols wasn't there.

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

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

The Fortiers never mentioned it until they were dealing with the prosecutors to escape years in prison and perhaps a greater punishment. In any event, this so-called "letter" that only the Fortiers know about was written, they say, by Timothy McVeigh.

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

When we speak of these dates, these contradictions, there are going to be thousands of documents in evidence.

Sometimes you'll have to resolve contradictions.

The FBI cast its net very wide. For example, we have a record in this case of almost every telephone call made by everybody connected with this case for years. The FBI went out and got all those records. Now, the problem with these phone records is sometimes the phone companies make mistakes. We can prove that. The problem with these phone records, such as those that "Mr. Computerman," Mr. Dexter, is going come in -- is that sometimes the FBI makes mistakes, and you'll see that.

And often, the records don't show what is claimed for them.

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

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

And back in 1993, however, they were relatively new; and the conservative publication *Spotlight* advertised them. Terry Nichols not only didn't have long distance service, he had some financial difficulties. He had judgments against him. And he started doing business exclusively in cash, so he didn't have bank accounts, and in trade names, not his own name. He got one of these *Spotlight* cards in the name Daryl Bridges; and when he and McVeigh started their gun business, McVeigh got the PIN number so he could make calls on it, too. There are a lot of calls charged to that Bridges card, but the

evidence is going to show you that the Bridges records cannot be the basis to conclude that anybody ever called anybody. They're just numbers. In order to make a conclusion about who called whom, you need more evidence. And in every instance we rely on, we'll present that evidence to you.

But why would Terry Nichols get a card in a different name than his own? Well, the evidence is that one of the judgments against him was from AT&T. They had sued him on a credit card bill. He figured that if he tried to get long distance service in his own name even with some other company maybe AT&T could interfere with it. And the evidence will be that the forms are filled out and somebody on the farm took them to the post office, and we can prove that.

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

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

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

things that you need for your business and things you're going to sell.

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

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

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

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

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

Now, you also heard about

fertilizer. Well, it's true that on September 30, 1994, and October 18, 1994, two men bought ammonium nitrate at a farm cooperative in McPherson, Kansas. The two co-op employees who sold the ammonium nitrate in bags were unable to identify the purchasers while the transactions were fresh in their minds. These employees are called Rick Schlender and Jerry Showalter. But Mr. Schlender gave a very precise description of the vehicle. He said that the men were in a Dodge pickup truck with Kansas license plates, pulling a trailer made from a Ford truck bed.

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

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

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

Now, Terry Nichols did have access, no question, to storage units, those rental storage units in the mid-Kansas area. You know the ones. When Terry Nichols told the FBI about these sheds -- and he did, and he told them in what names he rented them. They went out and searched them. No residue of any

ammonium nitrate or other bomb component was ever found in these sheds. They were, as Terry Nichols told the FBI, used to store household furniture and things he was keeping to sell in trade.

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

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

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

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

The evidence will show that in searching for racing fuel, McVeigh used the Fortiers' phone on October 7, 1994. And Terry Nichols was not there.

By late October, 1994, McVeigh's bombing plans were well advanced. Terry Nichols, who had started this gun show venture, had reached a parting of the ways with McVeigh. Now their paths begin to

diverge again. McVeigh went his own way, hooking up with the Fortiers in Kingman, keeping in touch with Roger -- Roger Moore -- excuse me -- and confiding in the Fortiers about his plans.

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

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

First, he updated his life insurance.

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

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

The letter also reminds Mr.

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

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

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

He planned to return and did return in January of 1995. The evidence will show that after he did he bought a house for his family, for Marife, Nicole and Josh, began acquiring a stock of military surplus items to sell supplementing gun sales, and then began to establish his own separate business in his own name centered in Kansas.

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

On November 30, 1994, a power

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

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

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

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

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

From early December, 1994, until January, 1995, Tim McVeigh called arms

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

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

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

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

And Terry Nichols prepared for his wife, daughter, and son to come and live in Herington. We'll show you the

telephone calls he made, the places he stayed, and introduce you to the people he met along the way.

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

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

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

In March and April, 1995, Tim McVeigh told Michael and Lori Fortier that Terry Nichols would not have anything to do with any plan to blow up a building. Now, of course, the evidence is the Fortiers are unreliable witnesses. You can't believe anything Tim McVeigh told them unless you find independent corroboration. So let's look at what

McVeigh and the Fortiers did, not just what they said.

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

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

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

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

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

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

When Timothy McVeigh arrived in Kansas, he bought an old Mercury Marquis from a Firestone dealer in Junction City. It was the car he was driving when he was arrested. On the

drive from Arizona to Kansas, he may have stopped at the Oklahoma City federal building yet again. A senior federal employee reports seeing him there.

Friday, April 14, Junction City, Kansas: McVeigh using the name Robert Kling, the name on the fake license that Lori and Michael Fortier helped him make, called the local Ryder rental place and reserved a truck for the next Monday.

He already knew how Ryder truck rentals worked from his Arizona call.

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

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

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

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

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

Terry Nichols knew that McVeigh had gone to Josh's house in Las Vegas -- Josh Nichols' house to pick up a television

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

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

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

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

Tuesday, April 18, a crucial date: Terry Nichols did not build a bomb. There will be a great deal of evidence on that day. During a part of the day, Timothy McVeigh had borrowed Terry Nichols' pickup truck while Terry was at an auction at Fort Riley, Kansas. These are places where military surplus dealers, like Terry was becoming, buy goods to sell or trade. To buy the goods, you have to inspect

batches and batches of stuff that are spread out over a big area. You then have to look and see what you think the stuff is worth, and then you make a sealed bid.

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

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

The Government will try to tell you a different story about what Terry Nichols did that day, and they're going to present evidence of times and timers, of clocks and clockers. The biggest difficulty in the

Government's evidence, members of the jury, will be their own clock. Yes, folks, the official time clock at the Fort Riley military base that day was at least one month and one hour off. We will have to reconstruct Mr. Nichols' movements from other evidence, and we'll present that evidence.

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

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

Notice what the evidence will be:

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

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

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

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

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

Briefly now, Part 3, the so-called "science." I want to wait on this because I

want you to hear it from the witness stand.

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

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

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

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

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

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

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

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

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

I'm about done.

For two months in 1994, Terry Nichols was Tim McVeigh's business associate; and he had befriended Tim McVeigh. Tim McVeigh did not treat his friends very well. You may ask how they even became acquaintances. Well, in 1988, Lana Padilla -- after Terry had gone in the Army, he found that his wife had virtually abandoned their son, Josh. So he went back to Michigan, got Josh, rented a house in Kansas, where he could raise Josh himself while he was serving as a soldier. To help pay the rent, he advertised in the paper for somebody to let one of the rooms. That's when Tim McVeigh showed up in answer to the ad. And when Mr. Nichols got out of the Army on his single-parent discharge, he went back to Michigan and cared for Josh and for Lana's son by a former marriage.

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

for things to sell at gun shows, in his shed.

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

He was building a life, not a bomb.

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

Foreword II
The Closing Argument

*"As I said, Terry Nichols wasn't
there..."*

*"The government can't handle
the truth."*

*"The Marine Corps builds men,
the FBI builds witnesses."*

Michael Tigar, the schoolteacher from Washington, D.C., teaches advocacy students that a closing argument must engage the mind and move the heart. Tigar uses the words "logic on fire" to describe a powerful and persuasive final argument.

But even in harnessing the most solid logic and hottest fire, how do you persuade twelve jurors to sympathize with the man accused of conspiring with Timothy McVeigh to blow up the Murrah building? How can Tigar get past the undeniable fact that 168 people, including many, many children, died when that bomb exploded in front of the Murrah building at 9:02 a.m., April 15, 1995? Can Tigar neutralize that enormous shock and empathy factor? How does any lawyer take on the entire United States government and the Federal Bureau of Investigation's scientists? How can this defense attorney even dream of convincing the jury that there is a single reasonable doubt, never mind the "hundreds of..." he promised in his powerful opening statement? Well, despite all these obstacles, Tigar did convince the jury that Terry Nichols did not commit first-degree or second-degree murder, did not commit arson, and did not use a

weapon of mass destruction against the Murrah Building. How did he do it?

First of all, Tigar never forgot Terry Nichols, the person. In fact, Terry Nichols became something substantially more than the defendant and the client.

*"I tell you this, my brother, he is
in your hands."*

Tigar is not afraid to give of himself - not only to his client, but to the jurors. He takes on Terry Nichols' emotion and experience as his own. He is the channel through which the jury connects with the accused.

Of course, Tigar doesn't let go of Nichols' story and his own theme. In the opening, he promised he would show that Terry Nichols was building a life, not a bomb. He takes that poignant phrase much further in the closing. He slaps the jury in the face with the ultimate paradox - could Terry Nichols do this dirty deed while living his life with a pregnant wife?

*"The charge is a conspiracy to
blow up a building and kill children.
Terry Nichols had started another baby
who was born in December. A conspiracy
is charged to blow up a building and kill
children."*

There can be no more direct approach to a jury than Tigar's approach. As you will hear, Tigar never forgets Terry Nichols, the person.

Tigar also knows that a powerful closing argues from both sides. Tigar often asserts in his advocacy programs that two-sided arguments are essential. Arguing one side of the case is not enough. Tigar understands that he must also destroy the government's case by attacking the FBI's credibility. And he does just that. He derides the FBI. He ridicules the "scientists."

*"We know what science is. For
heaven's sake, we go to the doctor."*

And then he takes our normal

human experience with our family doctor and contrasts it with the FBI's handling of the evidence.

"The FBI laboratory and every other scientist brought before you flunk every test. Their observations of measurement in every case are filled with serious doubts."

Tigar belittles the government's case by putting the incredible sloppiness of the FBI's scientists before the jury. He does this in his own unique way, expressing honest amazement at the ineptness of "the authorities." His disbelief is palpable. Listen as he makes the jurors wonder how, in the most important case ever, the FBI experts managed to present the evidence so poorly:

"The agent they send for the most important case in the FBI's history can't count fingerprints."

Tigar is even unafraid to attack by name:

"We're talking about the FBI's science. Mr. Krivosta is the one who said 'textbook picture perfect,' but admitted there was no textbook except for the one he hoped to write someday. His total experience in publication was one article that taught you not to drop a firearm when it's loaded because it might go off."

Tigar also knows that the effective closing argument must evoke anger and make the jurors feel miserably uncomfortable to admit to anyone that they first considered the evidence from the FBI's viewpoint. How does he do that? He uses common human experience and whimsical commentary. Even the government's apparently rock-solid fingerprint evidence takes a licking:

"Nichols and McVeigh were sharing many, many things. But fingerprints?"

"Nichols was not in the FBI laboratory putting extra fingerprints on exhibits."

The powerful advocate is bold

enough to use humor to show disdain for the opposition. Tigar creates a striking visual mind picture to discredit a photograph that showed "smoke":

"Look at the smoke. Look. You can't see through it. Visibility's down to what, Danny DeVito's inseam?"

In arguing away a book that Nichols supposedly used as his blueprint for the bomb, Tigar says:

"When I read a book, I usually touch more pages than thirteen."

"I was born at night - but I wasn't born last night."

And, of course, he attacks the Government's key witness, Michael Fortier - the one who traded his testimony for immunity. What better metaphor can there be than a phrase we've all heard time and time again - and with a telling twist?

"The Marine Corps builds men, the FBI builds witnesses. Let's look at how Michael Fortier was made into a witness."

The effective closing argument never tells the jurors what to do - it tells them why they should want to do what is asked of them. The powerful closing argument commissions the jurors to argue for your side, calms their fears, creates action, not abstraction. The passionate closing argument calls the jurors to justice, transfers the advocate's powers to them, and raises them to a new level. The persuasive closing argument makes the story come alive, so that it becomes the jurors' story.

Michael Tigar's closing argument is another CLASSIC OF THE COURTROOM, because it accomplishes all of the above. Tigar analyzes the facts, uses analogies, asks rhetorical questions, shows that the government's case is riddled with doubts and, in fact, makes one wonder how and why the government could have presented the case the way it did. Tigar raises questions throughout in

his own droll style. Most importantly, he puts himself into his argument, just as he has put himself totally into his case. There is no doubt that Tigar disbelieves the FBI. He argues from the jurors' viewpoint and acknowledges their position. He empathizes with them, identifies with them and agrees with them. He makes them wonder, makes them think and makes them doubt.

Finally, the schoolteacher from Washington, D.C. pulls it all together. In no uncertain terms, Tigar tells the jurors what he wants them to do and why they should do it.

"We could continue this forever. It's a work offiction. "

"We end where we began. It isn't just reasonable doubt."

"The government's theory is riddled with doubts."

"The government can't handle the truth." It's all here -- the Will, the Way, and the Why.

Let's return now to the classroom, and listen to Michael Tigar's classic courtroom closing argument.

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CLOSING ARGUMENT

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

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

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

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

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

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

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

The Judge is going to instruct you at the end of the case that if there are two possible interpretations of the evidence, you must of course choose that which results in an acquittal. And throughout this talk that I'm going to have, I may refer to

things the Judge is going to say. Well, let it be understood that we have some idea of what the Judge will tell you. I'm going to paraphrase. What the Judge is going to say is what the Judge is going to say. So you'll hear it from him.

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

And then when you look at how to reconstruct what happened, ask yourself, was that lawyer guessing, does that lawyer have evidence, does that lawyer have evidence that something happened, or is that just a guess, is that a leap, is that speculation?

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

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

It must be difficult in this case, as I said in the opening statement, to get -- to get one's mind around that. The enormity

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

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

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

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

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

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

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

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

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

Nichols worked pretty much from 8:00 in the morning till the sun went down.

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

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

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

Here's another one. Here is from

1:51 p.m. on the 28th of September, 1:51 p.m., the home of Terry Nichols, but it's the afternoon. Terry Nichols is working.

Who gets called?
Rosewood Signs,

Tonawanda? No, no. Who is Rosewood Signs in Tonawanda, New York? That's Tim McVeigh's friend, Dave Darlak. And Tim McVeigh is looking for racing fuel.

So what we ask you to do, if you will, is to consider the real evidence, not the charts, not the summaries, not some advocate's view, not my version, even. I don't ask you to take it from me. Don't take anything I say or that Ron Woods says without looking in the evidence to see if it's there and making up your own mind about whether it fits.

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

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

And most important of all, Government counsel referred to this, but I'm going to turn it around, zoom in. This says 18th. There is no 18th Street in downtown Oklahoma (sic). All the streets are 5th and 6th and 7th. Then over here it says 24. There is no 24th Street in downtown Oklahoma (sic). And you'll have this. It's Government Exhibit 352. You'll have it in evidence. You were told

that this deal, whatever it is, which is not in Terry Nichols' handwriting and which doesn't have anybody's fingerprints on connected with the case and which was found in a trash can in an alley behind his house all wadded up, somehow is a route.

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

There's more.

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

Well, the problem with this alleged routing is -- and you'll see it when you look at this exhibit. I know it's hard when you see it on the screen. But isn't there something missing here? How about the Regency

Tower building, which is -- would be off the map if this was a map of downtown Oklahoma City. And how do you know that the Regency Tower building was the real route? Because a television camera took a picture of the truck.

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

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

living Mrs. Nichols, Marife, and Terry Nichols; and Timothy McVeigh had come there and would stay and work for a while and then leave.

You can start with the very first call that Mrs. Nichols was shown. She called the place in Palm Desert where her aunt was working, and that was done while they were leaving the Nichols farm on their way back across the country. Then you can start to see Timothy McVeigh using it to make calls of his own. You can see 117 calls, which represents by far -- even though there's 685 -- the majority of the time and a majority of the money, to the Philippines. When Mrs. Nichols was out of the country, this was the card that Terry Nichols used to keep in touch with her. The Nicholse and the Torres family -- that's Marife's parents -- they don't have a phone.

So every phone call you see to the Philippines is somebody down the street, one direction or another, where Terry Nichols would call or somebody else would call to get a hold of Marife and say, "Can you get them to the phone?" And you'll see those calls as well as attempts when The Spotlight card didn't work to make the call when it didn't go through.

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

What happens to The Spotlight card? Calls 222 through 300 on The Spotlight card show you Timothy McVeigh calling David Paulsen over and over and over again, and why? David Paulsen's testimony was read to you because he was unavailable as a witness. But what he said was that Mr. McVeigh was calling him. Mr. McVeigh wasn't

saying, I've got a friend Terry Nichols. Mr. McVeigh wasn't saying anything except, "I've got blasting caps I want to sell you for between \$3,000 and \$5,000. I want to trade TNT for those blasting caps. How about it."

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

Then you see all of the calls made from the Nicholas's house. Why is that significant? It tells you something about Timothy McVeigh. I mean it was represented that it was unusual for Timothy McVeigh to stay with people. Miss Nicholas pointed out -- she said, "Well, he came. Kevin was neighborly. Kevin went and got him when his car had problems and towed it back.

Here's a picture of the car." It's all right for the Nicholases to be neighborly when somebody called, apparently, and then Tim stayed for a month. Stayed for a month. They weren't particularly good friends, but I guess we've all had house guests like that. But he sure did outstay his own welcome. And while he did so, you can see he used the telephone over and over and over again, principally to call David Paulsen and other sources of supply. This is at a time when Terry Nichols is in the Philippines.

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

The next thing that I want to ask you to look at: The Judge is going to instruct you -- and you'll have copies of the Judge's instruction in this case. He's going to tell you the elements of the offenses; that is to say, what the Government has to prove beyond a reasonable doubt. And he'll tell you that if the Government's proof fails as to any element of any offense or charge, you have to acquit as to that. He'll also talk about reasonable doubt, and he'll give you

some instructions on how to view the evidence.

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

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

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

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

I wonder what you have to do to have a prosecutor stand up and call you a truthful person. We have heard the prosecutors tell you that you shouldn't believe anybody who didn't come forward, having seen a Ryder truck at Geary Lake, until the FBI set up a roadblock and then stop people and ask them. Well, what is the purpose of a roadblock to interview

witnesses if, after you've interviewed all of them, you're going to say that because you stopped at the roadblock, that you're not to be believed?

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

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

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

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

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

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

His testimony was bought and paid for. It was bargained for, not with money but with a coin that only the Government has the ability to print and to hand out;

and that is immunity from punishment. Not immunity from all punishment, but you heard him say that he expected to be out -- the guideline sentence for him, he doesn't know what it will be, but his guideline sentence is under three years. You heard him say that he had seen on the television and the radio that there was a death penalty involved here maybe. You heard him say that it was the most important thing in his life to go home to his children.

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

On redirect examination, when the prosecutor asked him, "You didn't have any barrels, did you," he said, "No, except for the three 55-gallon barrels that I had in back of my house." Barrels that are never tested by the Government. Nobody cut a piece out of his and sent them up to Tony Tikuisis in Canada. This is a man that had this Primadet that Mr. McVeigh gave him that we'll talk about more when we talk about fingerprints -- this is a man that had guns that Mr. McVeigh gave him to sell. This is a man that has ammonium nitrate. This is a man that has blasting caps. This is a man who helps Mr. McVeigh get false ID. This is a man who heard about the plan. This is a man who, contrary to what the prosecutor said, never told you that there was a test blast involved, never used those words. He said Tim and Terry were going out in the desert, said they were going to do something, never called it a test blast. This is a man who was offered \$10,000 and then lied to by Tim McVeigh 'cause he never got his 10,000 to drive and case the building and get the guns, this is a man who says he saw Storage Unit No. 2 in Herington, Kansas; and when the door was opened, he looked inside and all he could see were mattresses, mattresses.

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

he your dealer?"

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

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

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

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

And what's he doing while he's gathering all the information bit by bit? Is

he going to the police station to tell them what he knows? Well, he's going to the police station, but he's bragging to his friends that he stands toe to toe with the FBI agent and tells them things, and on his phone that the FBI agent had a tap on using all those colorful methamphetamine-esque language and four-letter words and so on. And then as he talks, he begins to see that there's a future for him in this, not a future going to law enforcement and telling them what he knows, not a future telling about some storage shed in Arizona so they could maybe test that in any kind of a hurry, not a future telling about any guns in his house, not a future telling about Primadet, not a future telling what he knows about Tim McVeigh because he wasn't telling that. No, he's got a future.

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

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

That's another thing the Judge is going to instruct you. Political talk, I can

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

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

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

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

What was the relationship between Fortier and McVeigh? Why was Fortier so anxious to ingratiate himself once he felt the noose tightening? Well, McVeigh had lived in his house for weeks and weeks and weeks, repeatedly. McVeigh had made free with his phone. The two of them had called Walter Bassett about

forming a militia.

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

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

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

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

And what is it that contradicts it? What contradicts it is that in March of 1995, Fortier says McVeigh was getting

desperate. How desperate? So desperate that Fortier and Mrs. Fortier were scared and Michael Fortier carried a gun whenever he went to see him.

How desperate? He tells Michael Fortier:

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

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

Do you remember what Michael Fortier told you about sometime before October 31? He said Tim McVeigh came by his house and said, "I'm waiting for Terry." "Doggone it, he's not here."

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

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

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

the gun show business, is Terry Nichols. It's the only one.

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

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

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

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

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

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

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

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

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

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

And I don't have to go through the rest of the conversation. Would you do it?

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

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

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

No, sir.

Did he ever say he'd robbed anybody?

No, sir.

Did Mr. McVeigh ever say within earshot of Mr. Nichols that Mr. Nichols was going to rob anybody?

He did not.

Did Mr. McVeigh ever say within earshot of Mr. Nichols that Mr. Nichols had robbed anybody?

No, sir.

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

That is correct.

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

Correct.

That's just a part.

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

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

Then there's a whole 'nother part, and that's science is supposed to assure us that when we see something, it's not accidental. All right? That is to say that it is based on something. If you step on a crack, you'll break your mother's back. Well, maybe you will and maybe you won't. If a scientist wanted to prove that if you step on a crack you'll break your

mother's back, we'd have to observe many, many mothers and many, many people stepping on cracks, and then we'd have to have some -- some scientific, reliable statistical way to show that those two events were connected to each other.

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

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

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

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

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

problems there.

Now, there's another thing we know, before I start. Mr. Hupp said that some people are dry people: They don't leave fingerprints. Mr. Nichols is not a dry person. When he touches things, he leaves fingerprints.

Mr. McVeigh is not a dry person. When he touches things, he leaves fingerprints. And so it's the presence, the placement, the absence, the location that we got to look at here.

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

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

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

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

Terry Nichols and Timothy McVeigh were sharing many, many things, but fingers? I don't think so, members of the jury. How is it that Lou Hupp tells -- makes his conclusion on the

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

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

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

Now, we know where Terry Nichols was between the 20th of May and the 24th of May, 1995. He was not in Mr. Hupp's laboratory putting extra fingerprints on Mr. Hupp's exhibits.

And yet Mr. Hupp comes in here and essentially tells you that the final report is one he can rely on and that his lab notes made at or about the time are meaningless.

Is that the only one? No.

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

That is 770 -- Q770-1, the storage unit agreement. And he says he's got eight

fingerprints on it in his report. He's got eight. And you can look on the previous page and see that those are eight out of the ten of Timothy McVeigh.

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

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

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

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

But they don't want to accept the evidence that she heard of several people in Mr. McVeigh's room with Mr. McVeigh being next to the window. They also had had an opportunity to talk to Jeff Davis, who delivered the food. I'll talk about him in a while. They had also gone

to the Ryder Truck Rental place where Vicki Beemer -- and Ron Woods is going to talk about this -- had seen two people. So you've got 1,034 unidentified prints. That's taking Mr. Hupp's words.

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

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

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

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

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

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

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

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

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

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

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

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

What there is, is evidence that Timothy McVeigh took that old, burnt-out car Friday morning into the Firestone store in Junction City. Please remember that

day. Timothy McVeigh buys an oil filter. I think that's a fair inference from the evidence. Somebody buys an oil filter. In addition to Isuzus, GMC Jimmies, and Jeep Cherokees and a few other things, it does fit the car he's driving then. Okay. Let's assume that's what you think.

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

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

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

Finally with Mr. Hupp. It's true that there's a print -- well, it's as true as Mr. Hupp can count. That Terry Nichols' print is on a sleeve that's wrapped around this Primadet. What does that corroborate? Well, where's the Primadet found? It's found with Michael Fortier's brother. It's found in Arizona. Well, how did that print get there, the same kind of Primadet they say is also in Terry Nichols' house? How did Michael Fortier get his Primadet?

Remember? Timothy McVeigh after February 1, in that time frame, came to Kingman and gave him an ammo can that had explosive things in it including Primadet.

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

Well, we were talking about the FBI and science.

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

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

Now, the second problem with Mr. Cadigan and Mr. Krivosta is that they admit that the drill bit they measured, which they said was one-quarter inch, was instead about 17/64. Remember, it's

smaller (sic) than a quarter of an inch; that Mr. Cadigan says he measured the hole in the drill (sic) with a ruler, nothing more precise, and he said, "Well, that's about a quarter of an inch."

You can look at the pictures. The most important question about that drill bit came up when William T

"Well, not really."

"Do you know where it was?" "No, not really."

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

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

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

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

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

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

You already have a problem, because this whole package wasn't recovered from Mr. Nichols' house until May of 1995. And the allegations about the lock being drilled at the quarry go back clear to what October + September October, 1994. So we've already got a period of months in there, seven or eight months, during which time this particular drill bit in this particular case, this being some standard-size drill bit, one of the most popular sizes that could be used, is used for a number of things, such as Mr. Nichols' doing work on his house, which we know from other witnesses he was doing.

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

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

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

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

that or anything. And yet they had the full resources of the FBI to do it, and they were being directed by Steven Burmeister.

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

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

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

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

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

Well, this is Government's Exhibit 70. This bag has some plastic that is folded into or is a part of the multilayer in the bag. But when you look closely at this picture, you'll see that that plastic is not heat-sealed-crimped at the top. It has no plastic heat-seal crimp. It's not even sewn. You know how some bags of fertilizer are sewn across the top? No, the paper is simply folded over and glued at the top, and; there was a place right up here at the

top where it's tucked.

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

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

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

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

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

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

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

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

All right. We are asked to believe that conditions were sufficiently moist to do that.

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

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

Now, we have -- if we're asking the difference between an inside and an outside diameter -- this is my one and only one demonstrative exhibit, so please forgive me.

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

So that would give us a lip of $\frac{5}{16}$ th of an inch; right? 23 inches -- this is $22 \frac{3}{8}$ here. The total outside distance is 23. The distance between -- difference between those is $\frac{5}{8}$ of an inch divided by 2 is $\frac{5}{16}$.

Right? You can do the math back there. I don't claim I know how to do the arithmetic here. Please check me when you get back to the jury room.

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

Then he said: How much -- wide a

mark did the rust pattern leave on the floor? How wide? Oh, approximately, probably, $\frac{5}{8}$ of an inch.

$\frac{5}{8}$ of an inch in width?

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

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

This barrel, outside diameter is 23 inches.

This mark -- these marks are $23 \frac{3}{4}$ inches.

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

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

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

was the thing it was.

But let's start: Government's Exhibit 664.

That's Q507. It is a piece of the Ryder truck body. Here it is. You remember the picture.

There it is.

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

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

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

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

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

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

Here is the official report, E89, of Wilson and Kelly. And we zoom over to

the area here, and there is no No. 6. There is a 4, there is a 5, there is a 7, there is no 6.

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

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

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

Kelly says, "I gave it to Wilson."

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

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

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

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

But it gets curiouser.

When they asked Linda Jones from the United Kingdom, who is an internationally renowned expert on these things -- there is no question about that. She's worked many cases before, both sides of the Atlantic, in other countries. They supplied to Linda Jones a version of the map where they circled everything, and somebody wrote in "06." So by the time the notes get to Jones, they've doctored them to make up for the fact that they have no record on their notes of where they found this thing.

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

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

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

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

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

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

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

So in the end, their most important piece of evidence -- that is to say, this Q507 -- really doesn't work for them very well. But not only that, you remember Paul Rydlund? Paul Rydlund from the

Imperial Chemical and that group of companies, a man that has spent his professional life manufacturing ammonium nitrate to mix with fuel oil to blow things up, did a master's thesis on it, holds a patent on it -- did all of that. What does he say? He says that if a bomb, a device, operated efficiently, you would not expect to see any ammonium nitrate or fuel oil particles. Inconsistent with Burmeister.

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

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

Then when Linda Jones got on the stand, she confirmed it. They can't tell you it's Tovex, they can't tell you it's Primadet, they can't tell you that it's anything at all; and that is the sum and substance of what the Government's evidence on this subject is,

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

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

But there is more. Paul Rydlund: Millions of pounds a year of ammonium

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

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

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

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

When I read a book, I usually touch more pages than 13. If I'm just riffling through, I might touch 13. And the copy in Mr. Nichols' house had a sticker

on it that said he got it for sale at gun shows. And it is something people buy there. So the fingerprints, we can leave aside.

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

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

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

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

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

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

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

Then the night -- "the ammonium

nitrate is emptied and stirred with fuel oil." Rydlund said you don't have to stir.

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

He said yes.

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

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

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

And then Mr. Rydlund was challenged on redirect: Well, you don't mean it would melt the plastic?

Well, if it was efficient, it would.

Well, what if it was inefficient?

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

In Mr. Rydlund's opinion, an efficient ammonium-nitrate-based bomb

would volatilize the plastic barrels in which it was contained.

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

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

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

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

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

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

Well, why didn't they test the barrels in Michael Fortier's house? Why didn't they test any of the other hundreds

of pieces of plastic? Well, it's just like Agent Hupp's 1,034 fingerprints: Because they didn't care. They didn't care. And so they tested that piece of plastic.

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

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

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

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

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

"No, I didn't."

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

The chemistry doesn't work.

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

Moreover, what did Mr. Killam tell you? You go out to Pure Country

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

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

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

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

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

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

CLOSING ARGUMENT 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 ax 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 ax 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 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 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 -² 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 ^{its} 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.

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. 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 down, 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 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.

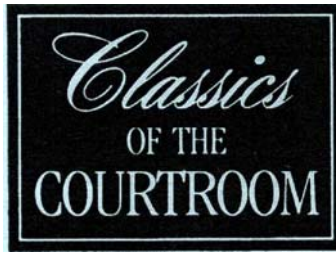
168 people died in Oklahoma City. We have never denied the reality of that.

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.

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