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Transcription  
Street,  
629-9285

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

14375

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APPEARANCES

Western

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District of Oklahoma, and RANDAL SENDEL, Assistant U.S.

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appearing

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for the plaintiff.

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13 Street, Suite 1308, Denver, Colorado, 80203, appearing  
for  
14 Defendant Nichols.

15 \* \* \* \* \*

16 PROCEEDINGS

17 (In open court at 1:15 p.m.)

18 THE COURT: Be seated, please.

19 (Jury in at 1:15 p.m.)

20 THE COURT: Ms. Wilkinson, you may proceed.

21 CLOSING ARGUMENT CONTINUED

22 MS. WILKINSON: Thank you, your Honor.

23 Good afternoon. When we broke, we were  
talking about

24 Mr. Nichols' last activities on April 18 when he was  
building  
25 the bomb with Timothy McVeigh at Geary Lake.

14376

1 You know that that afternoon, he left Mr.  
McVeigh,  
2 according to his story, at the McDonald's in Junction  
City,  
3 Kansas, for the last time. When Mr. Nichols spoke to  
the FBI  
4 on April 21st, he told them at first that Mr. McVeigh  
had left

later." 5 and they had parted the way they always did, "Catch you

admitted 6 But eventually during the questioning, Mr. Nichols

shed in 7 that Mr. McVeigh had asked him to clear out his storage

that he 8 Herington, Kansas. And Mr. Nichols admitted to the FBI

9 had done that; that on the morning after the bombing on

cleared out 10 April 20th, he had gone to Unit 2 in Herington and

11 the storage shed for Mr. McVeigh.

12 There are several questions that are raised by  
13 Mr. Nichols' version of the story to the FBI. First is  
how did

14 he know that he should clean out that storage shed on  
the

15 morning of April 20th if he wasn't involved with the  
bombing.

16 Mr. McVeigh, he says, told him that he was leaving to  
go back

17 East to see relatives. That means Mr. McVeigh would  
have had

18 to leave on the afternoon of April 18th and returned on  
the

19 19th for -- to clean out the storage shed in order not  
to raise

20 suspicion in Mr. Nichols' mind. Just 24 hours to get  
all the

21 way to New York and back to his family. That, of  
course, makes

22 no sense. The reason that Mr. Nichols cleaned out the  
storage

23 shed on Wednesday, April 20th -- excuse me -- on  
Thursday,  
24 April 20th, was because he was expecting Mr. McVeigh to  
come  
25 back. He was expecting Mr. McVeigh to drive down to  
Oklahoma

14377

1 City, to leave the truck bomb that they had made and to  
drive  
2 directly back north to central Kansas.

3 You know this was the plan because when Mr.  
McVeigh

4 was arrested on April 19th, after detonating the bomb  
outside

5 the Murrah Building at approximately 9:02 a.m. on  
Wednesday the

6 19th, he got on Route -- I-35 and drove directly north,  
going

7 back to Kansas. And as part of his plan, he was going  
to

8 return to central Kansas to be with his partner in  
crime, Terry

9 Nichols.

10 But thank goodness for Trooper Charlie Hanger.

11 Trooper Charlie Hanger finally stopped Timothy McVeigh  
and

12 Terry Nichols' plan. Timothy McVeigh could have driven  
13 anywhere. He could have gone south, he could have gone

east,

14 and he could have gone west; but he drove -- he chose  
to drive 15 north back to Kansas.

16 Just the way he planned it.

17 When Trooper Hanger arrested him and brought  
him back

18 to the Perry County jail, Terry Nichols was alone. On  
Thursday

19 morning, when Timothy McVeigh did not arrive back as  
planned,

20 Terry Nichols went to the storage shed and cleaned out  
Timothy

21 McVeigh's items. He then went into town to get cable  
TV so

22 that he could find out what had happened to his  
compatriot, and

23 he recognized at that point that he needed more  
information.

24 He started to panic.

25 He started to realize that for the first time,  
Terry

14378

1 Nichols didn't have a plan.

2 So he went and he bought three newspapers,  
three

3 newspapers all from Kansas that talked about the  
Oklahoma City

4 bombing.

5 Now, you have to ask yourself if Terry Nichols  
was  
6 responsible for the bombing, why would he buy three  
different  
7 newspapers on the same day? You know that the only  
reason that  
8 most people buy three different newspapers on the same  
day is  
9 when the story is about you or someone you know.

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

22 He was a clever, crafty man, and he wanted to

make

23     sure that he had as much information as law enforcement  
did.

24     He wanted to know if they had figured out that he had  
stored

25     the bomb components in the storage sheds near his  
community.

14379

1     He wanted to know when the law enforcement would find  
out about

2     the Ryder truck being rented in the town next to him.  
And he

3     wanted to -- wanted to know when the police would  
realize that

4     one of the main components in the massive bomb that  
destroyed

5     the Murrah Building was ammonium nitrate.

6             Can you imagine the panic he started to feel?  
The

7     methodical, careful, and devious Terry Nichols had  
planned for

8     almost everything, but he never expected that Timothy  
McVeigh

9     would not return to Kansas. For the first time in  
months, he

10     was on his own with no plan.

11             And inside his house was plenty of  
incriminating

12     evidence.



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

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

14380

1                   would have burnt any grass that was already there, but  
she kept  
2                   her mouth shut and didn't talk to Terry Nichols.

3  
evidence that

4  
knew but at

5  
part of

6  
yard? He

7  
knew

8  
the

9  
He wanted

10  
that law

11  
told

12  
had to

13  
He

14  
explain

15  
of it.

16  
trace the

3 Terry Nichols was trying to destroy the  
4 he knew would incriminate him, the evidence that he  
5 the time no one else knew would show that he had been  
6 the Oklahoma City bombing.  
7 Why would he toss ammonium nitrate on his  
8 tossed it because he had mixed the bomb himself and he  
9 that the main charge, the massive part of the amm -- of  
10 bomb was made of ammonium nitrate. And he panicked.  
11 to get rid of it, and he put it on his yard, hoping  
12 enforcement would never suspect him.  
13 Just a couple hours later, as his wife Marife  
14 you, he heard his name on the radio and decided that he  
15 talk to law enforcement. He couldn't take it anymore.  
16 wanted to know what they knew, and he wanted to try and  
17 away everything he had done.  
18 And he thought that he could talk his way out  
19 He knew or at least he thought that no one could ever  
20 Daryl Bridges phone card. He knew it was a debit card.

And he

21 knew that -- or he thought that because he didn't  
receive a  
22 bill for those records and because that card was in a  
false  
23 name, that once he debited the account, there would  
never be  
24 any records of his criminal calls with Timothy McVeigh.  
25 He was wrong.

14381

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

building,

11 going down 5th Street one way towards the Murrah  
Building, on

12 the evening of April 16th.

13 You also showed the -- saw the videotape which  
showed

14 the Ryder truck approaching the Murrah Building just  
moments

15 before the blast.

16 So Terry Nichols, on the afternoon of April  
21st, did

17 a calculation in his mind. He decided that he knew  
what law

18 enforcement knew. He knew what they could figure out  
and what

19 they couldn't, and he was going to go in and talk to  
them. He

20 was going to go in and try and blame it on his friend  
Timothy

21 McVeigh and elude detection for all criminal  
activities.

22 But Terry Nichols lied, and Terry Nichols lied  
over

23 and over again to the FBI on the pieces of information  
that he

24 thought they could never contradict. But he was wrong.  
Terry

25 Nichols lied about anything that would have  
incriminated him

1 just like a guilty man does.

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

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

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

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

15           Here's the Wal-Mart receipt with the front and  
the  
16 back and the sticker that shows you that on April 15th,  
1995,  
17 Terry Nichols returned the oil filter that was circled  
here by  
18 Mr. Kordyak at the Manhattan Wal-Mart. You know he was  
there

19 because we found another receipt that showed him  
purchasing  
20 items for his home; but most importantly, his own wife  
told you  
21 that he returned the oil filter on that day.

22 In case there's any question, you can see  
right on the

23 back here, circled on the left of this piece of  
evidence is SWB

24 upside down, which is Southwestern Bell, and Mr.  
Nichols' No.

25 9349. You can see that that matches the Southwestern  
Bell card

14383

1 for Mr. Nichols, Government's Exhibit 2003.

2 You also know that that receipt was Mr.  
McVeigh's

3 receipt from Arkansas City because it says on the  
receipt that

4 the initial purchase was made in Arkansas City on April  
13.

5 You know that Mr. McVeigh handled that receipt because  
you

6 heard that there were fingerprints on that receipt of  
Timothy

7 McVeigh and Terry Nichols.

8 Here on this chart, you see the Wal-Mart  
receipt with

9 the purchase from Arkansas City on April 13th, the  
circle of  
10 the oil filter with the initials and the tag showing,  
"Return  
11 on April 15th"; and to the left, you see Terry Nichols'  
12 thumbprint on the top and Timothy McVeigh's thumbprint  
on the  
13 bottom.

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

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

1995, 1 For Terry Nichols to get that April 13th,  
with 2 Wal-Mart receipt, Terry Nichols had to be face to face  
oil 3 Timothy McVeigh before April 15th when he returned the  
told 4 filter. He had to get that oil filter that Mr. Kordyak  
That's 5 you he got returned on April 15th from Timothy McVeigh.  
evidence 6 what happened, ladies and gentlemen. The documentary  
about 7 proves it, and Mrs. Nichols left no doubt in your mind  
8 what happened.

9 So once you see that evidence, what is the  
only 10 conclusion that you can make? That Terry Nichols lied  
about 11 why he went to Oklahoma City on April 16th, that  
Sunday. He 12 had already been face to face with Timothy McVeigh the  
day 13 before. He had received that oil filter and that  
receipt. If 14 he was face to face with him, why didn't he get his  
television 15 set with him then? Because he wasn't going to Oklahoma  
City to 16 pick up a television set. He was going there to stash  
the 17 getaway car and to prepare for the bombing of the



Murrah

18 Building. There is no other explanation. Terry  
Nichols and  
19 Timothy McVeigh were face to face before April 16th.  
Terry  
20 Nichols lied to everyone and he lied about something  
that he  
21 knew would show he had been part of the plan up to the  
very  
22 end, and it's a simple Wal-Mart receipt that tells you  
that  
23 that is true.  
24 Terry Nichols had returned the oil filter that  
day,  
25 but he did not get his cash. Mrs. Nichols told you  
that he had

14385

1 forgotten when he was in the store. After he went back  
to the  
2 automotive section and returned the oil filter, they  
went about  
3 their shopping. He forgot to go to the customer  
service desk  
4 to get his money back, so he still had that receipt in  
his  
5 hand. They drove on to Junction City and stopped at  
the  
6 Wal-Mart one more time where Mr. Nichols tried to get  
his money

7 back, but the lines were too long.

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

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

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

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

14386

his house 1 He also lied about having any explosives in  
know 2 because he didn't want the FBI to be suspicious, but we  
3 Primadet was found in his house.

because of 4 He lied about being at DRMO for six hours  
anyone to 5 the reasons we've already reviewed. He didn't want  
his own 6 know that he had been mixing those bomb components with  
DRMO but 7 hands just 24 hours before the bombing. He lied about  
see the 8 let the FBI know that he had signed in so they could go  
knew 9 record at 12:50. He told them the truth about what he  
thought 10 they could figure out, and he lied about the things he  
11 they could never discover.

it's his 12 The best example of that is his statement --  
told the 13 lack of forthrightness about Bridges and Havens. He  
used. He 14 FBI and the marshal service about the aliases that he  
He 15 never mentioned Bridges and he never mentioned Havens.

16 never mentioned Bridges for the reasons we've already  
stated,  
17 because that phone card, the phone card in Bridges'  
name, gives  
18 you a road map to what Terry Nichols and Timothy  
McVeigh were  
19 doing from the fall of 1994 to the spring of 1995; and  
he  
20 surely didn't want to reveal the name "Havens," whether  
it was  
21 Joe, Mike, or Terry, because he knew that would lead  
the FBI to  
22 the purchase of 4,000 pounds of ammonium nitrate back  
in the  
23 fall of 1994.

24 When Mr. Nichols did talk about the storage  
sheds that  
25 he had rented, he told the FBI about the Council Grove  
storage

14387

1 shed No. 40, and he told them about the Herington  
storage shed.  
2 He told them that because he had seen -- he thought the  
FBI  
3 knew about some of the storage sheds when they came  
back and  
4 asked him during the end of the interview, but he never  
5 revealed Council Grove No. 37. Even though he told  
them about

6 No. 40, he never revealed No. 37; but again, that would  
have  
7 led the FBI to the robbery of Roger Moore and the  
storage of  
8 the stolen guns.

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

16 He definitely did not want the FBI to know  
about  
17 Michael Fortier, because he knew that Michael Fortier  
knew he  
18 was part of the plan. So when he talked to the FBI, he  
said he  
19 didn't know Michael Fortier's first name. You know  
that's not  
20 true because the book recovered from Mr. Nichols' house  
listing  
21 addresses shows on page 4 that he has Michael Fortier's  
first  
22 name and his full address. He was hoping beyond hope  
at that

23 time that the FBI would not be able to find Michael  
Fortier and  
24 determine that Terry Nichols had agreed with Timothy  
McVeigh to  
25 bomb and kill.

14388

1 And finally, after the F -- after he finally  
2 acknowledged at the end of his interview that he had  
tossed  
3 ammonium nitrate on his yard, he explained to the  
agents that  
4 the reason he did it, but didn't tell them about it  
initially,  
5 was because it would make him look guilty in front of a  
jury.  
6 Well, we all agree on that. It definitely makes him  
look  
7 guilty in front of a jury.  
8 He also said that anyone with ammonium nitrate  
on  
9 April 21st would have been a suspect in the bombing, an  
10 absolutely ludicrous assertion. Terry Nichols had this  
yard in  
11 front of his home on April 21st, 1995. He tossed that  
ammonium  
12 nitrate on there not to grow his grass, but to hide the  
13 evidence. And he knew the reason it would make him a  
suspect

14 was not just because he had ammonium nitrate in his  
house, but  
15 because he had virtually everything else anyone would  
need to  
16 bomb the Murrah Building.

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

23           He had ammonium nitrate in his home.

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

14389

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

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

5           He had the Bridges card, the card that showed  
all the

6 phone calls he made to further the plot.

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

8 you that he knew exactly what would happen if an  
ammonium

9 nitrate/fuel bomb was placed in front of a glass  
building.

10 He had Mr. Moore's guns and ammunition.

11 He had Mr. Moore's quilt and keys.

12 And he had Waco materials, showing how he felt  
about

13 the government's actions at Waco.

14 This list of incriminating evidence was found  
in Terry

15 Nichols' house. All of these items were there on April  
22d

16 when the agents searched his home.

17 Mr. Nichols was not a suspect because he  
tossed

18 ammonium nitrate on his yard or just because he had  
some

19 antigovernment literature in his home. He was a  
suspect

20 because of everything else that he had in his house and  
every

21 action he had taken from September of 1994 until April  
19,

22 1995.

23 In the face of this overwhelming avalanche of  
24 evidence, Terry Nichols presented a defense to you that  
was



25 meant to confuse and to throw blame once again onto  
someone

14390

1 else.

2 Ask yourself what type of man would raise the  
issue of

3 John Doe 2 and other sightings of a Ryder truck at  
Geary Lake.

4 This is the defense of a guilty man. Terry Nichols  
used

5 witnesses that he knew were mistaken. He knew that  
what they

6 were telling you could not be true. The best example  
of that

7 is when he called Germaine Johnston, a victim of the  
bombing,

8 in to testify before you, the most disingenuous type of  
defense

9 that you could have. Germaine Johnston had been in the  
10 building on the morning of April 19th, and she told you  
that

11 she was in shock, she was confused and traumatized, as  
anyone

12 would be by the bombing. But despite that, Terry  
Nichols

13 called her into this courtroom and had her tell you  
about how

14 she searched the streets looking for friends and family  
and how

15 she finally turned down an alley to look for her  
husband. She  
16 recalls that when she walked down that alley, she saw  
two men  
17 sitting near a Mercury at around 9:30 a.m., about 25  
minutes  
18 after the bombing, and that they talked to her and  
asked her  
19 about what had happened and asked her how many people  
had died.  
20 Terry Nichols knows that Mrs. Johnston could  
not have  
21 seen what she said. He admits that Timothy McVeigh was  
22 arrested in Perry, Oklahoma, 75 miles from the bombing  
scene,  
23 75 minutes after the bombing. For that to be true,  
Timothy  
24 McVeigh had to get in his Mercury Marquis and drive to  
Perry,  
25 Oklahoma, immediately after the bombing to arrive at  
the same

14391

1 time that Trooper Hanger arrested him.  
2 No one is here to criticize Ms. Johnston. She  
was a  
3 victim of the crime. But her recollections cannot be  
correct.  
4 Despite knowing that and despite knowing that it  
contradicts

5 his own theory, Terry Nichols brought her before you to  
somehow  
6 try and confuse you about what had really happened with  
Timothy  
7 McVeigh on that day.

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

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

20 One, we'll call the John Doe 2 category,  
Timothy  
21 McVeigh's phantom companion in Kansas and Oklahoma  
City.  
22 Geary Lake, where everybody sees a Ryder truck

at

23 different times but almost nobody sees it twice.

24 DRMO, where almost anything can happen except  
seeing

25 Terry Nichols.

14392

1 The Herington witnesses who showed you that  
Terry

2 Nichols was building an alibi, not building a life.

3 The witnesses called to impeach Roger Moore  
who proved

4 that no matter what else they think of Roger Moore,  
Roger Moore

5 got robbed.

6 The madman McVeigh witnesses, the people who  
said that

7 McVeigh had radical ideas and also told you that he  
wouldn't

8 stay friends with the people who didn't share those  
ideas.

9 And finally, the witnesses who confirmed that  
Michael

10 Fortier sometimes used drugs, something that the  
Government had

11 already told you during its case.

12 And what did you hear about these types of  
witnesses?

13 Let's start with the John Doe 2 witnesses. You've seen

the

John Doe 14 sketch. Everybody in America has seen the sketch of  
before 15 2, including all the witnesses that the defense paraded  
newspapers, 16 you. They had seen the television coverage, the  
told you 17 and seen the sketches of John Doe 2. Those witnesses  
18 some other things.

Sharen 19 Two of their witnesses, Mary Martinez and  
get 20 White, told you at that time, everybody else wanted to  
But in 21 involved and everybody claimed to have seen something.  
against 22 an attempt to divert you from the overwhelming evidence  
tales which 23 Terry Nichols himself, they brought you conflicting  
Martinez, John 24 could not possibly be true. According to Mary  
Ryder 25 Doe 2 is a fully erect Mexican midget who stood up in a

14393

was 1 truck. Sharen White, convinced that Timothy McVeigh  
told 2 staring at her going 55 miles an hour. Shane Boyd, who

3 you that it was some Hispanic male who was buying a  
Coke at the  
4 Dreamland; therefore, he must be John Doe 2. Rose Mary  
Zinn,  
5 who insulted everyone when she said the dark-colored  
man who  
6 came into her store was John Doe and he was going to  
rob her.

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

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

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

Nichols,

21 and this is the case where we evaluate the evidence  
against

22 Terry Nichols.

23 And if there were someone else involved, what  
evidence

24 has there been that anyone but Terry Nichols and  
Timothy

25 McVeigh bought the one ton of fertilizer on September  
30th?

14394

1 That alone tells you that Terry Nichols is guilty of  
the crimes

2 charged.

3 What evidence was there that John Doe 2 was  
involved

4 with the theft of explosives? You've seen evidence of  
Terry

5 Nichols, and finding him guilty of the theft of  
explosives is

6 enough showing that he agreed with Timothy McVeigh to  
bomb the

7 building to find him guilty of these crimes.

8 There was no evidence that anyone but Terry  
Nichols

9 and Timothy McVeigh were involved with the purchase of  
the

10 second ton of ammonium nitrate fertilizer on October  
18th.

Nichols 11 The same holds true for October 21 when Terry  
12 and Timothy McVeigh went to Ennis, Texas, to purchase  
the 13 nitromethane.

14 The only evidence that we have heard in this  
case is 15 that Terry Nichols was involved with robbing Roger  
Moore on 16 November 5th, 1994.

17 And if this phantom of John Doe 2 were to be  
charged, 18 could we charge him with April 14 when Terry Nichols  
was called 19 by Timothy McVeigh right before Timothy McVeigh tried  
to rent 20 the Ryder truck? No. The only evidence is that  
Timothy 21 McVeigh and Terry Nichols were together, making their  
final 22 plans. Stashing the getaway car on April 16? Which  
23 Mr. Nichols does not dispute that he was in Oklahoma  
City. He 24 and Timothy McVeigh were the only ones down there,  
planting the 25 getaway car.

14395

1 And finally, on April 18th, 1995, Terry



Nichols and

2 Timothy McVeigh were building the bomb to destroy the  
Murrah  
3 Building and kill 168 people.

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

9 The defense counsel told you to wait until the  
end to  
10 hear all the evidence, and they were right, because it  
was the  
11 last witness of the defense count -- case, Marife  
Nichols, who  
12 made you absolutely sure that Terry Nichols was  
involved in  
13 this plan from beginning to end. Marife Nichols told  
you Terry  
14 Nichols and Timothy McVeigh were best friends. Marife  
Nichols  
15 told you that Terry Nichols used false names. She told  
you  
16 that the two men were together in 1994 and that all of  
the  
17 coins in Terry Nichols' house belonged to him. She  
told you  
18 that Timothy McVeigh had never been to her house in  
Herington;

ski 19 that Terry Nichols had never scared her with a wig and  
separated 20 mask, and she told you that their family had been  
for seven 21 more than they had been together. She had been gone  
22 months during the time of the conspiracy.

returned the 23 She told you herself that Terry Nichols  
McVeigh. She 24 oil filter on April 15 that belonged to Timothy  
25 told you that Terry Nichols had lied to her about going  
to

14396

Josh 1 Omaha. She recounted for you the conversation with  
left him 2 Nichols when Terry Nichols turned his back on him and  
letter that 3 there on Easter Sunday. And she told you about the  
before 4 Terry Nichols had gotten from Timothy McVeigh the week  
5 the bombing.

McVeigh 6 She said to the best of her knowledge, Timothy  
of 7 had never called before April 17. And on the morning  
8 April 19, she had no idea where Terry Nichols was.

Nichols 9 She even told you that on the day that Terry  
10 spoke to the FBI, he was concerned about a fuel meter  
in his 11 garage as soon as he heard his name over the radio. He  
turned 12 and said, "I have to do something about that."

13 Marife Nichols told you that Terry Nichols  
gave her 14 money before they went to the police station and that  
only as 15 they were about to enter the doors did he finally admit  
that he 16 had lied about Omaha and that, in fact, he had been in  
Oklahoma 17 City on April 19 -- April 16, 1995.

18 And one small fact, maybe most telling about  
Terry 19 Nichols' story about building a life instead of  
building a 20 bomb, was when Marife Nichols told you that she had  
called to 21 arrange to leave the United States on the morning of  
April 21, 22 1995, to return to the Philippines. After being back  
with her 23 husband for just more than a month, she wanted to leave  
the 24 country and go back to the Philippines. Terry Nichols  
was not 25 building a life. He was building a bomb.

14397

1 Over the past few hours this morning, we have  
reviewed 2 an avalanche of evidence. Beginning with the fall of  
1994, we 3 know that Terry Nichols made a choice to quit his job  
and join 4 in this plan to bomb the Murrah Building and kill the  
people 5 inside of it with Timothy McVeigh.

6 The avalanche, the momentum of this evidence  
has been 7 apparent over the past few hours. When Terry Nichols  
and 8 Timothy McVeigh began on the road to destruction back  
in 9 September of 1994, they were together in central  
Kansas. At 10 each stop along the road, Terry Nichols made a choice,  
a choice 11 to participate in the plot to bomb and kill. He didn't  
just 12 happen to be Mr. Havens. He didn't just happen to rent  
three 13 storage sheds in false names. He didn't just happen to  
use the 14 Daryl Bridges phone card to obtain bomb components and  
he did 15 just not mistakenly rob Roger Moore.

16 Even at the end of the plan, the last few days  
of

17 April of 1994 (sic), Terry Nichols did not just run  
into  
18 Mr. McVeigh by chance. He did not just go to Oklahoma  
City to  
19 assist Timothy McVeigh without knowing what he was  
doing. Nor  
20 did he do anything but make a purposeful choice on  
April 18 to  
21 mix the bomb at Geary Lake. This wasn't a coincidence.  
Terry  
22 Nichols was in it every step of the way.  
23 When you all go back into the jury room to  
review all  
24 of the evidence against Terry Nichols, you will see  
that there  
25 is but one conclusion: Terry Nichols joined with  
Timothy

14398

1 McVeigh to bomb the Alfred P. Murrah Building and  
intentionally  
2 kill any federal workers and anyone else who was in  
that  
3 building on the second anniversary of Waco on April  
19th, 1995.  
4 The avalanche of evidence that we have  
presented  
5 against Terry Nichols can be displayed quite easily by  
just  
6 looking at the time, the place, and the distance. This

is a

7 map of America. From this, you can see the miles and  
miles

8 that Terry Nichols drove on the road to destruction to  
9 accomplish his task.

10 Back in the fall of 1994, all across America,  
citizens

11 were carrying out their daily rituals, tending to their  
12 families, and pursuing their interests with a sense of  
security

13 that no one from within their own borders would ever  
attack our

14 own citizens. Little did we know that in the middle of

15 America, in the middle of Kansas, Terry Nichols and  
Timothy

16 McVeigh decided to take action against the Government.

17 Look for a moment at this map. Look where  
Kansas is.

18 It's literally in the middle of America.

19 In the Heartland of America, in central Kansas  
in the

20 fall of 1994, no one thought twice about someone  
purchasing

21 4,000 pounds of ammonium nitrate. And why not? At  
that time,

22 people thought of Kansas as a place with friendly  
neighbors,

23 church picnics, and not having to lock your doors. No  
one

24 thought that central Kansas would be ground zero for a  
plan for

25 mass murder.

14399

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

7                   In response to this avalanche of evidence,  
Terry  
8                   Nichols is asking you to believe that he had no idea  
what  
9                   Timothy McVeigh was doing in the fall of 1994 or the  
spring of  
10                  1995. As many have said before, a picture is worth a  
thousand  
11                  words and if we take a look at a picture of Kansas, we  
can see  
12                  what was happening during that time.

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

on

16 April 17th.

17 Just due north and east, in Manhattan was  
where many

18 of the phone calls were made, including the contacts  
between

19 Mr. Nichols and Mr. McVeigh concerning the Roger Moore  
robbery.

20 Coming south, in Council Grove was where Mr.  
Nichols

21 rented the storage sheds to store the bomb components  
and the

22 stolen weapons.

23 Making a circle back around and south, in  
Marion,

24 Kansas, was where the quarry was robbed of the  
explosives that

25 Terry Nichols and Timothy McVeigh needed for the bomb.

14400

1 And over here to the west, in McPherson,  
Kansas, was

2 where the 4,000 pounds of ammonium nitrate were  
purchased.

3 And in the center of all this activity is  
Terry

4 Nichols. Terry Nichols in Herington, Kansas. Right in  
the

5 middle of all the bombing activities.



6 Out of anywhere in America, ladies and  
gentlemen,  
7 virtually all of this activity was occurring right  
around  
8 Mr. Nichols. Terry Nichols was there not by chance and  
not  
9 because of coincidence, but because he chose to attack  
his  
10 country and kill his fellow Americans. In the face of  
this  
11 simple but overwhelming picture, Terry Nichols asks you  
to  
12 believe that he had no idea what was going on. When  
you  
13 consider all of the evidence and you look at all the  
facts that  
14 support the charges against Mr. Nichols, you will see  
one clear  
15 picture. You will see that Terry Nichols knew exactly  
what he  
16 was doing. You will see that Terry Nichols had a plan.  
This  
17 was a plan that he believed in, that he was committed  
to, and  
18 that he carried out.

19 Early on the morning of April 19th, the  
citizens of  
20 Oklahoma, located just south of Herington, Kansas, had  
no idea  
21 of what tragedy was about to befall their city that  
morning.  
22 Helena Garrett rushed off to work to drop off little  
Tevin at

idea what 23 the day-care center in the Murrah Building, having no  
Kansas. 24 Terry Nichols and Timothy McVeigh had done in central  
night on 25 Nor did Agent Luke Franey who had worked late into the

14401

19th to 1 April 18th and had come in early on the morning of the  
Alfred 2 write up an arrest warrant. None of the people in the  
and 3 P. Murrah Building, none of the innocent men, women,  
McVeigh 4 children had any idea what Terry Nichols and Timothy  
5 had planned for them that day.

safe at 6 As Timothy McVeigh drove south on I-35 towards  
massive 7 Oklahoma City from central Kansas and Terry Nichols was  
Nichols 8 home with his family, far from the target of their  
9 ammonium nitrate bomb, Terry Nichols waited. Terry  
Brown, to 10 knew what was about to happen to Agent Cindy Campbell-  
the 11 Paul Broxterman, and Agent Paul Ice, Donald Leonard of  
Claude 12 Secret Service, Mickey Maroney, Kenneth McCullough,

13 Medearis of the Customs Service, and Secret Service  
Agent Alan

14 Whicher.

15 Terry Nichols knew that many, many lives would  
be lost

16 in Oklahoma City on the morning of April 19th, 1995.  
Just the

17 way he planned it.

18 THE COURT: Members of the jury, we're going  
to take a

19 few minutes' recess here in between to give an  
opportunity to

20 rearrange things and prepare for hearing arguments from  
defense

21 counsel. And of course, during this time, you will  
continue to

22 keep open minds, recognizing, as I said, that you've  
heard only

23 from one side now on arguments, so please wait till  
you've

24 heard it all, including what I'm going to tell you  
about the

25 law. So we'll expect maybe five or ten minutes. Will  
that be

14402

1 sufficient to rearrange things?

2 MR. TIGAR: Yes, your Honor.

3 THE COURT: All right. And we'll let you know  
when

minds and  
all  
minutes.

4 we're ready to proceed. So again, please keep open  
5 avoid discussion of the case among yourselves and with  
6 others. You're excused now. Be ready in five or ten

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

argument,  
9

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

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

Government  
it is an

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

14 MR. TIGAR: Thank you, your Honor.

short

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

17 (Recess at 1:59 p.m.)

18 (Reconvened at 2:07 p.m.)

19 THE COURT: Be seated, please.

20 Ready?

21 MR. TIGAR: Yes.

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

we'll

23 THE COURT: All right. Members of the jury,  
24 hear from the defense. Mr. Tigar.

14403

1                   MR. TIGAR: May it please the Court, Mr.  
Nichols,  
2                   Counsel, members of the jury.  
3                   I want to thank you for listening to us, for  
taking  
4                   time away from your lives and work over the past  
several months  
5                   to listen to the evidence; and now I'm going to ask you  
one  
6                   more favor, if I may. It may be that you, after three  
hours  
7                   and a half or three hours and 45 minutes of Government  
8                   counsel's summation, looked inside yourself and said,  
well, how  
9                   in the world are they going to answer that? And I'm  
going to  
10                  ask you a favor. I'm going to ask you to let me start  
with a  
11                  clean page.  
12                  You know, I -- when my two older kids were  
younger,  
13                  sometimes they'd fight and I'd go into the next room  
and I'd  
14                  turn to John, and I'd say, "John, what happened?"  
15                  And he'd tell me some version, and then I'd  
turn to

16 Katie and I'd say, "What happened?"  
17 And she'd start to tell me, and I'd start to  
interrupt  
18 her, say, "Well, that's not what I heard."  
19 And then I realized that I wasn't really being  
fair to  
20 John or to Katie unless you heard each one of them out  
right  
21 from the beginning before I tried to unravel whatever  
it was  
22 was the difficulty. So I'm asking you that favor as  
Ron Woods  
23 and I try to talk about the evidence that's been  
received here.  
24 I'm going to talk for a while, Mr. Woods will  
talk for  
25 a while, and then I'll try to sum up. But one of the  
things

14404

1 that we're going to emphasize here is that we don't  
have a  
2 burden of proof here.  
3 The Judge is going to instruct you at the end  
of the  
4 case that if there are two possible interpretations of  
the  
5 evidence, you must of course choose that which results  
in an

6 acquittal. And throughout this talk that I'm going to  
have, I  
7 may refer to things the Judge is going to say. Well,  
let it be  
8 understood that we have some idea of what the Judge  
will tell  
9 you. I'm going to paraphrase. What the Judge is going  
to say  
10 is what the Judge is going to say. So you'll hear it  
from him.

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

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

22 And I will say that when you look at the  
testimony of  
23 the 92 witnesses that we brought, those witnesses were  
selected

24 by Ron Woods and me. If there's a personal attack to  
be done

25 here, which was made by the prosecutor, it is a  
personal attack

14405

1 on us. We, as lawyers charged with a certain  
responsibility,

2 selected witnesses and we brought them here, just as  
the

3 Government must bear responsibility for the witnesses  
that they

4 brought and for what those witnesses did or didn't say.

5 We have this idea of reasonable doubt because  
it seems

6 as a country that it's served us very, very well. The  
people

7 who founded this country were no strangers to  
controversy, and

8 they were no strangers to social danger, having created  
some of

9 it, themselves. They knew that the surest and best way  
to

10 guarantee the liberty of citizens was that make sure if  
the

11 Government brought charges, they had to prove them. If  
there

12 was a doubt, there had to be an acquittal.

13 It must be difficult in this case, as I said  
in the



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

14406

1 And having lived and taught as a law teacher  
and  
2 practiced some in five countries, where in every one of  
which  
3 except our own this system doesn't work, they don't

have it, I

power 4 think that we appreciate on our side of the aisle the

5 that you have in your hands and the responsibility.

going to 6 The evidence in this case -- the Judge is

it 7 tell you about it and tell you about how to choose when

that is, 8 seems to point both ways. Circumstantial evidence --

phone call 9 evidence that somebody checked in a motel or made a

discuss -- 10 or did this, yes, even fingerprint evidence as we'll

Watson, 11 that circumstantial evidence, Sherlock Holmes once told

here and 12 is kind of like a stick on the ground. If you stand

but if 13 look, it seems to point there just as sure as could be;

exactly 14 you walk around the other side and look, it points to

15 the opposite direction.

summation, 16 So let me -- let me begin. During this

is to 17 we're not going to use any demonstrative evidence; that

18 say, we're not going to use any charts or diagrams or

those 19 summaries. Why not? Because I tell you frankly that

because they 20 charts or diagrams or summaries can mislead you,

as 21 represent selections by lawyers, not in bad faith, but  
you ought 22 advocates, trying to advocate a position, as to what  
23 to pay attention to.

exhibits 24 We're going to try to show you some of those  
example, do 25 that you'll have the opportunity to look at. For

14407

about 1 you remember during the testimony of the witnesses  
Yellow Pages 2 Kansas, when you saw pages from -- pieces from the  
These 3 and arrows and phone calls and so on, all being made?  
you saw 4 were demonstrative exhibits, those were charts. And  
in your 5 some other charts and diagrams of phone calls. Well,  
Exhibit 6 jury room, when you go to look, you'll have Government  
put my 7 553. That's every single one of the 600 and -- let me  
-- 685 8 glasses on here. I thought it was 684, but I'm wrong  
single 9 calls made on the Daryl Bridges telephone card, every  
10 one, so that you can look at them.

The  
their  
3-second  
was 6  
be a  
calls that

11 Now, you recognize that, as the man said from  
12 Spotlight company, that they might have missed some,  
13 computer could miss some. You recognize if you see a  
14 call, that 3 seconds is a tick in there, so maybe it  
15 seconds. It might even be zero seconds. There could  
16 mistake there. But that summary shows you all the  
17 the Government is able to trace.

because the  
somebody  
places  
page 51,  
Michael  
made at  
Racing

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

1                    Now, you've had a witness from VP Racing Fuels  
-- we  
2                    from the defense called him -- who was Glynn Tipton;  
and what  
3                    did he say? "I got a call," he said, "and then  
thereafter, the  
4                    man who called and said he was John showed up at a race  
and  
5                    came up to me and that he was Tim McVeigh and he wanted  
to buy  
6                    racing fuel."  
7                    So if all you had were calls that supposedly  
were made  
8                    from Terry Nichols' house, you might get the idea that  
maybe  
9                    Terry Nichols might have some knowledge of that. Of  
course, if  
10                    you looked at the whole pattern of calls that were made  
during  
11                    that time that McVeigh was staying, you would see that  
even  
12                    that is an inference that wasn't supported by the  
evidence.  
13                    And why not? Because all of the calls were made during  
times  
14                    that Mr. Nichols were expected to be out working for  
15                    Mr. Donahue. As soon as it gets close to the noon  
hour, the  
16                    phone calls stopped, and Mr. Donahue says and Marife  
Nichols  
17                    says that Terry Nichols worked pretty much from 8:00 in  
the  
18                    morning till the sun went down.

19 Is there another illustration of how the  
overuse or

20 misuse of an exhibit might lead you to the wrong  
conclusion?

21 Well, I think there is. Let's look in 553 somewhere.

22 Here is September 24, 1994. This is a call  
from

23 Mr. Nichols' house in Marion, Kansas. There it is,  
Terry

24 Nichols' house, but the times are 11:59, and then it  
stops and

25 starts up again at 1:38. And who's being called?  
William

14409

1 McVeigh, Greg Pfaff, Brooklyn Deli, Brooklyn Deli,  
Brooklyn

2 Deli.

3 Now, Greg Pfaff, who also owns the Brooklyn  
Deli, came

4 in here and testified. Who called Greg Pfaff? Timothy  
McVeigh

5 called Greg Pfaff. Did he say anything about Terry  
Nichols?

6 Did he say anything about a plot? No. Timothy McVeigh  
called

7 Greg Pfaff. And what did he call him for? He wanted  
to buy

8 det cord from Greg Pfaff. So looking at these records  
and

9 putting it together with the witnesses who testified  
who can  
10 remember about the calls, you can see who did what. No  
leap of  
11 faith is required. No imagination is required. No  
speculation  
12 is required.

13 Here's another one. Here is from 1:51 p.m. on  
the

14 28th of September, 1:51 p.m., the home of Terry  
Nichols, but

15 it's the afternoon. Terry Nichols is working. Who  
gets

16 called? Rosewood Signs, Tonawanda? No, no. Who is  
Rosewood

17 Signs in Tonawanda, New York? That's Tim McVeigh's  
friend,

18 Dave Darlak. And Tim McVeigh is looking for racing  
fuel. So

19 what we ask you to do, if you will, is to consider the  
real

20 evidence, not the charts, not the summaries, not some  
21 advocate's view, not my version, even. I don't ask you

to take  
22 it from me. Don't take anything I say or that Ron

Woods says  
23 without looking in the evidence to see if it's there

and making  
24 up your own mind about whether it fits.

25 There's another example of that. You might  
have

14410

1 wondered why in the world somebody would ask Agent  
Jasnowski,

2 "Did you find something in Terry Nichols' trash?"  
Well, you

3 found out.

4 Here is Government Exhibit 352, which in a  
chart, was

5 put up on here as though that's a map of downtown  
Oklahoma City

6 that was found in Terry Nichols' trash. That's what  
counsel

7 said. Well, let's take a look at that assertion.  
First, are

8 there fingerprints on it? No. Yet it was wadded up  
and bound

9 up and so on. There aren't even finger smudges on it.  
Does it

10 match the kind of diagram that Terry Nichols made when  
he drew

11 a chart of his house? No. Is there handwriting on it?  
Yes.

12 Does it match Terry Nichols' handwriting? No.

13 And most important of all, Government counsel  
referred

14 to this, but I'm going to turn it around, zoom in.  
This says

15 18th. There is no 18th Street in downtown Oklahoma  
(sic). All

16 the streets are 5th and 6th and 7th. Then over here it



says

17 24. There is no 24th Street in downtown Oklahoma  
(sic). And  
18 you'll have this. It's Government Exhibit 352. You'll  
have it  
19 in evidence. You were told that this deal, whatever it  
is,  
20 which is not in Terry Nichols' handwriting and which  
doesn't  
21 have anybody's fingerprints on connected with the case  
and  
22 which was found in a trash can in an alley behind his  
house all  
23 wadded up, somehow is a route.

24 Well, first, here's an arrow. Look right  
here.

25 Here's an arrow, but it only goes one way. The street  
happens

14411

1 to be a two-way street. Here's another arrow. It goes  
one  
2 way. That street happens to be a one-way street,  
according to  
3 the Government. So one arrow means two ways on one,  
but it  
4 means one way on the other, if we take the Government's  
5 interpretation.

6 There's more.

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

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

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

20                  Now, when you look at the telephone card  
exhibit --  
21                 that's Government Exhibit 553 -- you will see 685  
telephone  
22                 calls. You'll see that it was purchased in the name  
"Daryl  
23                 Bridges"; and talked about this in opening statement,  
way back  
24                 in 1993 before anybody says there was a conspiracy to  
do

was 25 anything. It was bought at a time when James Nichols

14412

Nichols, 1 hosting in Michigan. At his house was living Mrs.

there 2 Marife, and Terry Nichols; and Timothy McVeigh had come

3 and would stay and work for a while and then leave.

4 You can start with the very first call that

Desert 5 Mrs. Nichols was shown. She called the place in Palm

they were 6 where her aunt was working, and that was done while

country. 7 leaving the Nichols farm on their way back across the

make 8 Then you can start to see Timothy McVeigh using it to

represents by 9 calls of his own. You can see 117 calls, which

time and 10 far -- even though there's 685 -- the majority of the

Nichols 11 a majority of the money, to the Philippines. When Mrs.

Nichols 12 was out of the country, this was the card that Terry

Torres 13 used to keep in touch with her. The Nicholises and the

phone. 14 family -- that's Marife's parents -- they don't have a

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

21 You might notice, then, that this document,  
Government  
22 Exhibit 553, will help you to see what Timothy McVeigh  
was  
23 doing when Terry Nichols was out of the country,  
because you'll  
24 see the last call Terry Nichols made on November the  
21st,  
25 1995 -- 1994, and you'll see him come back to the  
United

14413

1 States.  
2 What happens to The Spotlight card? Calls 222  
through  
3 300 on The Spotlight card show you Timothy McVeigh  
calling  
4 David Paulsen over and over and over again, and why?  
David

5 Paulsen's testimony was read to you because he was  
unavailable  
6 as a witness. But what he said was that Mr. McVeigh  
was  
7 calling him. Mr. McVeigh wasn't saying, I've got a  
friend  
8 Terry Nichols. Mr. McVeigh wasn't saying anything  
except,  
9 "I've got blasting caps I want to sell you for between  
3,000  
10 and \$5,000. I want to trade TNT for those blasting  
caps. How  
11 about it."

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

14 Then you see all of the calls made from the  
Nicholas's  
15 house. Why is that significant? It tells you  
something about  
16 Timothy McVeigh. I mean it was represented that it was  
unusual  
17 for Timothy McVeigh to stay with people. Miss Nicholas  
pointed  
18 out -- she said, "Well, he came. Kevin was neighborly.  
Kevin  
19 went and got him when his car had problems and towed it  
back.  
20 Here's a picture of the car." It's all right for the  
21 Nicholases to be neighborly when somebody called,  
apparently,  
22 and then Tim stayed for a month. Stayed for a month.

They

all had 23 weren't particularly good friends, but I guess we've  
24 houseguests like that. But he sure did outstay his own  
25 welcome. And while he did so, you can see he used the

14414

call 1 telephone over and over and over again, principally to  
2 David Paulsen and other sources of supply. This is at  
a time 3 when Terry Nichols is in the Philippines.

evidence 4 So once again, I urge you to look at this  
and what 5 because it's going to help you see who was where when  
6 they were doing.

at: The 7 The next thing that I want to ask you to look  
8 Judge is going to instruct you -- and you'll have  
copies of the 9 Judge's instruction in this case. He's going to tell  
you the 10 elements of the offenses; that is to say, what the  
Government 11 has to prove beyond a reasonable doubt. And he'll tell  
you 12 that if the Government's proof fails as to any element  
of any

13 offense or charge, you have to acquit as to that.  
He'll also

14 talk about reasonable doubt, and he'll give you some  
15 instructions on how to view the evidence.

16 This is not . . . it's not an unguided  
determination;

17 that is to say, you have all the power. No question  
you've got

18 the power. But you also took an oath. I'm not  
insulting you

19 when I say that. I took one to be a lawyer. You took  
a

20 couple. You know, that's what we do.

21 And in the instructions, the Judge will say in  
22 essence, when you get back to the jury room, there's  
certain

23 ways to look at certain witnesses and certain kinds of  
24 evidence. For instance, he'll tell you how to view the  
25 evidence of Mr. Nichols' encounter with the FBI during  
the

14415

1 nine-and-a-half hours. He'll tell you how the law  
makes

2 allowance for somebody who might be in unfamiliar  
surroundings

3 during those nine-and-a-half hours, what you're  
supposed to do

4 with that. You know, I'm the last person in the world

that has

5 any right to upstage. Those instructions will be there  
and

6 you'll have them.

7 The other thing the Judge is going to tell you  
is when

8 you have somebody like Michael Fortier, there are  
special rules

9 that apply to what he says; and with very good reason  
indeed.

10 So let me turn to Michael Fortier. Michael  
Fortier

11 came here. He admitted that he never heard Terry  
Nichols say

12 I'm going to blow up a building. He never heard Tim  
McVeigh

13 say that Terry Nichols was going to blow up a building  
at a

14 time when Terry Nichols was standing close enough to  
hear it so

15 that he could deny it.

16 I wonder what you have to do to have a  
prosecutor

17 stand up and call you a truthful person. We have heard  
the

18 prosecutors tell you that you shouldn't believe anybody  
who

19 didn't come forward, having seen a Ryder truck at Geary  
Lake,

20 until the FBI set up a roadblock and then stop people  
and ask

21 them. Well, what is the purpose of a roadblock to  
interview



you're 22 witnesses if, after you've interviewed all of them,  
that 23 going to say that because you stopped at the roadblock,  
24 you're not to be believed?  
25 You have heard the prosecutor tell you that if

14416

newspaper 1 somebody had the opportunity to read something in the  
believe 2 and then later came in and testified, that you can't  
it in the 3 them as much because, after all, they might have read  
4 newspaper.

shouldn't 5 You have heard the prosecutor say that you  
want their 6 believe somebody because, after all, everybody might  
7 moment of fame and maybe they're doing it for that.

prosecutor's 8 What do you have to do to gain the  
jury? 9 approval as someone whose words can be believed by a

because the 10 Well, let's see what Michael Fortier did,  
Michael 11 prosecutors have said that you're supposed to believe  
12 Fortier. Now, Lori Fortier did not testify. That's

all right.

13 They have the option.

14 And I want to say as we go through this that  
the Judge

15 is going to say over and over, we never -- we do not  
have a

16 burden of producing any evidence or calling any  
witnesses. Not

17 our burden. It's their burden of proof. And if  
somebody gets

18 back in that jury room and says to you, well, by golly,  
why

19 didn't the defense explain this, why didn't the defense  
explain

20 that, I hope that you'll be able to turn to them and  
say, well,

21 wait a minute, you've got it backwards, the question is  
can the

22 Government prove this and did they prove it beyond a  
reasonable

23 doubt.

24 Michael Fortier is the only witness who says  
he ever

25 heard anybody say that they wanted to bomb the Murrah  
Building.

14417

1 As I said, Terry Nichols wasn't there.

2 His testimony was bought and paid for. It was

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

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

15 On redirect examination, when the prosecutor  
asked  
16 him, "You didn't have any barrels, did you," he said,  
"No,  
17 except for the three 55-gallon barrels that I had in  
back of my  
18 house." Barrels that are never tested by the  
Government.

19 Nobody cut a piece out of his and sent them up to Tony  
Tikuisis  
20 in Canada. This is a man that had this Primadet that

talk 21 Mr. McVeigh gave him that we'll talk about more when we  
22 about fingerprints -- this is a man that had guns that  
23 Mr. McVeigh gave him to sell. This is a man that has  
ammonium  
24 nitrate. This is a man that has blasting caps. This  
is a man  
25 who helps Mr. McVeigh get false ID. This is a man who  
heard

14418

1 about the plan. This is a man who, contrary to what  
the  
2 prosecutor said, never told you that there was a test  
blast  
3 involved, never used those words. He said Tim and  
Terry were  
4 going out in the desert, said they were going to do  
something,  
5 never called it a test blast. This is a man who was  
offered  
6 \$10,000 and then lied to by Tim McVeigh 'cause he never  
got his  
7 10,000 to drive and case the building and get the guns,  
this is  
8 a man who says he saw Storage Unit No. 2 in Herington,  
Kansas;  
9 and when the door was opened, he looked inside and all  
he could  
10 see were mattresses, mattresses.

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

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

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

24 First, in the wake of the bombing, on the 21st  
of  
25 April, 1995, according to Patty Edwards, whose  
testimony was

14419

1 presented to you through a summary, an affidavit that  
she had

2 signed, Mr. Fortier came out of his house and went next  
door to  
3 James Rosencrans's house, another one of his dope-  
dealing  
4 friends. You remember Rosencrans. He and Michael  
Fortier had  
5 been up all night the night of the 18th and 19th and  
saw the  
6 pictures of the Oklahoma City bombing shortly after it  
happened  
7 because they hit the wrong button on their video game  
that they  
8 had been playing and it switched over to the regular  
9 television. On the 21st, Fortier goes over to  
Rosencrans's  
10 house, and Patty Edwards hears him say, "Tim's the one  
who did  
11 it. Tim's the one who did it."

12 Now, after that, Michael Fortier begins to  
hear his  
13 name, and he begins to get a lot of newspapers. We're  
not  
14 talking about somebody who heard about a terrible event  
and  
15 bought all the newspapers at their local store. We're  
talking  
16 about a fellow who for days and days and days and weeks  
and  
17 weeks and weeks is able to follow on newspapers and  
television  
18 exactly what law enforcement is doing, who's been  
arrested,

19 what the evidence is, all of that information,  
gathering it bit

20 by careful bit.

21 And what's he doing while he's gathering all  
the

22 information bit by bit? Is he going to the police  
station to

23 tell them what he knows? Well, he's going to the  
police

24 station, but he's bragging to his friends that he  
stands toe to

25 toe with the FBI agent and tells them things, and on  
his phone

14420

1 that the FBI agent had a tap on using all those  
colorful

2 methamphetamine-esque language and four-letter words  
and so on.

3 And then as he talks, he begins to see that there's a  
future

4 for him in this, not a future going to law enforcement  
and

5 telling them what he knows, not a future telling about  
some

6 storage shed in Arizona so they could maybe test that  
in any

7 kind of a hurry, not a future telling about any guns in  
his

8 house, not a future telling about Primadet, not a  
future

wasn't 9 telling what he knows about Tim McVeigh because he  
10 telling that. No, he's got a future.  
11 And he told you what that future was. "I'd  
sit there 12 and pick my nose and flick it at the camera, flick it  
and then 13 kind of wipe it on the judge's desk. Yeah, really, ha-  
ha; or 14 'Wait, just a second, pull my finger,' to the lawyer  
asking me 15 questions, 'Come here, pull my finger. I'm the key,  
the key 16 man, the head honcho, Colonel Klink.'"  
17 Well, you heard the tapes. I don't have to  
replay 18 those, and I don't intend to. This is a man who  
speculated 19 about getting a cool million. This is a man who had  
bad words 20 to say about CNN because he (sic) didn't pay them  
(sic). This 21 is a man who talked about book contracts and movie  
contracts 22 and all the rest of it. And this is a man who the  
Government 23 says is the witness that you're supposed to believe.  
Because 24 why? Because he's the only one who ever says that he  
heard 25 Timothy McVeigh say, "Yes, I'm going to go and bomb  
that Murrah



14421

anybody 1 Building." And he's the only one who ever heard  
Murrah 2 attribute to Terry Nichols the desire to bomb the  
kind of 3 Building, not talking about heard Terry Nichols in some  
4 political talk, however radical.

instruct 5 That's another thing the Judge is going to  
from this 6 you. Political talk, I can stand out here 500 feet  
think 7 courthouse and say from now until next Tuesday that "I  
part -- 8 the Government should be overthrown." And that's a  
City 9 that's a part of America. And I can stand over in the  
unrest." 10 Park and I can say that "I think there should be civil  
that has 11 I can even say that "I hope that somebody that took --  
tradition, 12 a gun might use it." You know, that's a part of the  
13 the history of our country.

thing. You 14 No, we're not talking about that sort of  
of the 15 know, back in 1800, John Adams, who was the President

16 United States, was on his way up to a meeting in New  
Hampshire  
17 to dedicate a ceremonial cannon, and there was a guy  
that said  
18 he hoped it would go off and scorch the president's  
pants.  
19 Well, that fellow was prosecuted, and the Senate of the  
United  
20 States was so outraged, they almost impeached the judge  
that  
21 had convened the grand jury.

22 No. In America, we're used to wide-open  
discourse;  
23 that's not what we're talking about here. We're  
talking about  
24 the fact that Michael Fortier was presented to you as a  
witness  
25 who says he heard something. Now, in order to believe  
what

14422

1 Michael Fortier says, you have to believe two people.  
One is  
2 that Michael Fortier ever heard it. And second of  
course, you  
3 have to believe that Timothy McVeigh, the person he  
says said  
4 it, was telling the truth.

5 Well, what motive would Michael Fortier have?  
Well, I

6 told you about the conversation Michael Fortier  
admitted that  
7 the FBI told him on May the 17th, 1995. "We don't need  
you to  
8 get Tim McVeigh."

9 What was the relationship between Fortier and  
McVeigh?

10 Why was Fortier so anxious to ingratiate himself once  
he felt

11 the noose tightening? Well, McVeigh had lived in his  
house for

12 weeks and weeks and weeks, repeatedly. McVeigh had  
made free

13 with his phone. The two of them had called Walter  
Bassett

14 about forming a militia.

15 When Fortier was first asked: "Who might have  
been

16 accomplices to Timothy McVeigh," he said, "Well, Bob  
from

17 Arkansas, or James Rosencrans."

18 Now, I'm not going to spend a lot of time  
talking

19 about Dr. Michael Abrams. You heard him. He's treated

20 thousands of patients with methamphetamine usage. He  
can tell

21 you what the symptoms are. And the Judge is going to  
tell you

22 that you look at the testimony of somebody who uses  
dope or

23 uses methamphetamine, this particular drug, this drug  
that

24 keeps you up all night, this drug that causes you to  
25 hallucinate, this drug that causes your perceptions of  
reality

14423

1 to be distorted.

2 He does tell us -- and we know because we can  
3 corroborate it -- Timothy McVeigh lied. He helped him  
get  
4 false ID. Timothy McVeigh, he says, he thought was a  
thief.

5 Timothy McVeigh, he says, wanted to max out credit  
cards and  
6 not pay them back. Timothy McVeigh was a junk-food  
addict.

7 Timothy McVeigh used the Fortiers as a place to stay  
and a  
8 place to use their phone. Timothy McVeigh, Mr. Fortier  
knew,

9 had tried to recruit Rosencrans. Now, that's  
corroborated by

10 Rosencrans himself, who says that McVeigh wanted  
Rosencrans to  
11 do some driving for him.

12 Don't make a mistake here. Who is it that's  
being

13 selective? Michael Fortier says that Timothy McVeigh  
says that

14 he and Terry wanted to do something violent, blow up a

15 building. Are we supposed to believe Timothy McVeigh  
when he  
16 says that and not believe everything else Timothy  
McVeigh said?  
17 What is there that corroborates Mike -- that version of  
events?  
18 Nothing. Nothing. Not even any evidence that Terry  
Nichols  
19 was in a position to hear any such things, had it been  
spoken.  
20 And what is it that contradicts it? What  
contradicts  
21 it is that in March of 1995, Fortier says McVeigh was  
getting  
22 desperate. How desperate? So desperate that Fortier  
and  
23 Mrs. Fortier were scared and Michael Fortier carried a  
gun  
24 whenever he went to see him.  
25 How desperate? He tells Michael Fortier:  
"Terry

14424

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

5 thing.

6 And there's something else that you can use as  
an --

7 in an effort to find out who's telling the truth and  
who's not.

8 Let's go back to Government Exhibit 553, page 65, and  
watch

9 what happens.

10 Do you remember what Michael Fortier told you  
about

11 sometime before October 31? He said Tim McVeigh came  
by his

12 house and said, "I'm waiting for Terry."

13 "Doggone it, he's not here."

14 The prosecutor referred to this episode in  
closing

15 argument. "When he gets here, you tell him to take the  
stuff

16 out of the shed and meet me in New Mexico." Michael  
Fortier

17 told you under oath that was at 20 minutes after 4. It  
was

18 about 4:00 when McVeigh left, and it was about 20  
minutes later

19 that Terry Nichols arrived. And Fortier says, "I gave  
him a

20 key that McVeigh had given me."

21 Here's a call in the morning. This is the  
29th of

22 October. It's the only relevant date. Here's a call  
in the

Leonard 23 morning at 9:52. Michael Fortier's house to Lana and  
24 Padilla. Now, Lana Padilla is Terry Nichols' former  
wife.  
25 It's a place where he sometimes would stay when he was  
visiting

14425

1 his son, Josh.  
2 Then there's another call from Las Vegas,  
Nevada, to  
3 Michael Fortier's house. The only person in Las Vegas,  
Nevada,  
4 who ever is shown to call the Fortiers' house, because  
he was  
5 at that time working with Timothy McVeigh in the gun  
show

6 business, is Terry Nichols. It's the only one.  
7 And that call is made at 5:58 p.m. Central  
Daylight  
8 Time. And Las Vegas is 90 miles away from Kingman,  
Arizona.

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

11 Michael Fortier? Michael Fortier? I asked  
him:

12 Michael -- or Mr. Fortier, you went to the FBI, you  
stood on  
13 the balcony of the motel in Oklahoma City. You had an

14 epiphany, sir -- I don't know that he knows what an  
epiphany  
15 is, so I didn't ask him if it was a epiphany; but he  
had some  
16 kind of a conversion -- and you told the FBI that you  
wanted to  
17 tell your story. And then you went back in the room  
and you  
18 talked about it some more, and the FBI agents left  
afterward.  
19 Then they came back, and then you turned to your wife  
and you  
20 said, "You tell yours first," and he told his. And  
when he  
21 told his, he admitted he didn't put Terry Nichols in  
it.  
22 Here's a guy who claims to have had a conversion.  
23                 Conversions should be made of sterner stuff.  
And when  
24 asked, he said: Well, I decided I'd keep on lying  
about that.  
25                 Michael Fortier. The Judge is going to tell  
you that

14426

1 a reasonable doubt is a doubt that would cause you to  
hesitate  
2 in the more important affairs of your everyday life.  
Words  
3 like that. Let's think about it. You open your door.



There's

4 Michael Fortier. "Good morning," you say.

Fortier. 5 "Good morning," he says. "I'm Michael

6 There's been a car accident down at the end of the  
street. You

7 really ought to go look."

before. 8 "Well, I'm sorry, sir, but I've never met you

9 And besides that, I've got my kids here."

your 10 "Well, that's all right. I'll take care of

11 kids."

a little 12 Well, that's an important decision. "Tell me

13 bit about yourself."

taking 14 "Well, I certainly won't fall asleep while I'm

under 15 care of your kids, because I've been up for three days

learned 16 the influence of methamphetamine, and I have actually

haven't 17 about a plot to blow up the Murrah Building. But I

million, 18 really sold my story on that yet. I'm waiting for my

million, 19 which means I'm a solid citizen, because when I get my

little fast, 20 I'll be a qualified person. I know I'm talking a

21 but it is the influence of the drug that I am taking."

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

24                   In that important decision as to whether to  
leave your  
kids, I  
25 house for 20 minutes with that guy in charge of your

14427

1 submit, members of the jury, that no sensible person  
would do  
2 it. Hesitate in the more important affairs of one's  
everyday  
3 life indeed.

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

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

11                   No, sir.

12                   Did he ever say he'd robbed anybody?

13                   No, sir.

Nichols 14 Did Mr. McVeigh ever say within earshot of Mr.

15 that Mr. Nichols was going to rob anybody?

16 He did not.

Nichols 17 Did Mr. McVeigh ever say within earshot of Mr.

18 that Mr. Nichols had robbed anybody?

19 No, sir.

Nichols that 20 Mr. McVeigh never said in earshot of Mr.

21 Mr. Nichols planned to explode anything in a way that  
was going

22 to hurt anybody; correct?

23 That is correct.

24 And Mr. Nichols never said that he was going  
to

25 explode anything in a way that was going to hurt  
anybody;

14428

1 correct?

2 Correct.

3 That's just a part.

4 I want to spend a few minutes and talk about  
the

5 scientific evidence. The Judge is going to tell you  
that in

6 many, many cases, we hear from scientists. We hear

from people

7        who are experts, and you're free to disregard their  
testimony

8        if it doesn't make any sense. And I want to talk a  
little bit

9        about that, because when I'm through with topics -- and  
Ron and

10       I have talked -- then I want to put together some  
chronology,

11       but I want to talk about the science because the  
Government

12       spent so much time on it.

13                    Now, we all know what science is. In our  
daily lives,

14       we know what science is. We rely on it. I mean, for  
heaven's

15       sake, we go to the doctor. The doctor takes a blood  
sample or

16       a urine specimen. Hey, we rely -- hey -- the  
container's clean

17       and it's the right kind of container. The needles are  
clean;

18       we rely on that. The sample is handled in a way to  
make sure

19       it's not altered before it gets to the lab, because if  
it's

20       mishandled, then we might be called back. We rely on  
the lab

21       to do a good job, to handle it right. So that's a part  
of what

22       we think of as science.

23                    Then there's a whole 'nother part, and that's  
science

it's not 24 is supposed to assure us that when we see something,  
based on 25 accidental. All right? That is to say that it is

14429

mother's 1 something. If you step on a crack, you'll break your  
you'll 2 back. Well, maybe you will and maybe you won't. If a  
3 scientist wanted to prove that if you step on a crack  
many 4 break your mother's back, we'd have to observe many,  
then we'd 5 mothers and many, many people stepping on cracks, and  
6 have to have some -- some scientific, reliable  
statistical way 7 to show that those two events were connected to each  
other.

When a 8 It is not our burden to disprove anything.  
task 9 prosecutor tells you that somehow we are to be taken to  
makes a 10 because, well, we didn't present evidence about who  
and then 11 barrel, we didn't present that, that's got it exactly  
12 backwards. And I am going to make a claim to you now,  
support it 13 I'm going to try to show where the evidence will

14 when you go back there.  
15 And the claim is this: that the Federal Bureau  
of  
16 Investigation laboratory and every other scientist and  
expert  
17 brought before you flunk every test. Every conclusion  
that  
18 they have is either flawed or meaningless; that the  
19 observations and measurements in every case are filled  
with  
20 serious doubts.

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

14430

1 science than it's worth, then you reach wrong  
conclusions.

2 First you want to ask: When and where was the  
3 fingerprint left, when? We've learned that a  
fingerprint once  
4 deposited on a porous surface can last for years. We  
also know

5 that if I take a fingerprint and put a finger imprint  
on a  
6 piece of paper and then I move the piece of paper from  
one end  
7 of the country to the other or from some other place,  
well, the  
8 fingerprint stays there. We need to have some  
witnesses to  
9 show us where that thing went.

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

13 Now, there's another thing we know, before I  
start.

14 Mr. Hupp said that some people are dry people: They  
don't  
15 leave fingerprints. Mr. Nichols is not a dry person.

When he  
16 touches things, he leaves fingerprints. Mr. McVeigh is  
not a  
17 dry person. When he touches things, he leaves  
fingerprints.

18 And so it's the presence, the placement, the absence,  
the  
19 location that we got to look at here.

20 Now, if you had to count the minutes for the  
-- in  
21 terms of time taken in summation, you would say that  
the  
22 Wal-Mart receipt would perhaps win the prize as the

exhibit

23 that the Government counsel wanted you to think about  
most. So

24 I want to look at what Mr. Hupp did with the Wal-Mart  
receipt.

25 The Wal-Mart receipt -- I'll put this up -- is  
Q772.

14431

1 Wal-Mart receipt dated 4-13. See that one? That's  
what it is.

2 It's called "Q772" in FBI Laboratory terminology. Now,  
3 Mr. Hupp testified to you that there were latent  
fingerprints

4 of Timothy McVeigh, ten developed on certain items.  
Ten.

5 There's ten. Turn the page. Two were on Q772, the  
Wal-Mart

6 receipt. Got it?

7 Then he says there are ten for Terry Nichols,  
three on

8 Q772, the Wal-Mart receipt. That's his report in  
evidence as

9 Defense Exhibit E129.

10 Here, E130 -- you may remember this

11 cross-examination -- is Mr. Hupp's chart. He makes  
this in the

12 laboratory. Here is Q772. And here is Terry Nichols'  
name.



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

14432

1 arithmetic.

2 Well, let's take a look. Here's Q775, a Boots  
3 U-Store-It agreement for Unit 37 bearing the signature

"Ted

Terry 4 Parker." And sure enough, he's got two on Q775 for

5 Nichols. That's his report.

he's 6 But in his lab notes, four days earlier, Q775,

7 got one for Terry Nichols, for a grand total of one.

the 20th 8 Now, we know where Terry Nichols was between

Hupp's 9 of May and the 24th of May, 1995. He was not in Mr.

exhibits. 10 laboratory putting extra fingerprints on Mr. Hupp's

you that 11 And yet Mr. Hupp comes in here and essentially tells

notes 12 the final report is one he can rely on and that his lab

13 made at or about the time are meaningless.

14 Is that the only one? No.

Now, this 15 There is a storage unit receipt -- rental.

for 16 is a very important storage unit rental. It's the one

name. 17 Shawn Rivers. Watch the first name, watch the last

that goes 18 Shawn Rivers. That's Timothy McVeigh. He's the one

2 in 19 into Herington. He rents a storage unit, it's Unit No.

name 20 the Herington Industrial Park. He rents it under the

21 "Shawn Rivers." It's the one that has the cement floor

with

22 the rust marks on it, which I'll talk about in a little  
bit.

23 That's the one he's got. So that's an important  
document.

24 That is 770 -- Q770-1, the storage unit  
agreement.

25 And he says he's got eight fingerprints on it in his  
report.

14433

1 He's got eight. And you can look on the previous page  
and see

2 that those are eight out of the ten of Timothy McVeigh.

3 Four days earlier, on Q770-1, he's got six  
prints.

4 Six. For a total of six. He comes in here and he  
testifies,

5 Well, it's eight.

6 What's going on here? What's wrong with a  
Federal

7 Bureau of Investigation with 35 million fingerprint  
files in --

8 on hand and plus 20 -- of the criminal ones and 20  
million

9 more, and the agent that they send for the most  
important case

10 in the FBI's history can't count fingerprints?

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

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

19 At the time that he started his examination,  
the FBI  
20 knew that Lea McGown had heard several people talking  
in  
21 Timothy McVeigh's Room 25 at the Dreamland Motel on  
Friday or  
22 Saturday night. Lea McGown is another one of these  
selective  
23 ones. The Government wants you to believe -- and it is  
true --  
24 that she saw Timothy McVeigh leave the hotel with the  
Ryder  
25 truck early one morning. They want that evidence.  
Hard to

14434

1 know why they want it. They didn't call her. We did.  
But

2 they can have it.

3 But they don't want to accept the evidence  
that she

4 heard of several people in Mr. McVeigh's room with Mr.  
McVeigh

5 being next to the window. They also had had an  
opportunity to

6 talk to Jeff Davis, who delivered the food. I'll talk  
about

7 him in a while. They had also gone to the Ryder Truck  
Rental

8 place where Vicki Beemer -- and Ron Woods is going to  
talk

9 about this -- had seen two people. So you've got 1,034  
10 unidentified prints. That's taking Mr. Hupp's words.

11 You know, Mr. Hupp's fingerprint counting  
ability is

12 not his strongest suit. But they decided not to use  
their

13 computer. They decided not to investigate the  
possibility that

14 Lea McGown was telling the truth; that there was  
somebody else

15 in that room, the possibility that Jeff Davis was  
telling the

16 truth.

17 Well, why not investigate it? You knew that  
it took

18 two people to run a barrel of nitromethane up a ramp.  
You knew

19 that mixing the bomb alone might not be possible or  
might not

blue 20 be easy. They knew that it was a gray pickup and not a  
pickup 21 one out at the lake. So it didn't match Terry Nichols'  
22 truck.

I didn't 23 Mr. Hupp, when he appeared here first, said:  
24 submit these fingerprints to my computer to try to  
retrieve out 25 of my 35 million. I didn't do it. It was to be done  
later.

14435

1 Remember that? Going to be done later.  
2 And then later it was decided: We've solved  
the case; 3 we don't care anymore.  
4 That's not good science, and it's not good law  
5 enforcement, and it's not fair, and it's not right.  
Mr. Hupp 6 came back. He said, Well, out of the 25 prints at the  
7 Dreamland, only one really was suitable for putting in  
my 8 machine. And besides that, I didn't really say it  
9 first time. I'd have to know what state -- each state  
is a 10 separate search. Each race type is a separate search.  
You

11 remember all that he said.

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

15 And then I asked him, Well, suppose you didn't  
want to  
16 use the machine, sir. Did you ever take a look at the  
17 thousand-34 and see if any of them matched each other?  
That's  
18 called an intercomparison. You don't need a machine  
for that.

19 All you need to know is how to identify a fingerprint  
and how  
20 to count. And you can ask somebody if you have trouble  
21 counting.

22 But he didn't do it. With all of their  
resources,  
23 they chose not to see if fingerprints at the Ryder  
rental place  
24 would also match one at the Dreamland; if fingerprints  
of  
25 Michael Fortier's stuff would also match one at the  
Ryder,

14436

1 would also match one at the Dreamland; if fingerprints  
on

would 2 things that were recovered here and there, literature,  
3 also match. They chose not to do it.

proof. 4 And they had every -- they have the burden of

30,000 5 They have the responsibility, with enough agents to do

which 6 interviews in the field and to field a team the like of

and the 7 law enforcement has never seen. They had the resources

8 power to do it.

-- 9 Now, there's been more talk about the Primadet

clear that 10 excuse me -- about the Wal-Mart receipt. And it's

it's 11 Terry Nichols touched that receipt at some point. And

15th; 12 clear that he had to have touched it before or on the

that he 13 that is to say, the Saturday, because Marife remembers

handed 14 took it in for \$2.90 to try and get the refund.

they had 15 But what is the evidence that Timothy McVeigh

drama 16 it to him along with an oil filter? Somebody told you

knowing 17 to stand face to face? And they even did a little

filter was 18 handing a piece of paper, one to another. Other than  
19 that that fingerprint had to get on there after the



20 purchased and before it was traded at the Wal-Mart,  
there's no

21 evidence of any face-to-face meeting.

22 What there is is evidence that Timothy McVeigh  
took

23 that old, burnt-out car Friday morning into the  
Firestone store

24 in Junction City. Please remember that day. Timothy  
McVeigh

25 buys an oil filter. I think that's a fair inference  
from the

14437

1 evidence. Somebody buys an oil filter. In addition to  
Isuzus,

2 GMC Jimmies, and Jeep Cherokees and a few other things,  
it does

3 fit the car he's driving then. Okay. Let's assume  
that's what

4 you think.

5 Friday morning he's in the Firestone store at  
Junction

6 City. I'm going to come back to this. Where did he  
spend

7 Thursday night? Where did Timothy McVeigh spend  
Thursday

8 night? Not at the Dreamland, he didn't check in till  
Friday.

9 Not at the Nichols' house. Marife Nichols says he  
wasn't

10 there.

11 Talk about that more. Friday morning, he goes  
into

12 Tom Manning's store. He makes a deal for a car, and he  
goes

13 out and he calls Terry Nichols. There's no evidence  
what the

14 subject of that call is. We do know that Terry Nichols  
was in

15 and out all that day with Josh and Marife and Nicole.  
There is

16 nothing to say in this evidence that's inconsistent  
with Tim

17 McVeigh having dropped that oil filter and receipt on  
the porch

18 in the mailbox, out behind the shed, somewhere else.  
And

19 there's no evidence of a face-to-face meeting.

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

21 minute, what's the evidence that there wasn't a face-  
to-face

22 meeting?" Well, I look back at you and say, "Who's got  
the

23 burden of proof here?" The point is that if the  
circumstantial

24 evidence, if the evidence points in either of two  
directions,

25 the law says which way to cut.

1                   Finally with Mr. Hupp. It's true that there's  
a  
2                   print -- well, it's as true as Mr. Hupp can count.  
That Terry  
3                   Nichols' print is on a sleeve that's wrapped around  
this  
4                   Primadet. What does that corroborate? Well, where's  
the  
5                   Primadet found? It's found with Michael Fortier's  
brother.  
6                   It's found in Arizona. Well, how did that print get  
there, the  
7                   same kind of Primadet they say is also in Terry  
Nichols' house?  
Timothy  
8                   How did Michael Fortier get his Primadet? Remember?  
Kingman  
9                   McVeigh after February 1, in that time frame, came to  
it  
10                  and gave him an ammo can that had explosive things in  
11                  including Primadet.  
12                  Where had Timothy McVeigh just been? He'd  
been at the  
13                  Sunset Motel with Terry Nichols. They'd been -- they  
were  
14                  handing out stuff: Here, some for you, some for you,  
some for  
15                  you. It goes in the ammo can; and after that -- and  
then it  
16                  gets in Fortier's hands. It is not Primadet from that  
17                  so-called episode at the Northern Lights Storage Shed

where

Nichols 18 Michael Fortier's testimony is that he didn't see Terry

19 touching anything.

20 Your Honor, could I take a break here?

21 THE COURT: Sure.

22 MR. TIGAR: All right.

here, 23 THE COURT: We'll take our afternoon recess

and of 24 about 20 minutes, I think, as is our usual practice;

more in 25 course, please remember that you will hear more and

14439

arguments, 1 connection with the arguments. After the defense

we 2 there's an opportunity, as I told you this morning when

since the 3 started for the Government, for rebuttal arguments

instructions. 4 Government has the burden of proof, and the  
And

please 5 so once again, in this recess, as always is the case,

case is 6 keep open minds, wait till you've heard it all and the

any way, 7 given to you for a decision before talking about it in

8 and avoid anything outside of our evidence, of course.

9 You're excused now, about 20 minutes.

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

11 THE COURT: We'll recess, 20 minutes.

12 (Recess at 3:12 p.m.)

13 (Reconvened at 3:29 p.m.)

14 THE COURT: Please be seated.

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

16 THE COURT: Please continue, Mr. Tigar.

17 MR. TIGAR: Thank you.

18 Well, we were talking about the FBI and  
science.

19 The next group of people you saw were Mr.  
Cadigan and

20 Mr. Krivosta. Mr. Krivosta, you will remember, is the  
one who

21 said "textbook picture perfect" but admitted that there  
was no

22 textbook except the one that he hoped to write some  
day, his

23 total experience in publication having been one article  
that

24 taught you not to drop a firearm when it's loaded  
because it

25 might go off.

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

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

19                   You can look at the pictures. The most

important

20 question about that drill bit came up when William  
Tobin of the  
21 FBI testified. Repeatedly on cross-examination, I  
asked  
22 Mr. Cadigan, "Well, do you care about where it was  
between the  
23 time it was found and the time you got it?"  
24 "Well, not really."  
25 "Do you know where it was?"

14441

1 "No, not really."  
2 And then we heard from Agent Tobin. The FBI  
3 Laboratory had a plumbing problem. It flooded the shed  
in  
4 which the forensic evidence in this, the most important  
case in  
5 FBI history, was kept. And before this drill ever got  
to Agent  
6 Cadigan, that flood had happened.  
7 Here's the box. It's 151, 151A, 151C; and you  
have it  
8 in evidence, and you can take a look at it.  
9 Now, there is an amazing thing about this box.  
One  
10 would believe that water affects everything the same  
that it

falls 11 comes in contact with; that is, water is water. It  
floods the 12 everywhere, falls on the just and the unjust. It  
flooded the 13 evidence of this case and that case. Certainly, it  
pictures, 14 manuals. Look at them. Entirely different from the  
15 all moldy and corroded.  
in the 16 It floods this Phillips driver bit that's out  
17 box. It takes this drill bit, which is one they're not  
18 interested in, and gets corrosion all over it.  
as the 19 This is not a watertight case. Inside it was,  
But all 20 photographs show, a screw; and it's got rust on it.  
tested, 21 the drill bits are polished clean; the drill bit they  
show that 22 polished clean, although the pictures in the recovery  
23 it was all sitting right in that box.  
investigator has 24 One of the things that a responsible  
the same 25 to do is to tell you that the thing they tested is in

14442

1 condition that it was when it was recovered; otherwise,  
the



2 results are meaningless.

3           You already have a problem, because this whole  
package  
4 wasn't recovered from Mr. Nichols' house until May of  
1995.

5 And the allegations about the lock being drilled at the  
quarry  
6 go back clear to, what, October -- September, October,  
1994.

7 So we've already got a period of months in there, seven  
or  
8 eight months, during which time this particular drill  
bit in

9 this particular case, this being some standard-size  
drill bit,  
10 one of the most popular sizes that could be used, is  
used for a

11 number of things, such as Mr. Nichols' doing work on  
his house,  
12 which we know from other witnesses he was doing.

13           So right away, you have to wonder whether the  
tests on

14 the lock and the tests on the drill are reliable  
anyway,

15 because the drill bit has been out there being used.

16           But when you hear the thing was flooded, you  
know, one

17 might have a further doubt.

18           And when one looks and sees that everything  
else that

19 didn't get cleaned up is all corroded but that the  
drill is

20 not, there is a substantial reason to say that Mr.  
Cadigan and  
21 Mr. Krivosta are not playing fair. They're not doing  
this in  
22 the way that a responsible crime laboratory should deal  
with  
23 evidence.

24 Now, we made much of -- made something of --  
the fact  
25 that Mr. Nichols told the FBI, look, I know that  
McVeigh had a

14443

1 shed. He had one in Herington, Kansas. And contrary  
to the  
2 Government's assertion, he also told them about Council  
Grove.  
3 Within days, they were out there. They were at the  
Council  
4 Grove sheds, both of them in both of those names,  
because they  
5 had the names; and they were at the one that Mr.  
McVeigh had  
6 rented. There was never any evidence in this case of  
anything  
7 allegedly connected with any bomb being stored in any  
of those  
8 sheds. Nothing, no ammonium nitrate, no nitromethane,  
no  
9 nitroglycerin, no, you know, Tovex residue, no this or

that or

10 anything. And yet they had the full resources of the  
FBI to do

11 it, and they were being directed by Steven Burmeister.

12 And what was the answer to that? The answer  
was:

13 Well, how in the world would ammonium nitrate ever leak  
out of

14 sealed bags?

15 Well, one answer as to how ammonium nitrate --  
we're

16 talking -- The Government allegation is that there were  
80 bags

17 of ammonium nitrate purchased that Terry Nichols had  
control

18 over in some sheds that he had access to. That's the

19 allegation. That's what they charge here. That's  
their chart.

20 80 bags stacked up high.

21 Now, if they were kept in the Herington shed,  
if they

22 were purchased on a shrink-wrap pallet, they weren't on  
a

23 shrink-wrap pallet any more because a shrink-wrap  
pallet

24 couldn't go through that 32-inch door in that shed. So  
the

25 Government's theory has to be there are stacks of  
ammonium

1 nitrate bags there.

2           What happens to stacks of bags in the normal  
use?

3 Here is a picture of Mr. Schlender, the Mid-Kansas Co-  
op --

4 this is his floor. It is a mess. It has stuff all  
over it

5 that fell out of the various little bags of chips and  
things.

6 Look at all the junk in there. Look at all the dirt,  
things

7 that fall out of things.

8           More than that, they showed you a picture of a  
bag

9 that they said was an ammonium nitrate bag from ICI.  
That was

10 Mr. Rydlund, if you'll recall.

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

12 some plastic that is folded into or is a part of the  
multilayer

13 in the bag. But when you look closely at this picture,  
you'll

14 see that that plastic is not heat-sealed-crimped at the  
top.

15 It has no plastic heat-seal crimp. It's not even sewn.  
You

16 know how some bags of fertilizer are sewn across the  
top? No,

17 the paper is simply folded over and glued at the top,  
and;

tucked. 18 there was a place right up here at the top where it's

actually 19 For demonstrative purposes, the Government

20 gave you the bag. Well, you remember when I talked to  
stuff 21 Mr. Rydlund about the bag, and we noted that there is

things 22 coming out of it. There is prills. There is little

of 23 that have adhered here; and look, because of the water,

because 24 course, they're starting to break down and then they --

25 of the coating on them, they stick.

14445

of those 1 It defies imagination to believe that for all  
all of 2 months -- all of those months and not a single prill;  
3 those months, not a single bit of residue.

the 4 Oh, the Government says, there are circles on  
floor. 5 floor. Circles on the floor. Circles on the cement

circles of 6 And here in Government's Exhibit 2054 are

There they 7 rust on the floor. And that's the Herington shed.

8 are: One, two, three.

9 And so they sent someone out -- now, they  
don't have

10 any evidence that the circles weren't there before the  
Shawn

11 Rivers person that was Tim McVeigh rented the thing.  
They

12 don't have any pictures. But they say, "Let's compare  
the

13 circles on the floor with the barrels from VP Racing  
Fuel."

14 Let's do. Here's a barrel. This stuff, this  
15 nitromethane, comes in a VP Racing Fuel barrel. And  
you can

16 see the lip of it, how it's been rolled around. But  
basically,

17 the top of it is mostly painted.

18 VP Racing Fuel likes to keep their barrels  
apparently

19 in pretty good condition because otherwise, who knows?  
Maybe

20 the stuff would come out of them.

21 So we have to first believe that over a period  
of from

22 October 21 of 1994 until the shed was entered late in  
April of

23 1995 that there was enough moisture in that shed to  
cause the

24 barrel, paint on the barrel to come -- to be penetrated  
by the

25 moisture and for the rust to get out and to leave a  
mark that

14446

asked to 1 that -- that that's significant. All right. We are  
that. 2 believe that conditions were sufficiently moist to do

that, then 3 If conditions were sufficiently moist to do  
water than 4 what about ammonium nitrate, which absorbs even more  
nitrate 5 table salt? What about the fact that that ammonium  
likely to 6 would begin to do things that would make it much more  
7 leave traces? But we don't rest there.

the 8 The FBI actually sent someone out to measure  
nitrate 9 barrel; that is to say, they measured these ammonium  
measurement 10 (sic) barrels, and they found out that this inside  
That's the 11 here, the inside diameter, is 22 3/8 inches. Okay?  
12 inside diameter. The outside diameter is 23 inches.

between 13 Now, we have -- if we're asking the difference  
only 14 an inside and an outside diameter -- this is my one and  
15 one demonstrative exhibit, so please forgive me.

16 The difference between an inside and an

outside

17 diameter is the inside diameter plus 2 times the width  
of the  
18 lip. Right? You have to count it twice because you're  
on both  
19 sides of the diameter.

20 So that would give us a lip of  $5/16$ th of an  
inch;

21 right? 23 inches -- this is  $22 \frac{3}{8}$  here. The total  
outside

22 distance is 23. The distance between -- difference  
between

23 those is  $5/8$  of an inch divided by 2 is  $5/16$ . Right?  
You can

24 do the math back there. I don't claim I know how to do  
the

25 arithmetic here. Please check me when you get back to  
the jury

14447

1 room.

2 Well, then Agent Witt went and measured the  
circles;

3 and he found that the circles were somewhat irregular  
but that

4 the diameter of what he measured was  $22 \frac{1}{2}$  inches  
measuring

5 the inside -- okay. So his number was -- all right --  
 $22 \frac{1}{2}$

6 inches. All right? Okay so far.



7                    Then he said: How much -- wide a mark did the  
rust

8                    pattern leave on the floor? How wide? Oh,  
approximately,

9                    probably, 5/8 of an inch.

10                   5/8 of an inch in width?

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

12                   Now, let's add 5/8 over here and 5/8 over  
here.

13                   What's 5/8 plus 5/8? That's 10/8, or 1 1/4 inches. So  
we add

14                   22 1/2 plus 1 1/4 -- correct? We can do that. And we  
get 3/4.

15                   23 3/4 as an outside -- as the very outside. And  
nobody is

16                   saying that it was the "outside" outside that leaves  
the mark.

17                   Presumably the lip of the barrel is slightly rounded,  
so it's

18                   going to be something a little less than that. But the  
outside

19                   diameter is 23 inches of the barrel.

20                   This barrel, outside diameter is 23 inches.

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

22                   Now, this is a steel barrel, too. It's not a  
cartoon

23                   barrel. It's not a Roger Rabbit barrel. It pretty  
well kept

24                   the same diameter as it did when it was manufactured  
and sold.

25                   Now, in addition to no evidence from the shed,

we know

14448

1 that soil samples were taken. We know that the FBI had  
the  
2 ability to look for tire tracks. We know that they had  
the  
3 ability to look for residues from the bomb scene; and  
they  
4 found nothing, nothing that was introduced in evidence  
here.

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

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

That's

16 Q507. It is a piece of the Ryder truck body. Here it  
is. You

17 remember the picture.

18 There it is.

19 A very important piece of evidence. Only  
piece of

20 evidence on which Agent Burmeister with all of his  
laboratory

21 says he found any ammonium nitrate. The only piece.

22 Thousands and thousands and thousands of  
pieces of

23 evidence were picked up. Tons of debris were sifted.  
And yet

24 that is it.

25 And from that, Linda Jones wants to tell you  
this

14449

1 proves there was certainly ammonium nitrate in this  
device.

2 Well, how did the FBI handle it? We had  
Steven

3 Burmeister on the scene, the FBI's most senior chemist  
that had

4 been assigned to this case. We had Mr. Kelly assigned  
to the

5 scene and working for the FBI for many years, and we  
had Agent

6 Wilson.

7 This is not just a story about a piece of  
evidence.

8 It is a description of how the FBI chose to handle the  
most

9 important evidence in this case; that is to say,  
evidence that

10 they believed would be able to show us exactly what  
this thing

11 was made of. And so Agent Wilson and Mr. Kelly report  
to the

12 crime scene. And here in E89, which we had to  
introduce, is

13 the map they made. The little rectangles are cars.  
Those had

14 already been drawn on it when they got the map. They  
were

15 simply supposed to record each piece of evidence as  
they

16 recovered it.

17 This exhibit we're talking about is called

18 Government's 664, also known as Q507, also known as 6  
or 06 in

19 terms of when it was picked up. It has all three  
names.

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

21 And we zoom over to the area here, and there is no No.  
6.

22 There is a 4, there is a 5, there is a 7, there is no  
6.

23 Now, Agent Kelly testified that this  
particular piece

that 24 of evidence was photographed in place. But you recall  
some 25 some were photographed after being picked up and moved,

14450

confusion 1 were photographed in bags. And you remember the  
2 about that.

Wilson." 3 Then Mr. Kelly says, "I gave it to Mr.  
He 4 didn't write down and mark it.

5 And when the log came to be made up, it wasn't  
6 identified -- 01 was identified as wood panel, yellow  
and red.  
7 06 was just identified as wood panel, even though it is  
yellow  
8 and red supposedly.

9 Kelly says, "I gave it to Wilson."  
10 Wilson says, "I took it to the Evidence  
Control  
11 Center."

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

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

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

19                   But it gets curiouser.

20                   When they asked Linda Jones from the United  
Kingdom,

21                   who is an internationally renowned expert on these  
things --

22                   there is no question about that. She's worked many  
cases

23                   before, both sides of the Atlantic, in other countries.  
They

24                   supplied to Linda Jones a version of the map where they  
circled

25                   everything, and somebody wrote in "06." So by the time  
the

14451

1                   notes get to Jones, they've doctored them to make up  
for the

2                   fact that they have no record on their notes of where  
they

3                   found this thing.

4                   Now, where was it found? Let's go back.  
Let's just

5                   forget everything we just found and let's assume that  
it's

lot. 6 right: Kelly found it in the parking lot. The parking

7 He found it on the morning of the 21st, after there had  
been an

8 Oklahoma gullywasher rainstorm and after Government's  
Exhibit

9 964 -- this -- had happened.

10 They're There is a fire hose. There is a fireman.

11 putting out the fires with water. Squirt, squirt,  
spray,

12 spray, fire-hose-strength water covering the vehicles  
in that

13 parking lot, fighting those fires.

14 Look at the smoke. Look. You can't even see  
through

15 it. Visibility is down to, what, Danny DeVito's  
inseam? Some

16 distance, very short. And water is being sprayed on  
this.

17 Ammonium nitrate attracts water. Ammonium  
nitrate

18 crystals disappear in humid environments. Ammonium  
nitrate

19 crystals are very sensitive to those environments.

20 Mr. Burmeister next reports that he sees it.  
In his

21 lab report, he says it was a "glaze" of crystals. Then  
he told

22 Linda Jones they were embedded. Well, if they're  
embedded, how

23 do they disappear? Embedded things don't just kind of  
slough

24 off or disappear in the humidity.

there 25 Nobody does a background soil sample to see if

14452

when they 1 is ammonium nitrate in the dirt perhaps from a spill  
2 pick it up to see if it picked it up from the ground.

the 3 Moreover, Burmeister doesn't do any tests on

doesn't 4 crystals. He says the crystals look funny, but he

crystals 5 bring you a book on crystals to show you that those

6 look any different from any other crystals.

work 7 So in the end, their most important piece of  
8 evidence -- that is to say, this Q507 -- really doesn't

Paul 9 for them very well. But not only that, you remember

that 10 Rydlund? Paul Rydlund from the Imperial Chemical and

professional life 11 group of companies, a man that has spent his

blow 12 manufacturing ammonium nitrate to mix with fuel oil to

on it -- 13 things up, did a master's thesis on it, holds a patent

14 did all of that. What does he say? He says that if a



bomb, a

15 device, operated efficiently, you would not expect to  
see any  
16 ammonium nitrate or fuel oil particles. Inconsistent  
with  
17 Burmeister.

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

25 He said he'd have to pull out a reference text  
to find

14453

1 out about that.

2 Then when Linda Jones got on the stand, she  
confirmed  
3 it. They can't tell you it's Tovex, they can't tell  
you it's  
4 Primadet, they can't tell you that it's anything at  
all; and

evidence 5 that is the sum and substance of what the Government's

6 on this subject is.

Burmeister 7 Not only that, Linda Jones and Steve both

random 8 conceded that these are random events; and if they're

scientific 9 events, they cannot be subjected to any reasonable

10 analysis.

article in 11 Linda Jones herself had also written an

conclusions 12 which she pointed out the dangers of leaping to

article 13 from insufficient forensic evidence. You remember the

story 14 that she wrote in which she hypothesized -- she had a

garage 15 about a number of people who shared access to a lock-up

16 like a storage shed.

pounds 17 But there is more. Paul Rydlund: Millions of

commercial 18 a year of ammonium nitrate and fuel oil are sold for

an 19 purposes, and he knows about it. If you want to make

blow 20 ammonium nitrate device and mix fuel oil with it and

people. 21 something up, well, you've got to join a large group of

22 Farmers do it. You can use Primadet, the witnesses say

--

23 Rydlund says -- to rig through water, if you want to  
blow a  
24 trench, for example, in a place where there is water.  
25 You remember the witness who said -- Mr.  
Farley, who

14454

1 said: Back when I was a boy, we used to use it to blow  
ponds;  
2 you know, it was an agricultural use. Mr. Rydlund has  
been  
3 supplying this market for many, many years. He knows  
about it,  
4 and he tells that there are two kinds of ammonium  
nitrate, low  
5 density and high density. The low-density prills are  
the ones  
6 his company manufacturers, and they're the ones that  
absorb  
7 fuel oil or whatever else you want to mix with them,  
some  
8 hydrocarbon, to make an explosion.  
9 But the bags are not labeled "low density" or  
"high  
10 density," and the high density doesn't absorb it.  
Whoever it  
11 is that walked into Mr. Schlender's co-op on the 30th  
of  
12 September had no way to know whether the ammonium

nitrate that

13 that person was buying was suitable for manufacturing  
an

14 explosive device. There was no way to know that  
because it

15 isn't labeled on the bag; and there is no evidence in  
this

16 case, not a bit, not a whit, not a whisper, that shows  
that

17 anybody was aware of that distinction.

18 Now, Rydlund also told you something else.  
Might as

19 well just put it out right here and talk about it.  
There is a

20 lot of aspects to it. It's a book, Hunter. Hunter. I

21 asked -- well, first Mr. Hupp talked about it. He said  
there

22 are fingerprints of Mr. Nichols in Hunter. Okay. 13  
of them.

23 When I read a book, I usually touch more pages  
than

24 13. If I'm just riffling through, I might touch 13.  
And the

25 copy in Mr. Nichols' house had a sticker on it that  
said he got

14455

1 it for sale at gun shows. And it is something people  
buy

2 there. So the fingerprints, we can leave aside.

3                   Next, we have the FBI agent who introduced it.  
And  
4                   the FBI agent said: Oh, yeah, this is a book. Well,  
it is a  
5                   book. It's not a very good book. As a matter of fact,  
it's a  
6                   lousy book; but whatever else it is, it is a work of  
fiction.  
7                   The FBI agent conceded that on the stand. He said  
there had  
8                   never been an FBI senior official such as Mr. Ryan, the  
FBI  
9                   senior official portrayed in this book, who praised  
Hitler's SS  
10                  legions as being dedicated to their cause but just  
there  
11                  weren't enough of them to pull it off.  
12                  He conceded that the FBI has never hired  
somebody to  
13                  blow up something with an ammonium nitrate bomb,  
because that's  
14                  chapter 28 in this book. I don't recommend you read  
it. But  
15                  if we're talking about, as Government counsel did,  
what's in  
16                  this book, why don't we look?  
17                  Let's see here. Oscar -- that's the guy that  
blew up  
18                  the thing -- he spent the day looking without success  
for a  
19                  delivery van or a light truck -- not a Ryder truck. So  
that's

20 different.  
21 But he found one. And you know how he got it  
started?  
22 With a master key that the FBI gave him. A senior  
official of  
23 the FBI gave him the master key to get the truck to put  
the  
24 bomb in.  
25 Okay. We could continue this forever. It's a  
work of

14456

1 fiction.  
2 I asked Mr. Rydlund about it because there was  
some  
3 allegation here that if you read this book, you'd know  
how to  
4 make a bomb.  
5 Well, the bomb that's talked about here is one  
in  
6 which they use 40-gallon plastic trash barrels; that is  
to say,  
7 from a hardware store. So different-sized containers.  
8 Then the night -- "the ammonium nitrate is  
emptied and  
9 stirred with fuel oil." Rydlund said you don't have to  
stir.  
10 "Then the barrels were grouped around a 50-  
pound case

middle of 11 of Tovex." That's 50 pounds of these sausages in the  
write a 12 the barrels. And I asked Mr. Rydlund, "Didn't you  
booster 13 master's thesis on ignition delay? Don't you want your  
14 close to each clump of ammonium nitrate?"

15 He said yes.

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

shows 18 Well, let's don't be silly. Everybody at gun  
whole 19 can buy books that show you really how to do it. This

Government to 20 Hunter thing: It's a dodge. It's silly for the  
over in 21 introduce this document which is sitting over in a box  
with it. 22 somebody's storage shed. Doesn't have anything to do

yes, 23 You want to talk about things, talk about the fact,  
company 24 everybody that goes to gun shows can buy books from a  
how to do 25 in Boulder, Colorado, with funny titles that tell you

14457

about this 1 these things. That's one of the interesting facts

2 case.

a place

3 But Rydlund told us something else: A bomb in

every

4 blows up and all around the center, 360 degrees out in

from the

5 direction, out flows what? The blast wave. Out comes

cars,

6 center of that enormous heat, heat enough to ignite the

and

7 to blow up the gas tanks, heat enough to burn and char

radius.

8 scorch. Yes, this terrible devastation in a 360-degree

9 Heat enough to volatilize, to melt plastic.

redirect:

10 And then Mr. Rydlund was challenged on

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

12 Well, if it was efficient, it would.

13 Well, what if it was inefficient?

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

ammonium-

15 In Mr. Rydlund's opinion, an efficient

in

16 nitrate-based bomb would volatilize the plastic barrels

17 which it was contained.

pounds of

18 And so now, we get to barrels. 50 million

single

19 high-density polyethylene is sold by Nova Chemical in a

this

20 year. Smurfit alone makes 2.5 million barrels during



21 time. Smurfit alone. There was some attack by  
Government  
22 counsel on our analysis of the evidence. So let us  
review what  
23 we believe and what we say the evidence is and let us  
see what  
24 you recall.

25 The one thing that we do not concede is that  
we have

14458

1 any burden here. All the burden we had was to cross-  
examine,  
2 to show that the Udell study was nonsense; that it was  
rigged  
3 by the FBI; that it was limited to a few manufacturers  
of  
4 polyethylene; that it was done in a slipshod and  
unreliable  
5 manner; that it was unscientific; that it was  
misleading, and  
6 that finally, when Mr. Udell was challenged under oath  
on the  
7 stand, "Sir, if we saw your notes, would I see there  
the  
8 questions you asked?" and he said yes, that that was a  
lie.

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

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

12 Mr. Tikuisis says that he tested the piece of  
plastic

13 they sent him. Well, where did that piece of plastic  
come

14 from? Mr. Udell says there was a time when an FBI  
agent came

15 to his office at the Smurfit company and on a  
conference table,

16 they spread all the pieces of plastic, hundreds of  
pieces of

17 plastic. All they found from all around the bomb. And  
Udell

18 said: Well, I think we made that one.

19 And the FBI said, well, that -- We've got some  
barrels

20 from Mr. Nichols house that's also that kind; let's see  
if they

21 match.

22 Well, why didn't they test the barrels in  
Michael

23 Fortier's house? Why didn't they test any of the other

24 hundreds of pieces of plastic? Well, it's just like  
Agent

25 Hupp's 1,034 fingerprints: Because they didn't care.  
They

1 didn't care. And so they tested that piece of plastic.  
2 And you were told that Mr. Tikuisis found this  
formula  
3 that Smurfit used. No, he didn't. Remember when he  
came back?  
4 Oh, he found Tinuvin 622; but Tinuvin 622 used to be  
patented  
5 and isn't anymore and can be made by a whole lot of  
people.  
6 Well, yeah, Well, he found some antioxidant package.  
7 but the antioxidant package that changes from month to  
month  
8 even inside his own company.  
9 He found a certain melt index. Okay. That's  
10 consistent with heavy-duty polyethylene. That narrows  
it. Now  
11 we're talking barrels and milk crates.  
12 And on his first appearance here, he said, "I  
found  
13 calcium carbonate."  
14 Then we brought him back and I said, "You  
didn't find  
15 calcium carbonate, did you, sir?  
16 "No, I didn't."  
17 He had performed an elemental test. He could  
only  
18 find calcium. Could be calcium stearate, it could be  
any kind  
19 of calcium compound. Doesn't have to be calcium  
carbonate.

20 The chemistry doesn't work.

21 So what else do we know about barrels? Well,  
look at  
22 all the barrel manufacturers in Government's Exhibit  
553.

23 Mr. Nichols' barrels don't come from any of those  
barrel  
24 companies. Mr. Nichols' barrels are recycled barrels  
from a  
25 certain company that makes stuff to wash dairy barns.  
Those

14460

1 barrel companies -- that's not those barrel companies.  
There  
2 is no evidence -- there is no evidence in this case  
that his  
3 barrels come from any of those companies that were  
called. Not  
4 a bit.

5 Moreover, what did Mr. Killam tell you? You  
go out to  
6 Pure Country Recycling and see the two old boys out  
there;  
7 they'll tell you about their barrels. They'll say: We  
got two  
8 kinds. One kind we sell if you're going to put water  
in them,  
9 and those are kinds that did not contain caustic  
chemicals.

10 Now, the other kind we sell used to have chemicals in  
them, and  
11 we don't recommend you put water in them. They're for  
trash.  
12 Mr. Nichols' barrels are the kind that used to  
contain  
13 chemicals.  
14 Well, let me ask you this: If you were a  
bomber and  
15 you were going to build a device, would you use barrels  
that  
16 had already contained some kind of caustic chemical  
that might  
17 interact with whatever you were going to put in them?  
Doesn't  
18 seem real likely. And the one fact about Mr. Nichols'  
barrels  
19 is that Mr. Nichols still has his barrels. Is there  
any trash  
20 in Mr. Nichols' barrels? No. Has he finished moving  
into his  
21 house? No. Are those barrels suitable for storing the  
various  
22 picks and shovels and all that stuff that's all around  
his  
23 basement so that they can be transported from one place  
to  
24 another, all those picks and shovels that are still  
laying out  
25 there in various stages of unpacking from having been  
purchased

1 at the DRMO as a part of an entrenching kit? Yes.

2 Even Linda Jones will not tell you that the  
barrels

3 contained the bomb. The most she'll say is, well, they  
were

4 either in the truck or else they were close by.

5 And so we come back to the fact that these  
barrels are

6 not proven to have had anything to do with the bomb  
that blew

7 up the Murrah Building.

8 At this point, I'm going to sit down for a  
while, and

9 Ron Woods would like to talk about some of the events  
connected

10 with Junction City, the Ryder rental, and Terry  
Nichols' trip

11 to the Herington police station.

12 CLOSING ARGUMENT

13 MR. WOODS: May it please the court.

14 THE COURT: Mr. Woods.

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

16 I must confess to you that I'm scared to death today in  
summing

17 up this case. I've been doing this for over 30 years;  
but the

18 stakes have never been this high, nor has there ever  
been a

19 case where the Government committed their full  
resources to  
20 investigate and prosecute a case like this.  
21 This is the largest case in the FBI history.  
There  
22 are over 30,000 interviews. There are thousands of lab  
reports  
23 and examinations. They've utilized all the tools that  
they  
24 have, search warrants, wire-tapped conversations,  
interviews,  
25 photos, soil analysis, tire track analysis, etc.

14462

1 And what I'm afraid of is that I won't be able  
to  
2 articulate and remember all the things I need to say  
about the  
3 weaknesses in this case in the short time that I have.  
4 The -- in a case such as this where the  
consequences  
5 are so very high and so dire upon conviction, then the  
strength  
6 of the evidence should be in proportion to the  
accusation that  
7 the Government is making. And it's not. The  
Government has  
8 jumped over a lot of the holes in the case and asked  
you to

9 speculate. She just skipped over a number of holes;  
and we'll

10 go back over and try to bring those out; but she was  
asking you

11 to speculate on a vast, vast majority of the evidence  
and

12 speculate to the meaning of it.

13 They've got to prove this case beyond a  
reasonable

14 doubt, and they haven't.

15 The strength of the evidence should also match  
the

16 intensity and the size of the investigation, and it  
doesn't.

17 It's woefully lacking.

18 As I told you on the opening statement, the  
FBI

19 started off for a day and a half doing an excellent job  
in this

20 case. They were able to find that axle, get the VIN  
number,

21 trace it back to Ford, down to Ryder in Miami, and then  
back to

22 Eldon Elliott's within that afternoon, April 19. That  
was

23 excellent investigative work. And they sent the  
closest agent,

24 Scott Crabtree, who was in Salina, Kansas, told him to  
get over

25 there immediately to Eldon Elliott's in Junction City.  
He did.



14463

going to 1 He called and said, "Put the documents aside. I'm  
talk 2 need those documents, and I'm coming over there. Don't  
3 about the case amongst yourselves."

he 4 He got there right away, 30, 40 minutes, and  
observed the 5 separated the witnesses, the three witnesses that  
of 6 Ryder rental. And he got detailed statements from each  
the FBI 7 them, and he then called in the forensic artist from  
8 lab that night. Ray Rozycki got there like at 4 in the  
sat down 9 morning, came to the CID post there in Fort Riley, and  
sat down 10 with those three witnesses, Vicki Beemer -- actually  
the 11 with Tom Kessinger first because Kessinger actually had  
detailed 12 best opportunity to observe the people and got a  
and John 13 description and did a detailed drawing of John Doe 1  
14 Doe 2.

and 15 He then showed those drawings to Vicki Beemer  
anything from 16 Eldon Elliott, and they could not add or subtract

17 those drawings.

18 produced them,

19 going to all

20 to any

21 it was

22 only two days previous.

23 17. When

24 was on the

25 fresh with

Remember that the truck was rented on April

Crabtree got there and started interviewing them, it

afternoon of the 19th. So the memories were still

14464

1 these people.

2 agents

3 them;

4 McGown says:

5 was

6 truck in his

7 possession during that time. And here is his

So they launched out in the area with a lot of

and a lot of police, a lot of area CID people, helping

and they came across the Dreamland Motel. And Lea

Yes, there was a person that looks like John Doe 1 that

here from April 14 to the 18th, and he had a Ryder

registration.

8 It's Tim McVeigh. He gives an address of 3616 North  
Van Dyke  
9 in Decker, Michigan.

10 The FBI immediately had their Detroit office  
start

11 investigating the Detroit -- the Decker, Michigan  
address; and

12 they found the local sheriff's office knew something  
about that

13 address from Kelly Langenburg. So they set up a  
meeting with

14 Kelly Langenburg and the sheriff's office in Decker,  
Michigan,

15 early, early, the morning of the 21st. Kelly  
Langenburg told

16 you about that. She had to go in there like at 6 in  
the

17 morning or so. She told them what she knew about:  
Yeah, Tim

18 McVeigh was here in 1993, and I'm the ex-wife of James  
Nichols

19 who lives at the farm now. We have a son named Chase,  
but Tim

20 McVeigh stayed at that farm in 1993 and he was a friend  
of

21 Terry Nichols from the Army.

22 So they had that much information.

23 She then went on to say: Now, Terry Nichols  
was

24 married to my sister; and my sister, Lana Padilla,  
lives in Las

25 Vegas. And here is her two phone numbers, her work  
number and

14465

1 her home number. Terry Nichols left here somewhere  
like in

2 December, '93, and I think he was going to Las Vegas to  
be near

3 Josh. I don't know where he lives now.

4 The FBI immediately gets in touch with their  
Las Vegas

5 office; and the Vegas office gets in touch with Lana  
Padilla,

6 and they find out from Lana Padilla that yes, Terry  
Nichols is

7 in Herington, Kansas. I just got off the phone with  
him, Lana

8 tells them. I was talking to him this morning 7:00 my  
time,

9 9:00 their time; but here is his address in Herington.  
And he

10 was there, you know, a few minutes ago when I talked to  
him.

11 So that's excellent, excellent investigative  
work that

12 the FBI did.

13 Then they jump to conclusions. Their  
conclusion is,

14 well, James Nichols and Terry Nichols are involved in  
this

15 bombing; and we're going to arrest them and do. They  
launch  
16 their forces out of Kansas City to go to Herington to  
arrest  
17 Terry Nichols. And the problem with that is they don't  
have  
18 any evidence that he's done anything. They don't have  
one  
19 single fact to put in an arrest warrant in order for a  
judge to  
20 sign: Yeah, you've got probable cause to go arrest  
this  
21 person.

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

25 Now, jumping to conclusions is a -- it's not  
unknown

14466

1 to the FBI. But it's a huge mistake to theorize before  
one has  
2 the facts, because insensibly you then start twisting  
facts to  
3 match the theory. And what investigators should do is  
gather  
4 the facts and then match the theory to the facts that  
you

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

6 Kansas They issued or they sent their forces out of

7 City. And you've heard that evidence from Steve Smith,

8 who was there initially and setting up surveillance and noticed

9 where Mr. Nichols was. And the surveillance team got there,

10 and they followed him to Surplus City and then to the police

11 station. And we've all heard that testimony about what

12 happened at the police station. I'm going to come back to that

13 later, but I want to talk about a few other things first.

14 station at But remember that he walked into the police

15 that 3:00, and there was a stipulation offered into evidence

16 Oklahoma City there was a material witness warrant obtained in

17 was in at 4:30, well after the time all the FBI knew that he

18 Steve the Herington police station. And if you recall, Agent

19 examination he Smith said when I was questioning him on cross-

20 stated on it had looked at that material witness warrant and it

21 jurisdiction of that Terry Nichols had attempted to flee the

22 the United States.

23  
Nichols that

And you know from the testimony of Marife

24  
arrest.

is not true. Yet that's what they obtained to get his

25  
the

Now, what I want to talk to you about first in

14467

1  
Government didn't

topics is the rental of the Ryder truck. The

most

2 bring that in. We had to bring that. Probably the

and to

3 important fact in the case linking McVeigh to the truck

why not?

4 the bombing, the Government didn't bring that in. And

person

5 Well, you know why not, because there was a second

theory

6 there. And anything that differs from the Government's

21 --

7 that they came up with originally on noon, about, April

put aside,

8 anything that differs with that, they discount, they

these

9 or they ridicule: "These are Elvis sightings." Well,

10 aren't Elvis sightings.

heard

11 You heard the testimony of Vicki Beemer. You

12 what she said. She got a call Friday morning from a

person

13 named Bob Kling who wanted to rent a Ryder truck to go  
to  
14 Omaha, and he needed a certain size and they decided on  
a  
15 20-foot size. And Vicki Beemer gave him a quote and  
said,  
16 "That quote is good for 24 hours. We're not open on  
Sunday,  
17 but we are open a few hours on Saturday morning."

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

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

23 She didn't work Saturday, but she came back in  
Monday  
24 morning and she noticed that there was a reservation  
form that  
25 had been filled out by her boss, Eldon Elliott, for a  
Bob Kling

14468

1 who had come in on Saturday and paid the full amount of  
2 \$280-some-odd for the rental of the truck and had  
reserved it



3 for Monday, April 17, at 4:00.

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

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

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

21 She said that Kling turned then and mumbled

something

22 to the person that was with him. She couldn't hear  
what was

23 said, but he mumbled something to the person.

24 She filled out the contract, finished it up,  
and it

25 was finished at 4:22. She then asked Eldon Elliott to  
do the

14469

1 inspection; and Eldon Elliott came into the shop, got  
the

2 sheet, and went out and did the inspection and then  
came back

3 in and gave her the sheets.

4 She said she saw Bob Kling sign the documents  
in front

5 of her, and the Government has stipulated that that was  
6 McVeigh's signature on those documents.

7 She stated that she saw him sign the rental  
contract

8 and the inspection sheet.

9 She also stated that Tom Kessinger was seated  
to her

10 right nearby eating popcorn, sitting at a chair that  
whole

11 time.

12 She said that she observed the two people  
leave

13 together shortly after the transaction was completed,  
and she  
14 further told you that there is no doubt in her mind  
that the  
15 two people were together.

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

18           You also heard from Eldon Elliott. And  
there's  
19 people, of course, that would never talk to us. This  
is the  
20 first time I was able to talk to them -- was on the  
witness  
21 stand. But you heard then from Eldon Elliott who told  
you that  
22 he was in the office on Saturday morning, on April 15,  
when a  
23 person came in, Bob Kling, who he later identified in a  
photo  
24 lineup as Tim McVeigh. The person came in by himself  
Saturday  
25 morning and said, "I've made a reservation. My name is  
Bob

14470

Monday at 1 Kling. I've got a reservation for a truck to Omaha  
2 4:00, and I'd like to pay all of the money now."

want to 3 And Eldon Elliott asked him, "Well, do you  
responsible 4 take out insurance on the truck? Because you're  
5 for any damage to it."

in 6 And Bob Kling said, "No. I'm real experienced  
a 7 driving these large trucks" -- called them a "deuce and  
trucks on 8 half" -- "I'm real experienced in driving these large  
truck, and 9 Fort Riley; so I don't have any problem driving this  
10 I don't want to get the insurance."

with the 11 So Eldon Elliott spent about 5 to 10 minutes  
reservation 12 man, he testified, took his money, wrote up the

And the 13 form, and that Mr. Kling signed the reservation form.  
14 Government stipulates that that signature is McVeigh's  
15 signature.

when 16 He then got -- Eldon Elliott was on the phone  
drive 17 Kling walked out, and he heard Kling get in a car and  
that his 18 away. And Kling told ---excuse me -- Elliott told you  
leading out 19 shop is a mile west of town. It's just on a road  
walked 20 of town for a mile and that very few, if any, people

I think 21 there; that people usually drive a car or get a ride.  
22 he even mentioned some people ride a bicycle.  
the 23 He then further told you that -- he filled out  
24 reservation form and left it for Vicki on Monday  
morning; and  
25 then on Monday morning he was asked to go do the  
inspection on

14471

1 the car (sic) shortly after 4:22. He thought it was  
about  
2 4:25. He said he walked into the shop and he saw these  
two  
3 people standing there; and he immediately recognized  
Bob Kling,  
4 and he asked Kling, "Have you rethought anything about  
the  
5 insurance?"  
6 And Kling told him, "No, I still don't want  
insurance  
7 on it."  
8 And he noticed a person standing next to him,  
and he  
9 noticed that Kessinger was seated over in the chair  
eating  
10 popcorn on his right. And he said, "Well, okay, I've  
got to  
11 take this inspection sheet and go out and walk around

the

12 truck. Do you want to come out with me?"

13 And Kling told him no.

14 And Elliott told you that it was slightly  
misting,

15 slightly raining at that time. So he went out and he  
did the

16 walk-around, put on the diagram where the scratches  
were on the

17 truck, and walked back in. And when he walked back  
into the

18 office, Kling and that second person were talking. He  
couldn't

19 hear their conversation, but he heard them talking.  
And he

20 noticed that the second person was shorter than Kling  
but

21 didn't pay any attention to him because he was dealing  
with

22 Kling and talking with him.

23 He said that when he was outside doing the

24 walk-around, he noticed that there was a light-colored,  
medium-

25 or full-sized sedan parked in front of his business.  
He did

14472

1 not recognize it as a customer, did not recognize it as  
an

in the 2 employee's car. In fact, there were no other customers  
3 shop.

4 He testified further that that car was not  
there after

5 5:00 when he closed up the shop and left. The car was  
gone.

6 He further testified that McVeigh or Kling, as he knew  
him at

7 that time -- his face or head or upper shoulders was  
not wet as

8 if he had been walking from McDonald's to the shop. He  
was not

9 wet. So you can reasonably conclude that he did not  
walk there

10 for a mile in a light mist and a light rain.

11 Now, you heard also from Ray Rozycki, who  
testified

12 that he was asked to come in and interview the  
witnesses and

13 draw a diagram. He met with Kessinger and got the most  
14 detailed description he could from Kessinger and drew

John Doe  
15 1 and 2 and that those were then later passed around,  
as we've

16 stated.

17 Now, why did the Government not want to prove  
this?

18 They certainly weren't ignoring the Ryder truck. We  
had all of

19 that testimony, and you saw all of these agents -- they  
have

20 squads of agents that will do anything. You saw all  
these bent  
21 and twisted pieces brought into the courtroom, and then  
you saw  
22 the reconstructed Ryder truck brought into the  
courtroom. And  
23 Mr. Paddock testified that yes, this piece is this  
piece and  
24 this piece -- and it was interesting to watch, you  
know. They  
25 had taken the next truck off the line and had bought  
it, the

14473

1 one that was manufactured right after the one that was  
blown  
2 up -- they bought it and they cut it apart, totally  
3 disassembled it, painted it nicely, and then  
reassembled it so  
4 they could bring it into the courtroom.

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

8 They're playing a shell game with you. They  
want you  
9 to look at that and not pay any attention to the fact  
of who  
10 rented the truck. They didn't need to rebuild that



truck.

11 When Dawn Hester of the FBI, young photographer who  
took the  
12 picture of the key and found the key down the alley --  
we  
13 stipulated that key fit the ignition of the truck that  
was  
14 rented from Eldon Elliott's. They didn't need to  
rebuild it  
15 for you.

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

24 Now, you also saw the video and heard the  
testimony  
25 about the -- Mr. McVeigh's being in McDonald's right  
before he

1 went to Eldon Elliott's. You heard the taxi driver say  
that he  
2 got a call, he picked up McVeigh near the Dreamland  
Hotel  
3 (sic), and he took him to McDonald's restaurant on  
Washington,  
4 rather than to Eldon Elliott's.

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

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

18 Now, this Dream -- this McDonald's restaurant

is an

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

14475

1 And we know he must have friends there,  
because when  
2 Marife Nichols testified that yes, Tim McVeigh came to  
visit us  
3 in Marion, Kansas, in August and September -- but he  
was always  
4 in and out. He never stayed there. He'd be there for  
a couple  
5 days, and then he was gone and then he was back.  
6 Well, why did he go up to Junction City, a  
long ways  
7 away, to sign up for a Blockbuster Video rental  
application,  
8 unless he was spending a lot of time in Junction City

with

9 other people?

10 He can rent videos in Marion. You can even  
rent them

11 in Herington, which has got, what, 2800 people? You  
can rent

12 them at Catlin's Video.

13 Why did he need or why was he in Junction City  
in

14 August, '94? He was seeing other people. He's  
familiar with

15 that area. He served in Fort Riley. He's lived in  
that area

16 before. He has other acquaintances there.

17 He has told Terry Nichols on two separate  
occasions:

18 "I've got friends here. I may be able to borrow a car  
so I can

19 go on East to visit my relatives. I've got friends  
here. I

20 may be able to get a room."

21 There is absolutely no suggestion that -- even  
the

22 Government has not even tried to make that speculation  
-- there

23 is no speculation that Terry Nichols was with McVeigh  
Monday

24 afternoon when the truck was rented. Terry Nichols was  
home

25 watching movies with his son, Josh, and his family; and  
they

14476

and 1 left at 5:00 to go to Junction City to Sirloin Stockade  
2 then drove to Kansas City to the airport.

Government 3 Now, the next block of proof that the  
McGown 4 didn't want you to hear that we had to bring is the Lea  
5 and the Dreamland Hotel. Why didn't they want you to  
know 6 about that? That was an important piece of the  
evidence, how 7 the FBI originally got on to Tim McVeigh.

8 The reason they didn't want you to hear about  
that is 9 because Lea McGown, Herta King, Hilda Sostre, Renda  
Truong, and 10 Shane Boyd all testified that there was a Ryder truck  
there 11 before Monday at 4:30. That was the earliest that he  
could 12 have gotten there at 4:30 on Monday afternoon with the  
one 13 rented from Eldon Elliott's. And they also -- you'll  
recall 14 Hilda Sostre's statement that she saw a person walk  
toward that 15 truck. You heard the testimony that McVeigh was seen  
driving 16 that truck on Easter Sunday. The truck was there on

Easter

17 Sunday. They certainly don't dispute that.

dinner 18 Herta King said she brought her son Easter

the 19 there, and the truck was right in the middle underneath

20 sign.

truck there 21 There is no dispute that there was a Ryder

22 and that McVeigh had been seen in it.

April 17 23 Now, why is there a Ryder truck seen before

keep in 24 at 4:30 when McVeigh rented this particular one? Well,

25 mind that McVeigh had been in the Army and that he was

14477

came in 1 classified an excellent soldier by every witness who

in the 2 here that knew him in the Army. And keep in mind that

been in 3 Army, they often -- and he had been in Desert Storm,

in the 4 combat. He did combat training. But keep in mind that

And if 5 military, they often do dry runs and practice runs.

appears to be 6 McVeigh had other people working with him, which

7 obvious to us, the truck was out at Ryder -- out at  
Geary Lake  
8 on several days prior to the day the Government claims  
it was  
9 out there to build a bomb on the 18th. It was there  
several  
10 days before, and it was there at Dreamland before. And  
those  
11 people that testified aren't incredible. They're not  
12 Elvis-sighting people, as the Government wants to  
dismiss  
13 everybody who disagrees with their theory.  
14 Those are questions that the Government  
couldn't  
15 answer, so they just ignored it. They didn't want you  
to hear  
16 about it.  
17 Well, we had to bring that; and we had to  
bring the  
18 Ryder rental.  
19 Now, let's look at -- you know, the Government  
has got  
20 a theory about building this bomb. Their theory is  
that it had  
21 to have been done on Tuesday morning because they know  
where  
22 Mr. Nichols is Tuesday afternoon; and their theory is  
since the  
23 truck was rented on Monday afternoon, then -- and it  
ends up in  
24 Oklahoma on Wednesday, then it has to be built on  
Tuesday

25 morning.

14478

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

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

14           So Budke took the information down, and what I  
-- we  
15 then saw that information for the very first time. We



had

16 never been provided those sheets. They're called  
"information

17 control sheets." And Mr. Tigar asked for that at that  
time,

18 and you saw Mr. Mackey dig it out of his briefcase and  
give it

19 to us.

20 We had never seen those sheets before, which  
are the

21 rendition of what the witness is telling the FBI when  
they talk

22 to them.

23 What we get is the 302 that is typed up after  
the FBI

24 talks to them and then writes up the 302 the way they  
want it

25 to read. But we don't have these verbatim  
extemporaneous

14479

1 remarks that the witness made.

2 And we got this one for the first time; and  
then you

3 also heard this morning that it was offered into  
evidence --

4 the other one when he called the FBI on the 1-800  
number.

5 What I'd like to show you first is the one  
that --

6 let's see if I can get this focused so we can read it.  
7 This is the record of his 1-800 call on April  
22, '95,  
8 at 3:57. That's Saturday -- Saturday afternoon; and it  
9 shows -- it's called "information control." Source is  
Rick  
10 Wahl, W-A-H-L. Phone number is such and such in White  
City,  
11 Kansas. And it's a telephone contact, as you can see  
here.  
12 Special Agent Jolene Jameson is the one who  
filled it  
13 out, and her narrative is that the "Caller heard news &  
advised  
14 on the morning of April 18 he was fishing at Geary  
State  
15 Fishing Lake -- Fishing Park, parentheses, (between  
Junction  
16 City & Herington). While fishing, he saw a Ryder truck  
parked  
17 at the end of the road & alongside it was a late-model  
Chevy  
18 truck. Did not see any other vehicle or any  
individuals."  
19 And they then make a decision, lead set, yes  
or no?  
20 They made a decision to disregard this one by saying  
no.  
21 So Mr. Wahl then sees the FBI agent at the  
Burger King  
22 and he goes up to Mr. Budke and says, "You know, I've  
got some

23 information I'd like to give you."

back in 24 And Budke takes it down and says, "We'll get  
25 touch with you."

14480

1 Now, the information that he gives to Budke on  
2 April 26 at 12:45 p.m. states that he ". . . was  
fishing at the 3 Geary State Fishing Lake on Tuesday, April 18, between  
9 and 4 12. Wahl observed a Ryder truck and a gray Chevy  
pickup truck 5 parked in a somewhat remote area. Wahl never observed  
any 6 people associated with the trucks. Wahl advised the  
lake is 7 located between Junction City, Kansas, and Herington,  
Kansas, 8 on Highway 77. Wahl has called the 1-800 number and  
reported 9 this and was never contacted by the FBI.

10 "Lead set? Yes."

11 Now, you heard Mr. Budke testify that he went  
back and 12 gave this information to his supervisor and that a lead  
was set 13 out and that Schaefer went out and did the interview.  
14 When they do the interview, they come back in

and they

put on 15 complete the information control sheet. And what is

and Carey 16 there that very same day, April 26, '95, by Schaefer

let me 17 concerning interview with Rick Wahl -- they put here --

Richard 18 see if I can get it where everybody can read it -- "SFC

interviewed. 19 N. Wahl, B Battalion, 23d ADA, Fort Riley, Kansas,

to 20 Wahl was fishing at Geary State Lake 4-18-95, 9 . . .

blue or 21 12 p.m. Wahl said he saw a Ryder rental truck and a

Ryder. 22 brown Chevy Blazer or GMC pickup parked next to the

during 23 Wahl did not see any people near or around the truck

was 24 time he was fishing. He left just after noon. Wahl

not see 25 fishing at same location Monday evening 4-17-95 and did

14481

1 any trucks or people."

lead has 2 Now, you notice that this reflects that the

is here 3 been completed and that it is 4-26-95. But the problem

4 that the FBI notices he -- well, he's describing it as  
a Chevy  
5 Blazer. And if it's going to match our theory that  
it's Terry  
6 Nichols -- this is on the 26th. Keep in mind that  
they've got  
7 Terry Nichols' truck since April 21. They've made up  
their  
8 mind who did this and don't confuse them with the  
facts.

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

12 And we know that from the 302 that they type  
up, which  
13 is D1898. And you see here that it is a -- an  
interview of  
14 Richard Norman Wahl. And I want to show you on the  
front of  
15 the FBI 302's, they always put the date that the  
investigation  
16 is conducted. And this investigation was conducted on  
April 26  
17 and April 28, '95, in Junction City, Kansas. And  
here's our  
18 case number that we'll always remember except for the  
agents  
19 who wrote it down wrong when they searched Terry's  
house.

20 But Walter Schaefer and Francis Carey dictate  
a report

21 on April 28, '95, and a redacted portion of it has been  
22 admitted into the evidence by the Court. And you'll  
notice

23 that his -- the way the FBI now writes it up:

24 "Wahl said one of the trucks was a Ryder  
rental truck,  
25 and the other truck was a pickup. Wahl said the pickup  
truck

14482

1 was a Chevrolet (or possibly a GMC), dark blue or brown  
in

2 color. Wahl said that the truck could have been  
anywhere from

3 a 1980 to 1986 or '87 model. Wahl said the pickup  
appeared to

4 have some white on the rear of the truck. The pickup  
could

5 have been -- The pickup could have had a shell or  
camper top,

6 but he could not see clearly from where he was located.  
Wahl

7 said that he and his son did not go all the way into  
the area."

8 Well, it's gone from a late-model truck now  
into the

9 mid 80's. This is in '95 when he's telling them that.  
It's

10 now the mid 80's.

11 Well, they asked Wahl to go to the grand jury;

and on

12 the 9th (sic) day of July of '95, the testimony of  
Sergeant

13 Richard Wahl, Defense Exhibit 1892, which has been  
admitted

14 into evidence, Mr. Wahl states:

15 "There were two trucks. There was a Ryder  
truck and a

16 pickup parked next to it, and they were both facing the  
same

17 direction.

18 "Question: How much of the pickup were you  
able to

19 see from where you were?

20 "Answer: From where I was at I could see the  
front of

21 the pickup. And I couldn't distinguish at that time if  
it was

22 a pickup or if it was a Blazer-type pickup. I just  
knew that

23 it was a pickup, if I could say, by the front end.

24 "And on top of the roof I could see white like  
either

25 it was a camper shell on the back, something white  
loaded on

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1 the back of the pickup or a Blazer-type truck. I  
couldn't

2 distinction" (sic).

3 Further states under question:

4 "And you said the other vehicle --

I'd say 5 "The other truck was parked next to it. And

6 it was a --

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

couldn't 8 "It was a blue or a brown, dark colors. I

9 tell which. I just knew it had some tones of both.

10 "And it appeared you were looking at it --

11 "From the front.

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

13 "I could see white.

14 "You could see white over the cab, I should

say? 15 "Over the top of the roof, the cab, right. I

could 16 see a white line that went all the way across the truck

like a 17 camper top on the back or something of that.

18 "Did you observe anything about the headlights

that 19 you remember?

20 "On the truck it had single square headlights

with a 21 parking light under it. It was definitely a General

Motors 22 product."



23 I'm going to show you pictures of Mr. Nichols'  
truck  
24 that were admitted into evidence when we were  
questioning  
25 Mr. Elliott, who was the FBI agent that was in control  
of the

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1 Evidence Control Center where they had the horse  
trailers and  
2 the total mess at the Evidence Control Center. And  
they put  
3 evidence in bins.

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

6 This is Mr. Nichols' pickup, clearly  
exhibiting a GMC  
7 emblem in front; and keep in mind, Sergeant Wahl told  
you that

8 he spent 14 years in the Army and his job is  
maintenance of the  
9 vehicle pool. If there is anybody that's familiar with  
10 vehicles, Sergeant Wahl is.

11 But he just couldn't remember if this was a  
Chevy or  
12 what it was. But do you see any white line in front of  
--  
13 excuse me -- over the top? When you're looking at this

vehicle

14 from the top (sic), you cannot see a white line because  
the

15 camper top is below the cab level, as you will see in  
F4.

16 See how the camper top is slightly below the  
roof of

17 the cab? You won't see that if you're looking at the  
vehicle

18 from the front.

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

20 And here it is in the garage next to McVeigh's  
truck

21 (sic). You see there is no white line. That's the  
chrome

22 molding around the windshield which -- but you don't  
see a

23 white line if you're looking at this truck from the  
front.

24 Now, remember what Mr. Wahl testified to when  
he got

25 here, though? When he got here after being worked with  
by the

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1 FBI and the prosecutors for two-and-a-half years, the  
truck was

2 pretty much Terry Nichols' truck.

3 We didn't have these prior descriptions that  
he gave

22d, four 4 when it was fresh on his mind. He gave this on the  
5 days after it was fresh on his mind. He said it was a  
6 late-model truck; and then on the 26th, he said it was  
a gray 7 truck. That's eight days after the event of seeing it.  
A gray 8 truck.

9 We didn't have those to cross-examine him  
with, or we 10 certainly would have, to question his recollection  
11 two-and-a-half years later.

12 But after working with the Government, he  
comes in 13 here and tells you -- gives you such a description that  
it can 14 only be Mr. Nichols' truck, yet he did tell you that he  
didn't 15 see anybody there. Nobody has seen any individuals  
around the 16 truck in Geary Lake. There is no proof that Terry  
Nichols was 17 there. They have no proof.

18 What the other witness that they offered --  
they have 19 two witnesses that can place a dark truck that's --  
it's gone 20 from gray to dark -- but they've got two witnesses that  
can 21 place it there that morning at Geary Lake.

22 The other witness was Bob Nelson, who, as you

south 23 remember, worked at Eldon Elliott's. But he lived down  
On that 24 of Junction City, and he drove by there every morning.  
Ryder truck 25 morning at 7:15 to 7:20, he drove by and noticed a

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rent them. 1 over at Geary Lake because he works at a place they

2 He would notice it.

backed up 3 But what he saw was a dark-colored pickup

says he 4 to -- with them back to back of the Ryder truck, and he

5 cannot remember if it had a camper shell or not.

dark 6 So what you've got is two descriptions of a

or he 7 truck, and there is no camper shell on the second one,

looking at 8 doesn't remember one. And Wahl can't see when he's

9 it head -- can't see a white line over that.

we've 10 So we really don't know what was there because

11 got those two witnesses and that's all; yet that's the

the most 12 Government's key, as Ms. Wilkinson told you -- that's

13 important day in this conspiracy -- April 18 is the

most

14 important day. And that's their proof that Terry  
Nichols built

15 a bomb on Tuesday, April 18?

16 If -- in a criminal case, if they come in with  
17 evidence that slight, you just disregard it, especially  
in one

18 where the consequences are so dire like this one. If  
they

19 can't prove beyond a reasonable doubt what they're  
alleging --

20 and they are alleging -- She told you Terry Nichols  
built that

21 bomb Tuesday morning. That's their proof? You don't  
-- you

22 don't convict somebody on proof like that. You  
certainly don't

23 execute somebody on proof like that.

24 MR. MACKEY: Objection.

25 THE COURT: Mr. Woods, we're not talking about

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1 punishment at this stage.

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

3 That's their proof for building the bomb on  
Tuesday

4 morning.

5 THE COURT: It's almost 5:00.

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

7 Honor.

8 THE COURT: Okay. We will.

9 So, members of the jury, recognize, of course,  
that we

10 want to give a full and fair opportunity to the lawyers  
on both

11 sides of this case to advocate their positions and to  
suggest

12 to you how you may analyze the evidence in the case;  
and so we

13 will, of course, do that, return to the arguments in  
the

14 morning. And of course, you recognize that following  
the

15 arguments I'll tell you about the law in some detail.  
So

16 again, we're going to recess now, let you go home now  
and ask

17 of you that you really put this matter to rest even in  
your own

18 minds. I know, you know, it gets harder when you get  
closer

19 and when you have heard a part of the argument. But  
once

20 again, please wait for us to complete the trial.

21 And of course, do not discuss the case among

22 yourselves or with any other persons, and be very  
careful about

23 all that you may read, see, and hear to avoid anything  
which

the 24 could in any way affect your decision on the issues in  
detail 25 case, recognizing once again, as I will tell you in

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-- follow 1 tomorrow, under the law you have to decide on the law  
trial. 2 the law and on the evidence that's presented to you at

3 You're excused now till 8:45 tomorrow morning.  
4 (Jury out at 4:59 p.m.)

5 THE COURT: We'll be in recess, 8:45.  
6 (Recess at 5:00 p.m.)

7 \* \* \* \* \*

8 INDEX

Page 9 Item

10 CLOSING ARGUMENTS

11 By Ms. Wilkinson (continued)  
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12 By Mr. Tigar  
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13 By Mr. Woods  
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14 \* \* \* \* \*

15 REPORTERS' CERTIFICATE

16 We certify that the foregoing is a correct  
transcript from

17 the record of proceedings in the above-entitled matter.  
Dated

18 at Denver, Colorado, this 15th day of December, 1997.

19

20

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21

Paul Zuckerman

22

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23

Kara Spitler

24

25