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14375

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APPEARANCES

Western

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3

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

Park

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Attorney for the Western District of Oklahoma, 210 West

appearing

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for the plaintiff.

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to the U.S. Attorney General, 1961 Stout Street, Suite

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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

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

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

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

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;

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

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

14396

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

6 She said to the best of her knowledge, Timothy
McVeigh
7 had never called before April 17. And on the morning
of
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
Brown, to 9 ammonium nitrate bomb, Terry Nichols waited. Terry
the 10 knew what was about to happen to Agent Cindy Campbell-
Claude 11 Paul Broxterman, and Agent Paul Ice, Donald Leonard of
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.

Desert 4 You can start with the very first call that
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

when he 15 building. Are we supposed to believe Timothy McVeigh

McVeigh said? 16 says that and not believe everything else Timothy

events? 17 What is there that corroborates Mike -- that version of

Nichols 18 Nothing. Nothing. Not even any evidence that Terry

spoken. 19 was in a position to hear any such things, had it been

contradicts 20 And what is it that contradicts it? What

getting 21 it is that in March of 1995, Fortier says McVeigh was

and 22 desperate. How desperate? So desperate that Fortier

gun 23 Mrs. Fortier were scared and Michael Fortier carried a

24 whenever he went to see him.

"Terry 25 How desperate? He tells Michael Fortier:

14424

him to do 1 Nichols won't go through with it; I'll have to force

have to 2 it." "Terry Nichols won't go through with it; I'll

what 3 force him to do it." Well, if you're going to take

whole 4 Timothy McVeigh said to Michael Fortier, let's take the

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
right the 10 separate search. Each race type is a separate search.
is a
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." He 3 Then Mr. Kelly says, "I gave it to Mr.
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 through Look at the smoke. Look. You can't even see

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

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

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.

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

10 And then Mr. Rydlund was challenged on
redirect:

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.

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

18 And so now, we get to barrels. 50 million
pounds of
19 high-density polyethylene is sold by Nova Chemical in a
single
20 year. Smurfit alone makes 2.5 million barrels during
this

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

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

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
possession during that time. And here is his

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

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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?

rent them 10 He can rent videos in Marion. You can even

can rent 11 in Herington, which has got, what, 2800 people? You

12 them at Catlin's Video.

in 13 Why did he need or why was he in Junction City

familiar with 14 August, '94? He was seeing other people. He's

that area 15 that area. He served in Fort Riley. He's lived in

16 before. He has other acquaintances there.

occasions: 17 He has told Terry Nichols on two separate

so I can 18 "I've got friends here. I may be able to borrow a car

here. I 19 go on East to visit my relatives. I've got friends

20 may be able to get a room."

the 21 There is absolutely no suggestion that -- even

-- there 22 Government has not even tried to make that speculation

Monday 23 is no speculation that Terry Nichols was with McVeigh

home 24 afternoon when the truck was rented. Terry Nichols was

they 25 watching movies with his son, Josh, and his family; and

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

know 5 and the Dreamland Hotel. Why didn't they want you to

evidence, how 6 about that? That was an important piece of the

7 the FBI originally got on to Tim McVeigh.

that is 8 The reason they didn't want you to hear about

Truong, and 9 because Lea McGown, Herta King, Hilda Sostre, Renda

there 10 Shane Boyd all testified that there was a Ryder truck

could 11 before Monday at 4:30. That was the earliest that he

one 12 have gotten there at 4:30 on Monday afternoon with the

recall 13 rented from Eldon Elliott's. And they also -- you'll

toward that 14 Hilda Sostre's statement that she saw a person walk

driving 15 truck. You heard the testimony that McVeigh was seen

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

15 complete the information control sheet. And what is
put on

16 there that very same day, April 26, '95, by Schaefer
and Carey

17 concerning interview with Rick Wahl -- they put here --
let me

18 see if I can get it where everybody can read it -- "SFC
Richard

19 N. Wahl, B Battalion, 23d ADA, Fort Riley, Kansas,
interviewed.

20 Wahl was fishing at Geary State Lake 4-18-95, 9 . . .
to

21 12 p.m. Wahl said he saw a Ryder rental truck and a
blue or

22 brown Chevy Blazer or GMC pickup parked next to the
Ryder.

23 Wahl did not see any people near or around the truck
during

24 time he was fishing. He left just after noon. Wahl
was

25 fishing at same location Monday evening 4-17-95 and did
not see

14481

1 any trucks or people."

2 Now, you notice that this reflects that the
lead has

3 been completed and that it is 4-26-95. But the problem
is here

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

14483

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

14484

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

14485

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

14486

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

14487

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

14488

-- 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
14403

13 By Mr. Woods
14461

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

21

Paul Zuckerman

22

23

Kara Spitler

24

25