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15 * * * * *

16 PROCEEDINGS

17 (In open court at 8:45 a.m.)

18 THE COURT: Please be seated.

19 Good morning.

20 MR. TIGAR: Good morning, your Honor.

21 THE COURT: Ready to proceed?

22 MR. WOODS: Yes, sir.

23 THE COURT: Okay.

24 (Jury in at 8:46 a.m.)

25 THE COURT: Members of the jury, good morning.

14491

1 JURORS: Good morning.

2 THE COURT: We are ready to continue with the
defense
3 closing arguments.

4 Mr. Woods.

5 CLOSING ARGUMENT CONTINUED

6 MR. WOODS: Thank you, your Honor.

7 Good morning. When we broke last night, we

were

about 8 ending up talking about Richard Wahl and his testimony

I 9 seeing the two trucks at Geary Lake on April the 18th.

when this 10 wanted to show you part of his grand jury testimony

11 is fresh in his mind.

And 12 He testified to the grand jury July 19, '95.

single 13 describing the truck, he said that on the truck it had

was 14 square headlights with a parking light under it. It

15 definitely a General Motors product.

that it's 16 Well, the photos of Mr. Nichols' truck show

lights are 17 dual headlights, stacked headlights, and the parking

description 18 inside, as you can see on these two photos. So the

That was 19 that he was giving does not match Mr. Nichols' truck.

he 20 at grand jury. Of course, at trial when he testified,

21 didn't mention that at trial.

have 22 The prosecutor mentioned to you that "We don't

the lake 23 any witnesses that saw Mr. Nichols and Mr. McVeigh at

they 24 building the bombs because they were so careful that

25 avoided being seen." Well, 300 years ago in Salem,
when they

14492

1 tried women for witchcraft, the prosecutor's argument
was,
2 "These women are so clever that the proof that they're
witches,
3 there is no evidence of witchcraft," and that's pretty
much her
4 argument, "Well, we don't have any witnesses, but
that's
5 because they were too clever to be seen."

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

15 through there, and they're asking them to recall.

16 So Schlender's testimony here at trial is that
Mike

17 Havens was 5-foot-8 to 6-foot tall, he was driving a
late 70's,

18 dark-colored pickup with a light-colored topper, towing
a Ford

19 cutoff-pickup-bed trailer with white-type lettering on
the end

20 gate. It's a cutoff pickup that you make a trailer out
of, and

21 he testified they're fairly common in Mid-Kansas.

22 Well, under cross-examination, he admitted
that when

23 he was first approached by the FBI, he told them it was
a late

24 70's Dodge, had a four-wheel drive, was a three-
quarter-ton

25 pickup, had Kansas license plates with a Marion County
tag on

14493

1 it. These facts didn't fit the Government's theory
because

2 they knew that Terry Nichols still had his Michigan
plates on

3 his pickup at that time, so that testimony was dropped
when

4 Mr. Schlender testified here.

5 He also admitted under cross-examination that
he told
6 the FBI when he was first approached that Mike Havens
was
7 6-foot tall. Now to get around that, his testimony
when he got
8 to trial was, "Well, what I meant was it was 5-foot-8
to 6-foot
9 tall." 4 inches difference? He didn't say that to the
FBI
10 when he first approached; but to get it into the
Government's
11 theory, it became 5-foot-8 to 6 foot.

12 Now, he told when he was interviewed by the
FBI, "Give
13 me a lineup of pickups, and I could probably pick out
the
14 pickup it was." So what did the FBI do? They gave him
a
15 lineup, all right. It was all the photos of one truck,
Terry
16 Nichols' truck; and not surprisingly, he was able to
pick out
17 the truck. And the FBI kept pushing him to identify
the
18 Donahue trailers, those low, flatbed trailers that were
at the
19 Donahue farm because that was going been to be their
theory,
20 that Terry Nichols was using the Donahue trailers. But
to
21 Schlender's credit, he wouldn't be pushed that far. He
said,

22 "No, I described it as a cutoff-pickup-bed trailer,"
and he was

23 sticking with that.

24 Now, it's interesting to note he didn't from
the

25 witness stand say Terry Nichols is Mike Havens. Some
witnesses

14494

1 can be pushed just so far, and they're not going to
come in a

2 capital murder case and say, yes, that's the man. They
give

3 the FBI what they wanted by going, "Well, I'll give you
the

4 description and I'll conform the testimony to close to
the

5 description, but I'm not going to come in and identify
the

6 man."

7 Well, what about the other one? Well, one
other thing

8 he added for the testimony here, he said that he talked
to Mike

9 Havens and Mike Havens said he was farming over near
Durham. I

10 asked him on cross-examination, "Weren't you asked that
question

11 question in grand jury? Didn't they ask you that same
question

12 and you said, 'I didn't have any conversation with him

about

13 where he was farming'?"

14 He admitted, "That's true, yes, that's what I
said in

15 grand jury under oath." He added the Durham because
it's right

16 next to Marion where Terry was working.

17 But he didn't identify the person.

18 Now, Showalter -- remember Showalter? He was
the

19 person who wrote up the September 30 tag. Not tag, but
receipt

20 for the ammonium nitrate. Now, see, the FBI has found
this

21 receipt in Terry's house by then. They found that on
Saturday.

22 They unwrapped it. When it's wrapped up around coins,
you

23 can't see what's inside. The fingerprints on the
outside are

24 McVeigh's, not Terry's. You heard the testimony.
There's no

25 fingerprint of Terry Nichols in there. But the FBI has
found

14495

1 the receipt in Terry Nichols' so they're going to match
that

2 receipt to Terry Nichols, come what may.

3 They come to Showalter. Showalter says, "I
don't
4 recall the thing." They came to him in late April of
'95. He
5 just tells them, "I don't recall the transaction." He
tells
6 them that all the way through '95 and up to October of
'96; and
7 he admitted under cross-examination, "Well, the FBI
started
8 meeting with me, Mr. Hersley and Mr. Mendeloff -- a
prosecutor
9 who is no longer here -- started meeting with me and
had a
10 number of meetings with them in October of '96. And
then in
11 '97, I started meeting with Geoff Mearns, a prosecutor,
had
12 four meetings with him. And now here's my recall."

13 And his testimony was, Mike Havens was in his
late
14 30's, early 40's, 5-foot-9, 5-foot-10, average build,
with
15 dark, short, well-trimmed hair and wearing slacks and a
sports
16 shirt. He, after being worked with, came up with a
17 description, fairly specific, as to a September 30, '94
18 transaction, after being worked with by the FBI and
19 prosecutors.

20 But you notice also he didn't in court say
Terry
21 Nichols is Mike Havens because some witnesses just

won't be

22 pushed that far in a capital murder case. They're not
going to

23 say, yes, that's the man. But they'll give the FBI
what they

24 want and come up with a good enough description.

25 Now, you may think, well, is this the FBI that
I've

14496

1 seen on TV shows? I think you've seen and understand
that the

2 gap between the reality of the FBI and the myth of the
FBI is

3 as big as the Grand Canyon and is growing daily. You
saw these

4 people. They're ordinary people like you and I. They
take

5 them right out of college, give them -- what was it --
14 weeks

6 of training. Eight weeks are spent on firearms, so
that leaves

7 six weeks to train them to be the investigators for the
best

8 law enforcement agency in the world. Six weeks.

9 The Denver police officers that ride around in
patrol

10 cars get more training than that. These people are not

11 infallible. They're not flawless. But the difference
between

operating 12 them and you -- between you and them and I is they're
FBI. 13 under incredible pressure to maintain the myth of the

we had 14 This case was solved right away. In two days,
Louis 15 the suspects in custody. You heard from Budke that
26th 16 Freeh, the director, was there one week later on the
17 giving a speech. What do you think that speech was?
the 18 Congratulations, you solved the case. We look good in
19 press.

it, 20 They've got to maintain that; and to maintain
early 21 they've got to get the conviction that goes with the
with no 22 arrest, and they made the decision to make the arrest
square pegs 23 evidence. They've then got to start putting these
you've 24 in round holes, and that's what you've seen here. And
over 25 seen a lot of speculation in the summary, just jumping

14497

guilt, 1 these gaping holes, telling you this, this proves his

2 this proves the guilt.

3 The one I really liked was Miss Wilkinson
said, "Terry

4 Nichols went out and bought three newspapers on
Thursday

5 afternoon. That proves he's guilty because you only
buy three

6 newspapers if the story's about you."

7 Well, putting aside her personal experiences,
most

8 people on some large event want to get as many sources
of

9 information because the press is so notoriously
inaccurate, you

10 try to get a number of sources, put them together, and
maybe

11 you can filter out what the actual facts are.

12 Keep in mind that he didn't have television at
that

13 time. At least on television you can see the visual
image.

14 And when they interview witnesses, you can hear the
live

15 witness being interviewed. You don't have to take a
reporter's

16 version of that.

17 He didn't have television till Friday morning.
But

18 Miss Wilkinson tells you, "Because he bought three
newspapers,

19 that proves he's guilty because he wanted to read about

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

14498

1 Now, it was interesting to watch the treatment
that
2 these witnesses got who didn't agree with the
Government's
3 theory. Jeff Davis, the person from Hunam Palace who
delivered
4 the Chinese food, he tried to help when he told the
FBI, "Look,
5 I don't think that guy that I delivered the food to at
the
6 Dreamland on Saturday night, Room 25, was McVeigh.
I've seen
7 the picture in the paper, and I don't think that's
him."
8 Did you see the treatment that he got? You
recall how
9 many times he was interviewed by the FBI. They kept
going over

do you 10 and over and over, repeating the same question. What
his 11 think the point of that was? They were trying to get
12 testimony to conform.

Denny's. 13 And you heard Nancy Kindle, the waitress from

Government 14 She did identify McVeigh, but he didn't fit the
to 15 theory because she said on Easter Sunday, when he came
her 16 Denny's, he was with two other guys. Well, you heard

testifying in 17 testify. She said when she got back home after
were 18 the McVeigh trial, two agents called her up, and they
family 19 badgering her so that she put it on speakerphone so her
20 could hear it.

front of you 21 And Mr. Ryan got up and very pointedly in
which 22 jurors got up to talk to the two agents to let you know
two 23 one it was because you certainly wouldn't suspect these
before 24 fine agents of doing that, very pointedly doing that
point. 25 starting his cross-examination. It was done for a

14499

1 finally said,

2 because she

3 theory.

4 insulting

5

6 Nichols

7 in a

8 Tuesday

9 McDonald's,

10 him up

11 outside.

12 items

13 large lot

14

15 a number

16 how

She told you they harassed her, and she

"I'm not going to answer questions anymore," simply

was trying to help. But her testimony didn't meet the

And they dismissed all the others with

comments that they're similar to Elvis sightings.

Let's talk about the DRMO for a second. Terry

told the FBI in his statement -- and we'll get to that

minute -- that McVeigh wanted to borrow his car on

morning and that he, Nichols, picked up McVeigh at

drove to DRMO, was dropped off, told McVeigh to pick

about noon, and that he went outside to view the items

We know from the testimony that there were over 100

outside as part of this sale. Some of them were in

sizes.

Now, the Government has made a big point with

of witnesses about how meticulous and how careful and

17 fact-gathering Mr. Nichols is.

18 Mr. Nichols knows he's there until noon, and
he's

19 looking at items to buy and resell. You've seen his
photos of

20 everything in his garage. He says he went through and
looked

21 at a number of items outside in order to determine
which ones

22 to make a bid on. He testified that at noon, McVeigh
wasn't

23 there so he went in the inside portion, which as you
saw was

24 down the building to the other door. And the
Government made a

25 point, we didn't bring you the video. We didn't need
to bring

14500

1 you the video, because they had shown so many charts
and

2 diagrams of the place, you had a picture of it.

3 He went in the door and, there's where he had
to sign

4 in. He told the FBI that on the statement. You'll see
it, I'm

5 going to read it to you in a minute. He told them he
went in

6 there right before 1:00 to sign in because to view the
items

7 inside that's what you have to do. And then he
submitted his
8 bid at 1:37, which is approximately 40 minutes later
from
9 12:50, 50 minutes later.

10 And you'll see on the catalogue all the items
that
11 he's looked at, that he's circled and put prices on.

And he
12 bid on ten items, and seven of the items were outside.

And you
13 saw that from Miss Garza who testified. This is pretty
dirty
14 from fingerprinting, but I'm not sure -- well, it's too
15 difficult to read. But you heard Miss Garza's
testimony that

16 the three items on top are the inside items, and the
seven
17 below are the items that were viewed outside. And you
can see
18 the catalogue.

19 Now, she testified as to how strict they are
on their
20 sign-in procedures. I'm going to show you what is in
evidence
21 as Government's Exhibit 1956. You'll have this back
there to
22 look at. Look at all the signatures that are signing
in.

23 They're all different; right? Look at the sign-in.
It's all

24 in the same handwriting. It's the same handwriting on
that

all these 25 page. The same handwriting on this page. You'll see

14501

time 1 different signatures. Look at the sign-in sheet, the
sheet. 2 wrote. That's all the same handwriting. Same on this

Yet the 3 All the different handwriting of people signing in.

there, 4 timing is all in the same handwriting. Pretty strict

unknown 5 all right. They've got a clock that's been broken for

6 length of time that they can't get fixed.

was the 7 And Mr. O'Connell told you -- remember him, he

for 8 gray-haired gentleman that goes out there a lot to look

there. 9 electronic things. He's the nurse from that -- nearby

sign-in 10 He told you he goes outside to view -- and he's on this

There are 11 sheet. You'll see that he attended that auction.

And he 12 over 130 people that attended that auction that day.

signing in. 13 told you that he goes outside all the time without

14 He views the items that are on sale. It sometimes

takes him a

15 long time. He spends a lot of time just looking at one
tent.

16 He said he may spend 20 minutes looking at a tent. But
he also

17 looks at all the items that are not for sale, that are

18 flagged -- there's a flag separating them. He said
he's done

19 that a number of times; nobody ever runs him off out
there.

20 But he says one thing: "Look, when I'm out
there, I'm

21 looking at the items, I'm not looking at who the other
people

22 are." Well, the Government wants you to believe that
Nichols

23 wasn't there, because Carolyn Marin didn't see him when
she

24 went outside. She was there with her baby and her son
-- or

25 her child, I don't recall the sex of the child. She
was with

14502

1 her husband and her child. She was there to look at
two

2 things, and she spent over an hour doing it. She went
inside

3 to look at dressers and she went outside to look at
cars; and

4 because she hadn't dressed and she said it was cold and
chilly,
5 she was carrying her baby and she was walking behind
her
6 husband, acting as a wind guard for her. Do you
remember that
7 testimony? She's not looking around looking as to
who's around
8 looking at other items. She went back to the back to
look at a
9 car, and they actually bid and got the car. She's
driving it
10 now, she said. Well, she wouldn't see anybody when
she's --
11 walk out like that and walk back.

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

16 Let me get my documents straight here for a
second.

17 Now, Mr. Nichols told the FBI -- and we'll get
to that
18 statement in a minute -- that McVeigh came back shortly
after
19 he had submitted his bid and walked outside, he took
McVeigh
20 back to McDonald's, and went by and picked up his mail
and went
21 home. And Marife Nichols testified on direct that

Terry

22 Nichols came home about 1:30. Now, in cross-examination, when

23 Mr. Ryan questioned her, she said, "Well, I remember he came

24 home at noon and then said he was going to the auction." And

25 I -- on redirect, I questioned her, "Did you understand the

14503

1 difference between going to and gone?"

2 And she said, "Apparently not."

3 And at that point, we were allowed to get into her

4 notes that she made while she was in FBI custody. Remember her

5 testimony that she went with her husband down to the Herington

6 police station on April 21, Friday, 3:00? She and her child

7 were separated and then taken by the FBI to Junction City and

8 then moved around for 36 days and eight different cities,

9 questioned over and over and over. And because she wanted to

10 get it right, she, without consultation with Terry Nichols --

11 she's not in contact with Terry Nichols during this

time -- she

12 sets (sic) down and writes her recollection because
they're

13 asking her, "What all did you do in April." So she
sits down

14 and writes what's fresh on her mind at that time as to
what I

15 and Terry Nichols did in April.

16 Here are her notes that she made for April the
18th.

17 Get them where we can all read them.

18 "April the 18th, Tuesday, 9:30 a.m. Joshua
called

19 from Las Vegas." Remember that Josh had flown home the
night

20 before. So he's calling back.

21 "11:30 a.m., I woke up. Terry is gone/'The
Lion

22 King,' Nicole watched the movie."

23 "1:30 p.m., Terry is home. He said he went to
the

24 sailed" (sic) "bid somewhere in Fort Rally" (sic).

25 "2:00 p.m., we eat Filipino food, broccoli
with beef

14504

1 and rice.

2 "Terry made a phone call to a guy that's
supposed to

3 send the laser."

4 And you've seen the phone records, he's
calling

5 Quarton and the other business for the beam shot and
the

6 lasers. Those records are in evidence.

7 "I sit around, watch the rest of the movies.
Terry

8 was in and out the house. He took some big ammo cans
into the

9 house so that we can dust it.

10 "We went to the IGA movie store, returned the
movies,

11 and buy one Sing-Along movies, the 'Mermaids,' rent to
tapes, a

12 'Girl to Kill,' western movies.

13 "Sleep.

14 "'Nice night, no arguments.'"

15 Those were the notes she was making when under
FBI

16 custody so they would be fresh on her mind. Now, the
her and

17 Government would make a big point that they confused
was

18 she said, well, he came home at noon and then said he
was

19 going. These are the notes she made at the time.

20 You recall her testimony. The FBI said -- or
not the

21 FBI -- the Government lawyer told her after her second
trip to

not going 22 Oklahoma City to appear before the grand jury, "We're
you're 23 to put you in front of the grand jury because we think
back they 24 telling the truth." And then they gave her her money
custody 25 had held for 36 days so she could finally leave their

14505

had these 1 and fly back to the Philippines. The Government had
her 2 notes for over two weeks because she left them there at
3 first appearance; and when she came back at her second
4 appearance, they gave them to her.

mentioned in 5 Now, the other items that the Government
which 6 direct was the letter from Terry Nichols to Tim McVeigh
of 7 they say proves his intent. This is the clear letter
also left 8 intent. First I want to show you the letter that he
one, the 9 with Lana Padilla. There were two letters left. This
storage 10 read-and-do-immediately letter, points out where the
storage 11 is, the access code. And then he says, "All items in

age 21. 12 are for Joshua. The round items are his when he turns
pickup put 13 All else now. Pickup can be sold, but money from
14 for Josh to buy his own vehicle."
utensil 15 "Other storage, located in kitchen behind
there are 16 drawer between dishwasher and stove. Remove drawer,
pull 17 two small levers, one on each side of drawer, on rail,
pull drawer 18 drawer out till it stops, then flip levels down and
take and 19 completely out. Then look all the way back inside,
panels are 20 push hard against back panel. Both sides and back
panel and 21 glued, top not. After it's broke free, remove wood
to be 22 then remove plastic bag. All items in plastic bag are
insurance 23 sent to Marife for Nicole if for any reason my life
and 24 doesn't pay Marife. Otherwise, one-half goes to Marife
25 one-half to Josh."

14506

what is 1 Continuation of the letter. "Marife will know

2 at storage and home. As of now, only Marife, you, and
myself
3 know what there is and where it is. I hope you will do
as I
4 have stated. Josh has just a few years before he's
capable of
5 being on his own. And Marife and Nicole have many more
years
6 of support needed. There's no need to tell anyone
about the
7 items in storage and home. Again, only the three of us
will
8 know. I have the most trust in you here in the U.S. to
do as I
9 have written. It would probably be best to wire the
items to
10 Marife 3M at a time over two to three months. You will
have to
11 contact Tim to get the title for the pickup. He should
know
12 where it's at. Write to his sister, Jennifer McVeigh,
6289
13 Campbell Boulevard, Lockport, New York, 14094. You can
tell
14 Josh after you finish with all the details. There are
two
15 stock powers of attorneys in the stock file signed but
not
16 filled out. You should be able to take care of them
with the
17 stock powers of attorney."

18 Now, it's clear from this letter that he is
making

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

24 Then the Government wants you to believe that
his
25 companion letter that's to Tim is a letter of intent to
engage

14507

1 in the bombing.

2 And the letter states: "If you should receive
this
3 letter, clear everything out of Council Grove 37 by
February 1,
4 '95, or pay to keep it longer under Ted Parker of
Decker."

5 Now, their theory, that's where the bomb
supplies are
6 located, the bomb components. Why did he need to clear
it out?
7 This letter is going to get to them in late January
because the
8 provision if he didn't get back in late January, Marife
9 would -- not Marife, but Lana was to mail the letter to

Tim

10 late January. And he's saying clear it out by February
1, '95.

11 Why do you need to clear out components, bomb
components, if

12 you're going to bomb something in April, '95? That
doesn't

13 make sense. Yet the Government says this is a clear
plan of

14 the bombing in April, '95, and it shows his intent.

15 The letter goes on: "This letter has been
written and

16 sealed before I left, 21 November, and being mailed by
Lana as

17 per my instructions to her in writing. This is all she
knows.

18 It would be a good idea to write or call to her to
verify

19 things." And it gives the numbers. "You're on your
own. Go

20 for it."

21 They say that statement means go for it, do
the

22 bombing.

23 He and McVeigh are splitting their business.
They're

24 not going to be in business anymore. Why can't that
mean

25 you're on your own in the gun show business, go for it?
Yet

14508

1 the Government says, no, that is clear proof that that
is
2 intent to bomb the building on April 19. They're
asking you to
3 speculate. And you don't speculate at criminal cases
where
4 their burden is proof beyond a reasonable doubt.
They've done
5 that a lot. And when you analyze what she said and
then
6 analyze the evidence, you're going to see that she's
asking you
7 to speculate a lot on a lot of things.

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

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

that 18 the bed, the couch, the table, and a dining room table
to be 19 they had back in Marion. When Terry vacated the Marion
believe 20 premises on September 30, one of the storage sheds has
from 21 for the furniture. But the Government wants you to
22 that they're all for bomb components and stolen weapons
23 Roger Moore.

Lana 24 He goes on to say: "Have my mail forwarded to
Las Vegas, 25 but use my name and her address, 7160 Nordic Lights,

14509

197." 1 Nevada. Mailbox Etcff, Sherry, and a phone number, Box

signed and 2 He goes on to say: "The Parker deal was

February, '95, 3 dated 7 November '94, so you should have until

should 4 plus five days' grace. If close or they disagree, then

know. 5 pay another term period. As far as heat, none that I

6 This letter would be for purpose of my death."

would be 7 That's written in connection with this letter

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

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

14510

1 there."

about

2 Now, on the last witness that we want to talk

As you

3 here, let's talk about the testimony of Marife Nichols.

speaks

4 could see, Marife does not speak perfect English. She

short

5 pretty good English for somebody who's been here such a

was

6 time. And it certainly has improved since '95 when she

her 36

7 interviewed by the FBI. You heard her testify about

8 days and her writing these notes.

McVeigh

9 What she also testified about was that Tim

from

10 visited them in Marion, Kansas, when they lived there

left in

11 March, '94, to September 30, '94. Remember that she

her to

12 (sic) September the 22d, '94. McVeigh had even taken

could

13 the coin shop to handle the sale of coins so that she

came in

14 leave. But she said during that time that when McVeigh

didn't

15 August and September, that he was in and out. He

16 stay -- he would stay a day or two, and then he was
gone. She
17 didn't know where he was going to. One time he told
her he was
18 going to Kingman and another time he told her he was
going to
19 New York.

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

25 She also told you that she made it a condition
with

14511

1 her husband, Terry Nichols, after she went over in
September,
2 '94, to go back to school in the Philippines and when
Terry
3 went back in November, '94, to surprise her and
obviously ask
4 her to come back home, she told you that she made it a
5 condition that "If I go back home, McVeigh's not going
to be

6 part of our life."

7 And that was the condition that Terry
accepted, and he

8 did bring her back. She came back in March, '95. And
he told

9 her, "We were going to have -- I'm going to do my
separate --

10 my gun show business separately, and I'll be able to
spend more

11 time at home. I'll just go to the gun shows on the
weekend.

12 I'll be able to spend time with you and Nicole." And
that was

13 a condition she set and came back for.

14 She told you that when she came back in March,
'95,

15 she started going to gun shows with Terry. The first
one was

16 at the Salina gun show. You know where Salina is. She
told

17 you that she herself sold some of the ammonium nitrate
that was

18 in bottles. Some of it was ground, some of it was in
prills;

19 that she sold some there. She told you that they then
went to

20 Grand Rapids, Michigan, the first week of April and
that she

21 sold some ammonium nitrate there. And she told you
about the

22 meeting with Kevin Nicholas where that was discussed
with he

23 and his wife, Sheila, about why people would buy

ammonium

24 nitrate. And she told you that Terry reminded her,
"Give this

25 sheet when you sell this," and the sheet was the
description of

14512

1 the fertilizer and that it was an explosive.

2 She told you about Terry Nichols coming home
on

3 Friday, April the 21st, and he was scared, he was pale,
he was

4 upset. They turned on the television set. They saw
the news

5 on the television set concerning the bombing,
concerning the

6 arrest. And that Terry Nichols then said, "I need to
go to the

7 police station." She stated that he was insistent on
going to

8 the police station and that she and Nicole went with
him.

9 She stated they went by the Surplus City first
where

10 Terry had mentioned trading shingles for nails but then
went to

11 the police station because Terry didn't go in there at
the

12 time. There was some testimony about seeing perhaps
somebody

fleeing. 13 following them. But her testimony was, "We weren't

14 We weren't going anywhere. We were going to the police
15 station. That's where Terry said he wanted to go."

16 And you know from the witnesses that were at
the

17 police station that when Terry walked in, they all
described

18 him as pale, scared, nervous, concerned. Barry
Thacker, Dale

19 Kuhn. We know that was his condition when he got there
at the

20 police station.

21 She further testified about, under cross --
under

22 questioning by the Government that Terry never
discussed Waco

23 with her; but when Tim would come, Tim was always upset
and

24 agitated about Waco, but that Terry wasn't near as
agitated

25 about Waco.

14513

opening 1 The Government kept telling you in their

2 argument over and over and over about how Terry Nichols
hates

3 the government, was obsessed by Waco. That's not the
facts.

4 You don't have anybody that says that.

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

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

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

19 Now, as to the interview by the FBI that Terry
did on
20 September -- on April the 21st, remember that the
people that
21 are interviewing him and taking notes are the ones that
were

22 sent to Herington to arrest him. Remember they
followed him
23 around, they watched him go into the police station.
And
24 what's their conclusion, what's their immediate
conclusion when
25 he went in the police station? He's held them up
hostage.

14514

1 It's a hostage situation. Here's a man with his two-
year-old
2 daughter and his wife. They've captured the police
station and
3 they're hostages. That's the mind-set of the FBI when
they
4 went in to interview Terry Nichols.
5 And early on in the interview, when there were
three
6 people interviewing him at once, Scott Crabtree told
him, "Stop
7 doing what you're doing. Don't take time to think of
these
8 answers." Well, here's a man who's heard on television
that
9 he's wanted in the largest criminal case that's ever
occurred
10 and the Attorney General's seeking the death penalty,
and he
11 wants to take time to answer questions? The FBI, "Stop

doing

12 that. Don't take time to answer these." Three agents
are
13 firing questions at him.

14 Now, these notes that Agent Steve Smith took.

15 this is a disgrace. This is incredible. The top law
16 enforcement agency in the world, the largest criminal
case and

17 this is their evidence of what they obtained from the
suspect

18 in nine-and-a-half hours of interview? This is it. If
the FBI

19 doesn't change their procedures after this case, then
you can

20 conclude they don't want the interview processes known
to the

21 public.

22 There is introduced into evidence at the same
time

23 Mr. Smith's typewritten version. And you can compare
-- what I

24 would encourage you to do when you get back there is
read this.

25 It's not that long. It's 24 pages. I would encourage
you to

14515

1 read it, either have the foreman read it out loud or,
you know,

2 you can come up with however you want to do it, but
read it

3 word for word. That's the closest we can get to
4 contemporaneous what Terry Nichols said and what they
asked.

5 They had nine-and-a-half hours to question him.

6 And I want to -- I'm going to go through
briefly --

7 and again I encourage you to look at this in full
context, but

8 I want to go through briefly and read some of the
statements

9 that were put in these notes, and you can remember
these when

10 you go back and look at it. I'm not going to read it
all. We

11 did that with Agent Smith with his totally illegible
notes. I

12 mean that -- that's a disgrace.

13 You know, look -- what did Luke Franey tell
you, the

14 ATF victim who was caught on one of the upper floors.
A good

15 law enforcement agent who says the first thing he did
was start

16 talking into a tape recorder so he could capture
everything he

17 saw and his observations and what he was seeing,
observing,

18 that's what you do. You don't make illegible notes
like this.

19 On something important.

Smith 20 At any rate, we have the benefit of Steve
would 21 setting (sic) down and typing up what he wrote. And I
notes. 22 encourage you to compare them, if you can read the

to see 23 But on page 1, the notes reflect: "Came to PD
surplus 24 what's what. Do not want another Waco. Stopped at
of car, 25 store, need shingle, trade tools for shingle, got out

14516

car and 1 had a feeling that I was being followed, got back in
2 headed to PD."

is in 3 Page 2. "Saw McVeigh Sunday. Heard McVeigh
not know 4 custody on the news. Not see at any hotel in JC. Do
Sunday. 5 if he rented a Ryder truck. Saw in Oklahoma City on
got car 6 Picked him up there and my TV. He called me and said I
November, 7 problems and if you want your TV, come pick up. Last
months 8 I dropped TV off with my wife and babies, Vegas. Two
9 ago, mentioned in a letter, if you are in the vicinity

of

10 Vegas, you can pick my TV up. I came back home.
Dropped him

11 off at JC McDonald's on Sunday night or early Monday
morning.

12 Apparently left car in Oklahoma City. He was vague on
a lot of

13 things, lot of small talk. Knew him in the Army and
seemed

14 like he was different when he got out."

15 Page 3. "Drove down by self (five hours) then
five

16 hours back with McVeigh. Said he got a room in JC.
McDonald's

17 was closed, but the Denny's was open. I dropped off
and said

18 that I would catch him later. He knew someone around
JC where

19 he could possibly get a vehicle. And head on his way
back

20 home, New York, see relatives in New York. Said he
bought it

21 cheap, did not know if it was worth fixing."

22 Page 4. "Last contact prior to Sunday was in
November

23 or January. Son, Joshua, TV, got call at approximately

24 3:00 p.m. after Easter dinner. I might not drop it off
because

25 I'm pressed for time to get back east. Assume call was
from

14517

relatives 1 Oklahoma City. He was coming from out West to visit
wanted 2 East. Gave son TV in Vegas in November. Thought if I
Arizona, 3 TV back, then go pick up. Send letter to mailbox in
4 Kingman, told Tim if he was in the area, to pick it up.
5 "Left about 10 minutes after call. He gave me
6 directions to go downtown, gave me the exits, go around
block
take 7 couple of times and I'll see you. Decided it would
him up. 8 approximately five hours. Circle the block and picked
9 Possibly Main Street exit (8th Street). Went past that
two of 10 building couple times. On phone (just keep between the
private on 11 us). Just repeat Omaha if your wife asks. Seemed
business, some 12 other calls, my business, no one is to know his
13 private were trivial things.
circles 14 "Make sure you come down 8th Street, make your
for 15, 15 (went south on 8th Street, possibly) drove around block
buildings, 16 30 minutes. Could have been half hour. All big
office. Route 17 went as far as a car dealer, and drove by a post

18 of blocks were not always the same. Glimpsed down an
alley to
19 other street and saw that it was him when drove around
block.
20 Driving east (saw through alley) then drove north and
back
21 west, picked him up on a two-way street."

22 This is page 6. "He was not wet when he got
in my
23 car. It was raining when in Oklahoma City. Go down
8th
24 Street. Came from Arizona, going back East to see
family and
25 bringing TV. Going to meet someone else in Midwest.
He does

14518

1 not want people to know what he's doing. This is his
nature,
2 so he told me to tell wife that you were going to go to
Omaha.
3 I told wife that was going to Omaha to pick up Tim with
car
4 problems. Then told wife on way to PD today that I
went down
5 to Oklahoma City instead of Omaha.

6 Page 7. "Tim had TV setting on sidewalk, not
see his
7 car. Way he talked, it sounded like a larger model.
Had a

City, got 8 compact Chevy before. Went straight up to Junction
somebody 9 to Junction City, about 1:30 a.m. He said he knew
10 there where he could stay and get a car."

11 Page 8. "Got home about 2 a.m. Think it
stopped 12 raining when got into Kansas. McDonald's on Washington
was 13 closed. He said to 'drop me off' there and he'd call
someone. 14 He said he was hungry but not opened, but Denny's was
open. 15 Pulled in between McDonald's and service station. And
then I 16 got back on Washington Street. He was walking towards
Texaco 17 or Conoco. He had a little bag, solid green laundry
bag like 18 laundry -- like Army laundry bag with drawstring.
'Catch you 19 on the way back.' Usually says this when we leave each
other.

20 "He gave me a call on Tuesday morning,
approximately 21 6 a.m., and would like to use your pickup a little bit.
Fort 22 Riley had a sealed bid auction, Monday, Tuesday,
Wednesday. 23 Knows a couple of guys in JC, find a car. Was just up
when got 24 call. 'Can I use your pickup a little bit? I need to
pick up

25 a few things and look at a few vehicles.' I said I
want to go

14519

1 to auction today, if it's not going to take too long,
you can

2 drop me off at auction so I can review it. Then borrow
it;

3 then we would be going our own way, after that. He
said he was

4 not in a real hurry. Home for an hour, left home at
seven,

5 agreed to meet at McDonald's in Junction City at 7:30
a.m.

6 Picked him up, drove up to Fort Riley. I got out and
told him

7 to be back at noon. McDonald's back on freeway, K-18,
through

8 Ogden and then to post to Fort Riley.

9 "He showed up after 1 p.m.; went into building
and

10 signed in before one and looked at items inside, then
left.

11 Went outside after bid and he drove up, dropped him off
at

12 McDonald's, and that was it."

13 Now, the Government will make a point that --
and has

14 made a point that there was no call on Tuesday morning.
The

Nichols 15 call was on Monday morning. And it's possible that Mr.
McVeigh 16 made a mistake as to the day he got a call from Mr.
morning. 17 wanting to borrow the car. There is a call on Monday
Tuesday 18 Why couldn't the call concerning borrowing the car for
19 be on Monday morning? It's not impossible.
being 20 Remember, he's under a lot of pressure and
He's 21 pressed by the agents, and he's saying what he recalls.
Sunday and 22 telling them everything he's done with McVeigh on
he went 23 Tuesday. I mean, the most incriminating thing is that
them 24 to Oklahoma City and picked up McVeigh. He's telling
he's 25 that. Yet the Government wants you to believe, well,

14520

1 mistaken on the day that the phone call came in to
borrow the 2 car. So what? He made a mistake. How many other
people in 3 this case have made mistakes to the FBI?
4 Yet the Government says that shows proof of
guilt.

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

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

17 Page 12. "My and my brother's mention in
regard to
18 OKC, two people from Michigan. Heard about OKC bombing
19 yesterday at cable outlet in Herington. Got a paper
last night
20 and got three different papers. Read about it last
night.
21 Wichita, Salina, at home. No reception on TV till
today at

heard 22 9 a.m. Cable. Home to lumberyard, parked there and
23 name, and did not go in.
not 24 "Ask her if she had heard about it. She does
25 believe it. Turned TV on a news station for 15
minutes. Janet

14521

1 Reno was on there discussing investigation. General
lingo that
2 they always give. It was a press conference. Then
heard Tim's
3 name on TV for first time. Said he was picked up for a
car
4 violation not far away from OKC. Thought and swore I
cannot
5 believe it was him because he was heading back to see
his
6 family and he was back there in OKC. When I heard his
name on
7 the TV, that is when I figured out why my name was on
the
8 radio, because I was his friend. I was feeling shock
because
9 heard my name. How am I involved? How am I connected
to it?
10 I must not have known him that well for him to do that.
11 "Friendship is about the same with him now as
five

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

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

14522

1 clothing for going out of town."

2 On page 15, a question: "Looking back in

hindsight,

3 anything he said on way up make you think he had done
it?

4 "Answer: Yes. He said on way from OKC to
Junction

5 City, Tim, 'You will see something big in the future.'

6 "I was talking about what I was doing, going
to

7 military shows, selling surplus. 'I'm doing fine. I
should

8 get something going here shortly.'

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

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

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

12 "Did not ask him what 'in the works' meant.
Tim said

13 'in the works' in the past. This discussion ended when
we got

14 distracted or talked about something else."

15 Page 20, "Question: Any storage facilities,
care,

16 custody and control? No. 1, had storage in Las Vegas,

17 November, '94 to 12-94 to January, '95. Personal
items, stored

18 pickup there when went to Philippines.

19 "2, one in Herington. I was asked to pick a
couple

20 things up from -- by Tim. At time not think much of
it.

21 Yesterday picked up. 'If I don't pick them up, pick
them up

bag and 22 for me,' told me on Tuesday. Those items are sleeping
now. 23 rucksack in the garage. His rifle in box next to meter
Pizza 24 Combination, nothing left in storage. Across from the
by-10. 25 Hut, second up from south end on east side, it's a 5-

14523

1 "Question: Are these your items?
2 "Answer: No.
3 "What about your fingerprints on any items in
the 4 rucksack?
5 "May have given some items to McVeigh in the
past that 6 are not rucksack.
7 "I had one that I stored my stuff in Council
Grove, 8 (furniture) (and guns, ammo in facility) stored there
last fall 9 (or October to March) (until I got home). Closed
before I 10 moved in. Nothing in house or truck that can be
construed as 11 bomb-making material."

12 Page 22. "I bought two 50-pound bags of
ammonium

(have 13 nitrate about one month ago from Manhattan elevator
bags for 5 14 receipts in the house) because going to sell 1-pound
Read 15 to \$10 instead of \$35 that a Tulsa guy was selling for.
16 books, sell as fertilizer with sheet that says plant
17 food/nitrogen and explain mixture for uses from plants.
Sold at 18 Plastic containers in basement, 8-ounce and 24-ounce.
any more 19 shows every weekend except Easter weekend. If I sell
morning. 20 at shows, they will question me. Put it on lawn this
21 Did not say earlier because it makes me look guilty."

22 Page 23.

23 "Question: What are drums in the garage?

Marion. Fuel 24 "Answer: Trash and other uses, bought in
25 meter to resell.

14524

involved 1 "Question: No knowledge of him Jim Boy being
2 in OKC bombing?
3 "Answer: No.
4 "Question: What about Tim?

5 "Answer: I suspect it now. Not recall a call
from

6 Tim on Saturday morning at 6:30 a.m."

7 And you recall the phone records reflected
that phone

8 call was not answered. It was zero duration. But they
were

9 asking him about that.

10 "Michigan militia equals big, we (Marife,
Nicole and

11 I) on 4-8 and 4-9, gone for a week, left on 4-9-95, and
got

12 back on 4-10-95. Went to a gun show, sold 30 cases of
MREs in

13 15 minutes to people from Michigan militia. Never
identified

14 themselves. Heard that they bought stuff. Guys
walking around

15 with full BDU, and aware they from Michigan militia.
Never

16 went to any meetings. Sold ten cases right off the
bat. \$30

17 then \$32 sold. Then sold two and three to 60-year-old
ladies.

18 I do not know anyone in the Michigan militia."

19 And then at 12:30 a.m., handed four pages of
letters,

20 notes. "I wrote it because I did not have a will. In
case of

21 event of death, this letter was going to be sent to Tim
in

22 January if I did not return. Ex-wife was instructed to
mail it

She 23 to Tim. Filipinos not like Americans, run over by car.
after 24 (Lana) had separate instruction, do not open until
opened it 25 1-28-95. She opened it up beforehand. She said she

14525

she felt a 1 up shortly after I left because Josh started cry and
2 need. Some personal effects in letter for Tim.

3 12:11, "Dan and Jack came in and left."

questioned 4 There's no mention in there that the FBI

know of. 5 him about the meaning of go for it or no heat that I

no 6 There's no reflection of a question or a reference of

7 answer. Yet the FBI wants you to believe, yes, we did
8 answer -- we did ask that because it was so important.

If it 9 was so important, they would have put it in the notes.

had they 10 It would make all of our lives much simpler

what 11 tape-recorded that conversation. We would know exactly

going to 12 was asked and exactly what was stated. But the jury's

13 have to look at the notes and the typewritten versions

to

14 recall what was said there.

15 Your Honor, may I have one second?

16 THE COURT: Yes.

17 MR. WOODS: To find my note sheet.

18 Some of the things that Miss Wilkinson
mentioned: She

19 stated that Donahue told you that Terry Nichols was
advocating

20 violence and overthrow of the Government. You heard
the

21 testimony in cross-examination when Mr. Tigar
questioned him.

22 It was normal political talk you hear in the coffee
shop. He

23 wasn't alarmed by it, he wanted to keep Nichols as an
employee.

24 Yet they want you to believe this shows hatred of
government to

25 the point where he would bomb a building? They're
asking you

14526

1 to speculate a lot.

2 They also brought up the phone conversation
that Terry

3 had with Lana, where Lana Padilla admitted on the
witness stand

4 she was irritated and upset with Terry when she got him

on the

5 phone because Josh was threatening to run away and she
couldn't

6 get a hold of Terry because he didn't have a phone.
She wrote

7 him a letter that said call me. When he called, she
was upset.

8 She admitted on cross-examination, yes, I was upset, I
was

9 giving him trouble. Terry like to avoid
confrontations. He

10 mentioned on the phone that he was concerned about
civic

11 unrest, civil unrest. He was concerned about citizens
shooting

12 each other. He wasn't advocating that. You can recall
her

13 testimony. The Government played it one way, and when
we asked

14 her on cross, she stated it the way she recalled it.

15 Well, I'm going to save those notes and let
Mr. Tigar

16 talk about them. He's much more articulate than I am,
and he

17 will be summing up for us. And I appreciate the time
and

18 paying attention to what I'm saying, thank you.

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

20 THE COURT: Yes.

21 If you want to stand and stretch.

22 (At the bench:)

23 (Bench Conference 127B1 is not herein transcribed
by court

24 order. It is transcribed as a separate sealed
transcript.)

25

14530

1 (In open court:)

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

3 about a 15-minute recess at this point, and again of
course,

4 we're going to give you the case today, but we haven't
given it

5 to you yet, so please do recognize that and avoid
discussion of

6 anything about the case now during the time of this
brief

7 recess. We'll be in recess about 15 minutes. You may
step

8 out.

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

10 THE COURT: All right, we'll recess.

11 (Recess at 9:49 a.m.)

12 (Reconvened at 10:03 a.m.)

13 THE COURT: Be seated, please.

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

15 THE COURT: Mr. Tigar.

16 CLOSING ARGUMENT CONTINUED

17 MR. TIGAR: Thank you.

18 Thank you, members of the jury, for your
patience.

19 This is our one and only one chance to address you.
When I'm

20 done, the prosecutor has a rebuttal, and we want to
make sure

21 we didn't miss anything. We probably did, but you'll
have all

22 the exhibits in there and you'll have your collective
memory of

23 the testimony; and so as the prosecutor talks at the
end, you

24 have to -- for the rebuttal that we don't get to
answer, I'm

25 sure that you'll think of the case in the way that the
Judge

14531

1 says that it is your oath to do; that is, you could
look at a

2 defendant on trial and say let's take every single
testimony,

3 every single piece of evidence, and let's try to figure
out

4 what is the most sinister implication we could possibly
attach

5 to it; or you could do it the way that stood us so well

with

6 the centuries of our justice system piled so high and
say no,
7 no, no, let's look at it with the understanding that
there is a
8 presumption of innocence and it stays with that person
9 throughout the case and that it is the Government's
burden.

10 Let's view the evidence from that point of
view. And

11 in this final part of the summation, I want to do that
for a
12 few more of these items.

13 The Martin Marietta quarry: You heard Mr.
Radtke.

14 There was a report that a former employee, a
disgruntled
15 employee, had made some threats; and yet nobody ever
16 investigated that.

17 There was no evidence that Tovex or Primadet
was even

18 used in the case. There was a picture of the quarry.
The

19 front gates were always locked, and those locks were
20 undisturbed. This is Government's Exhibit 119. There
is the
21 lock.

22 Whoever came into that quarry that night,
therefore,

23 either had to be somebody who had a key, or somebody
who had

field 24 figured out that there is maybe a back road across this
have it. 25 in there. That's Government's Exhibit 118. You'll

14532

where 1 And yet from the road, you can't see the shed

This looks 2 these items that they said were stolen are stored.

3 like an inside job.

the 4 And if you want to take Mr. Cadigan after all

own 5 water and the drill bit evidence -- Mr. McVeigh had his

The 6 car. Mr. McVeigh had access to Mr. Nichols' tools.

drive 7 Government asked you: Well, why would Terry Nichols

the 8 1100-some miles to Kingman, Arizona? And the answer in

Arizona. 9 evidence is that he didn't. He was in Kingman,
Never

in 10 went in the Fortiers' house. He has a son named Joshua

from. 11 Las Vegas, Nevada; and that's where the phone calls are

and 12 When you see Terry Nichols crisscrossing back

family 13 forth across the United States, remember he has that

with 14 there, and we'll hear a little more about what happened
15 that in November.

not with 16 Suppose we looked at the Roger Moore robbery
we 17 a sinister eye but honestly at that testimony. Suppose
you they 18 looked at Karen Anderson -- and the Government tells
19 don't rely on a certain list that she made. This is
witness 20 Government's Exhibit 2103. Karen Anderson took that
you the 21 stand right there and took an oath and swore to tell
an old 22 truth and said that she had found this list and it was
Roger 23 list and it contained the list of the guns that she and
24 Moore had.

here 25 And then we found out that there was a gun on

14533

the 1 with a certain serial number, 189-57425. So we went to
and 2 Department of the Treasury, Bureau of Alcohol, Tobacco,
there is a 3 Firearms and found out in Defense Exhibit D1166 that

a man 4 record of that gun, 189-57425, and that it was sold to
5 named "Terry Nichols" back in Michigan.

6 Well, does it matter that the Government says
they now 7 don't want to rely on it? Where did Karen Anderson get
that 8 serial number to make a fake list? Did she make it up?
Where 9 did she get it? There is only one place in the world
she could 10 get it, and that's because the Federal Bureau of
Investigation 11 showed her a bunch of guns that had been recovered from
Terry 12 Nichols' house, told her what the serial numbers were
so that 13 they could make up this phony document and then pretend
to find 14 it and bring it in to you.

15 The Judge will tell you that if you find that
a 16 witness lied to you under oath from that witness stand,
you're 17 entitled to disbelieve everything that witness said.

18 The Moore robbery: Walt Powell got a Waco
tape and a 19 lot of political talk from Roger about black
helicopters and 20 NATO forces. Roger Moore denied that ever happened.

21 Walt Powell? He doesn't have an axe to grind.
He's

22 not coming in here as some buddy of Terry Nichols.
23 Mrs. Powell welcomed Mr. Moore. He made phone
calls.
24 They put in some phone records that show that -- well,
there is
25 no trace of Roger Moore's phone calls on his own phone,
no

14534

1 trace of phone calls on the Powells' phone. He used a
calling
2 card. Did they subpoena the Bob Miller card? Did they
3 subpoena some other card Roger Moore had? The Powells
heard
4 him make two phone calls, and Mr. Powell had to remind
him to
5 call the sheriff.

6 Lance Powell hears him talk: "They got it
all." They
7 got it all? Is that a reference to "they cleaned me
out"?
8 Hardly. Spivey has a picture -- and it's in evidence
-- of
9 silver coins left behind by the robber. "They got it
all."
10 That's Roger Moore talking to somebody, and we may be
able to
11 figure out who that was.

12 Then the police arrived. He says, "The feds
did it."

list, two 13 Then he makes a list for the insurance agents. One
to 14 lists, three lists. When Mr. Spivey comes, we're down
numbers 15 Version 3. And I asked Mr. Spivey to total up these
and 16 that he was claiming from his insurance company; and lo
homeowner's 17 behold, it's \$400 more than the amount of his
deductible. 18 insurance contents coverage, and he has a \$500

19 Roger Moore is hard of hearing but can hear
footfalls
it turns 20 on a carpet. He says a wood floor at first, but then
carried. 21 out his floor is carpeted. He's dragged; no, he's
22 Which is it?

23 He notes that the serial numbers of all his
guns were
panel, 24 hidden in his van, maybe in a cabinet, maybe in a door
the 25 maybe behind the glove box; but when the sheriff goes,

14535

that was 1 serial numbers are mysteriously missing but the money
2 in the same place is still there, thousands of dollars

left

3 behind, while the serial number list is missing.

4 He tells Mr. Hethcox, the Little Rock police

Nobody

5 helicopter pilot, "The robber fired a shot in the air."

6 heard a shot.

open a

7 He tells Mr. Hethcox the robber forced him to

8 safe. He doesn't have a safe.

taken. He

9 He tells Mr. Hethcox that paintings were

10 doesn't have paintings.

her

11 He tells Jan Dies -- you remember Ms. Dies and

grind.

12 daughter, Dana Priddy? They don't have an axe to

because

13 They're not here to support somebody. They come here

badge,

14 they were subpoenaed. "The feds did it." "Here's a

house to

15 don't tell anybody." "I'll put explosives around my

16 keep people away."

McVeigh

17 The Fortier tired-robber story -- that's what

helped

18 told Fortier: that the robber got tired and then they

19 each other, and so on. Nobody supports that.

decal.

20 Roger Moore knows racing fuel. He has a

21 "The FBI blew my cover," says Rodney Bowers

Roger

22 Moore told him. Moore denies it.

23 He threatens Dana Priddy: "I'll spread her
all over

24 the counter."

25 He gives Jan Dies and Dana Priddy a
description that

14536

1 doesn't include wire ties. Another person, he tells
they're

2 police ties. Well, you saw the difference between what
Roger

3 Moore said he was tied up in and real police ties.

4 Government counsel said: Well, of course you
would

5 call a private detective; that shows he wanted to
investigate.

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

8 when I asked him if he had done it did he deny it? And
when I

9 said, "Do you deny that?" he said, "Yes."

10 Nothing wrong with calling a private
detective.

11 What's funny is Roger Moore's credibility. On his
homeowner's

12 application, he says he has only a thousand dollars in

jewelry

13 and guns. Why does he say that? "Well, I was told
once by an
14 insurance agent not to buy insurance. And I was told
not to
15 buy insurance because if you buy insurance, somebody
might tell
16 somebody else and then you get robbed."

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

25 And Roger Moore also tells you a lie about how
much it

14537

1 would cost. Jan Dies said it only cost a tenth as much
as
2 Moore said.

3 He offers McVeigh, so he says, \$100,000 to
come and
4 solve the case, doesn't remember getting a call at the
Powells.
5 Who knows to call him there? And yet Trooper
Karchefski
6 remembers that.
7 Karen and Roger both say Roger doesn't sell
porn, but
8 Roger has a sudden awakening and recollection that
maybe he did
9 sell porn tapes. That's his right to do it, but why
deny it?
10 Roger Moore deals in cash, not the small
amounts like
11 Terry Nichols, but enough so he can pull \$100,000 out
of the
12 bank on a whim.
13 His phone records will show, the ones
introduced by
14 the Government, that he called Karen Anderson that day;
but he
15 told Spivey that he didn't know where she was.
16 He tells the cops and Spivey McVeigh is a
suspect.
17 When the cops interview him and say, "Where can we find
this
18 McVeigh," he says, "Oh, Fort Riley. New York." And
yet he's
19 corresponding with him at least four times a year in
Kingman,
20 Arizona, and knows it and knows it so well that he and

Karen

21 can put McVeigh in touch with Steve Colbern.

Spivey 22 "Not a big enough closet for all those guns,"

says, 23 says. Oh, the insurance company paid, yes. But Spivey

pay the 24 "At some point we do make the decision to go ahead and

25 claim instead of investigating it further."

14538

what's the 1 When Lance Powell goes to Moore's house,

and says, 2 first thing Moore does? He takes him around the back

does he 3 "That's where the phone lines were cut." Well, how

right 4 know? He told you on direct examination that he walked

down to 5 out his front door, put a gun in his pocket, and walked

"That's 6 the Powells. How does he know to go back and say,

7 where the phone lines were cut"?

wasn't in 8 Well, what did happen? Maybe Karen Anderson

very much 9 the know. But Roger Moore's description, which looks

Nichols, 10 like the picture that was in his van, sure isn't Terry

11 unless Terry Nichols grew 4 inches and 30 pounds.
12 No description of any pantyhose being used.
Even
13 Roger Moore didn't say that, and he didn't say a wig.
He said
14 a beard, a full beard; and everybody that saw Terry
Nichols
15 said he was clean-shaven at that time.
16 No, folks, it doesn't make sense the way Roger
Moore
17 tells it.
18 How does it make sense?
19 Terry Nichols told the Government he had the
storage
20 sheds in Council Grove to store guns and ammo and
furniture.
21 And that's right. And Michael Fortier saw guns. Tim
McVeigh
22 was handing things out that were -- came out of Roger
Moore's
23 house. There is no question about that. Tim McVeigh
was
24 handing those out and saying, "Sell them." And when
Fortier
25 sold them, he said, "You got to give me some of the
money." He

14539

1 said, "I have to give it to Terry Nichols." There is

no proof

2 he ever did.

3 Tim McVeigh is in charge of distributing the
goods and

4 directing the goods out of Roger Moore's house because
Tim

5 McVeigh and Roger Moore have got a relationship; and
Roger

6 comes here and tells you that he wanted to trap Tim
McVeigh,

7 and yet he writes him a letter. And it's in evidence
and you

8 can read it, and I won't tax your patience with it.
That

9 letter is not the letter that somebody would write to
somebody

10 that you thought had robbed you.

11 And we can prove it. The Government says
through

12 Michael Fortier: "I got a call, or Lori did, that
there was a

13 code red from Tim McVeigh. And then I went to a pay
phone --"

14 pay phone "-- and I called back Timothy McVeigh. And
if you

15 don't believe me, here's a picture of the pay phone."

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

17 The Government then brought to you a chart.
And like

18 all these other charts, maybe those charts got made
before the

19 evidence came in. Maybe it's like that racetrack where
they
20 put the numbers on the horses after the race is run,
because
21 the chart doesn't tell you what the real evidence is.
The
22 chart talks about phone calls on the 6th and 7th of
November.
23 Let's look.

24 On November 5, before Roger Moore has had a
chance to
25 fully elaborate and invent his story, from a phone in
Kent,

14540

1 Ohio, where Terry Nichols is not, is a call to Michael
Fortier
2 for 11 minutes and 12 seconds. That's page 68 of
Government
3 553. There it is. Michael Fortier. November 5.

4 That's the first telephone call of these
records. The
5 page immediately before is November 1. There haven't
been any
6 calls on the 2d, 3rd, and 4th on this Daryl Bridges
card, and
7 those calls are clearly made by Terry Nichols. They're
made to
8 the Philippine consulate and other people connected
with

Terry 9 planning a trip to the Philippines. And you remember
to the 10 Nichols had made -- Terry had made a reservation to fly
11 Philippines from Wichita. That's November 5.

Terry 12 What happens, then, on November 5 and 6?

Lana 13 Nichols is in Junction City; and he gets a letter from
home." 14 Padilla that says, "Your son is going to run away from

get to 15 Now, this is the boy that Terry went up to Michigan to
16 live with him when he was in the Army.

that 17 So let's look at the calls now, if we remember
18 fact.

McVeigh. 19 Sure enough, Terry Nichols begins to call Tim

he's 20 He's got the letter and he calls. And you can see that

Spotlight 21 trying to call Tim McVeigh. First he checks The

apparently 22 balance. Then he tries to call Tim McVeigh but

very 23 leaves a message. This is the morning of the 6th. The

works, to 24 next call is to Esquire Realty where Lana Padilla

25 talk about Josh.

14541

1 Then again that night at 5:24, he calls
Padilla home,
2 another 30-minute call to talk about Josh. And in
between
3 here, you're going to see a lot of calls back and forth
in an
4 attempt to reach Timothy McVeigh. Of course, you are.
5 Concluding with, though, a call here, another one on
the 7th,
6 33 minutes and 19 seconds, Travelers Motel, to Lana and
Leonard
7 Padilla, calling to talk to about Joshua.

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

16 During that time, he also rents another
storage shed.

17 Now, if you look at this thing from the

standpoint of

18 let's try to recognize the presumption of innocence and
not

19 attach a sinister meaning, if, when he got to that
storage

20 shed, McVeigh has caused to be put there the things
that

21 McVeigh's friends have gotten from Roger Moore and
they're

22 talking back and forth, the distribution of what was
obtained

23 from Roger Moore begins right then. And Terry Nichols
gets

24 some, and Michael Fortier gets some, and Timothy
McVeigh is in

25 charge of that and sending the dough back to Roger
Moore --

14542

1 Roger Moore, who writes letters to Tim McVeigh and
writes

2 "burn" on them.

3 You'll hear instructions from the Judge about
how to

4 deal with the Moore evidence. But we submit to you
that the

5 Government's theory is riddled, riddled with doubts.
This is a

6 man on his way to the Philippines to accomplish a
purpose that

7 I'm going to talk about in a minute and on his way to
see his 8 son.

9 Yes, members of the jury, there are other
names. But 10 watch out. Shawn Rivers, Tim McVeigh. Joe Rivers,
Terry 11 Nichols. Tim Tuttle, Tim McEeige. Robert Kling. Why
use 12 other names if you're into the gun business? Well,
Roger Moore 13 told you why. It's because you store things under
different 14 names because you've got tens of thousands of dollars'
worth of 15 stuff in a storage shed sitting out there beside the
highway;
16 and in the gun business, apparently people use other
names.

17 I'll tell you something frankly that the
evidence 18 shows. The evidence shows that Terry Nichols doesn't
pay 19 income tax. The evidence shows he doesn't use a Social
banks, 20 Security number. The evidence shows he doesn't use
21 doesn't trust banks. The evidence shows that he deals
in cash.
22 The evidence shows that he is that kind of a person.
Maybe not 23 the kind of a person that you are or that I am, but
that's the 24 kind of person he is.

but as 25 And if you look at that not as being sinister

14543

of 1 one of those people who participates in a certain set
does, 2 economic relationships in this country like Roger Moore
3 it becomes clearer.

Rivers. 4 But what about Havens? Tim McVeigh is Shawn

evidence 5 Terry is Joe Rivers. Same last name. There is no

filled 6 that Terry Nichols ever registered in a motel or ever

yes. 7 out a form that said he was Mike Havens. Joe Havens,

Shawn 8 Terry Havens, yes. No evidence he ever said he was

yes. 9 Rivers. That was what Tim McVeigh said. Joe Rivers,

great 10 When you get back in the jury room -- I made a

receipt, the 11 deal, you'll recall, with Mr. Mr. Hupp about that

size of 12 ammonium nitrate receipt. Take a piece of paper the

a Maple 13 the ammonium nitrate receipt. Take a coin the size of

14 Leaf and try to figure out how in the world you could

get two

15 fingerprints on it in the way that the Government
testified.

16 1, 2, 3, 4 -- it was folded over the coins.
And what

17 are the prints? One thumb, one finger like this.
There are

18 only two prints on it. They belong to Timothy McVeigh,
and it

19 is folded with the writing side inside.

20 In January of 1995, Timothy McVeigh and Terry
Nichols

21 met in Junction City, Texas. They were there for
several days,

22 and Lana Padilla said after that she talked to Terry.
Remember

23 that? No matter what Terry said in that conversation
back in

24 November about whatever it was, Waco, she was willing
to have

25 her son -- their son go live with them. And he said,
"I'm not

14544

1 doing gun shows with Tim McVeigh anymore." They had
split

2 their stuff up, which included coins and things and
guns and

3 ammo and all other sorts of stuff; and then Terry had
begun to

4 accumulate his own.

beyond a 5 There is no evidence, nothing that shows
looked 6 reasonable doubt, nothing that would satisfy folks that
Terry 7 at this without some sinister cloud over things, that
8 Nichols ever saw that receipt.

said about 9 And that, put together with what Mr. Woods
Terry 10 Mr. Schlender and Mr. Showalter, who don't identify
11 Nichols and who know what a three-quarter-ton Dodge
12 four-wheel-drive pickup truck is, should solve the
matter.

truth. They 13 You see, the Government can't handle the
the 14 can't handle it. Because if Lea McGown is telling you
that 15 truth that she heard voices in McVeigh's room and if
up in 16 Blockbuster Video application that McVeigh made clear
showing that 17 Junction City, when he was staying in Herington,
in 18 he's got business up there other than with the Nichols
sighting, 19 Marion, and if Vicki Beemer, not exactly your Elvis-
Doe No. 2 20 National Enquirer, front-page-cover person, saw John
21 and McVeigh talking to each other and if the car was
there like

big 22 Eldon Elliott said and if the truck wasn't there, that
before 23 chart "Nichols on the Road --" that must have been made
when 24 Sergeant Wahl's testimony disintegrated in the cloud
blame 25 Christopher Budke came up with his note. And we don't

14545

until 1 that on prosecutors, by the way. They didn't even have
that had 2 the day before. They didn't know it. It was the FBI
things 3 it. But if all of those people are telling you these
because 4 and they are right, the Government can't handle that
bomb out 5 then their whole theory that Terry Nichols mixed that
has got 6 at the lake disintegrates, and all of a sudden the FBI
7 to answer some questions like why didn't you check the
didn't you do 8 fingerprints and why did you stop looking and why
your 9 intercomparisons and why didn't you flag the fact that
10 forensic evidence wasn't adding up?
11 Terry Nichols had books in his house. Sure he
did.

a 12 Literature that Tim McVeigh gave him and literature of
13 radical character.

14 But are there differences? Did anybody ever
say they 15 heard Terry Nichols walk up and say, "Join me in a plot
to 16 bomb"? No. Did anybody ever say, "I saw him at Elohim
City"? 17 Elohim City. The name of the merciful God. Elohim
City.

18 And it is the right of Mrs. Millar to have her
family, 19 the Millars, preside over it, I suppose, in America
today and 20 introduce their gospel of hate. And it is in her
interest to 21 say that that's all they do is introduce that gospel of
hate.

22 But there is a difference, we say in Texas, between
preaching 23 and meddling. And Andreas Strassmeier is not a
preacher, and

24 Tim McVeigh and Andreas Strassmeier were walking
together.

25 They reached out, Fortier and McVeigh, to the
National

14546

1 Alliance. They wanted to form a militia. They reached

out to

2 Mr. Coffman, and McVeigh reached out to Mr. Colbern.

3 Now, that letter, they say, was never
delivered.

4 Okay. It was written in November, '94. Roger Moore
and Karen

5 Anderson and The Candy Store -- they put those two in
touch.

6 "SC: I'll try to keep this generic. What I
am asking

7 you to do, then," says McVeigh, "is sit back and be
honest with

8 yourself. Do you have kids? A wife? Would you back
out at

9 the last minute to care for the family?" A sentiment
echoed in

10 his conversation with Fortier, because in Timothy
McVeigh's

11 version of the world, there is no worse insult than

12 "domesticated" and no greater glory than to be a
desperado, not

13 tied town, traveling with a rucksack, moving back and
forth

14 across the country. People that are tied down and have
kids:

15 Those aren't the ones that Timothy McVeigh wants. But
the

16 Government can't handle that truth because that truth
matches

17 up with what Lea McGown saw and Vicki Beemer saw and
all these

18 other people saw. They can't handle it.

19 And they even have the nerve to come in here
and the
20 FBI agents say, well, I didn't see a library in Mr.
Nichols'
21 house -- and I'm not going to put the covers of all the
books
22 up there that you saw at his house that he read, the
things
23 that he's curious about.
24 They can't handle the Ryder truck inquiry that
Tim
25 McVeigh made at Lake Havasu City.

14547

1 The FBI set up a roadblock near Geary Lake to
ask
2 everybody, "Well, Did you see a Ryder truck?" And then
they
3 come in here and tell you that if you stop at the FBI's
own
4 roadblock and didn't talk before, well, there must be
something
5 wrong with your testimony.
6 There are a dozen people or more came in here,
almost
7 20 of them, saw a Ryder truck. And Mr. Kitchener in
his creel
8 survey contradicts only two of them, if you look at the
time.
9 Why did we put those on? To show that there are lots

of Ryder

10 trucks out there -- one reason. To show that if
Sergeant Wahl
11 saw a Ryder truck and a gray pickup that completely
doesn't
12 match Mr. Nichols' pickup truck that maybe, just maybe,
if you
13 looked at this from a reasonable doubt point of view,
you'd
14 say: That must not be it, because the truck doesn't
match.

15 That's not rocket science, that's just observation.

16 They can't handle the truth. They can't
handle it; so

17 what they do is they take Tim Chambers from VP Racing
Fuels, a
18 nice guy, and they bring him in here. And they want
you to
19 believe that that's Terry Nichols' pickup truck in
Ennis,
20 Texas, and that Terry Nichols is there. Nobody saw
Terry
21 Nichols in Ennis, Texas, ever. That's the evidence;
not the
22 speculation, the evidence.

23 What did Mr. Chambers see? He saw a truck
that wasn't

24 shiny. Wasn't shiny. See the pictures of Terry's
truck at the

25 Herington police station? He keeps it shiny. The ones
when

14548

over it 1 it's in the FBI evidence room after it's had dust all
2 that it's not shiny. But his, he keeps it shiny.

make or 3 Chambers can't identify the pickup truck as to
4 model year. He says it had a camper shell but it's
faded. He

5 says that Terry Nichols is not the man. He cannot
identify Tim 6 McVeigh. The barrel rings don't fit.

7 When he was asked in front of you, "What did
the guy 8 look like that bought the nitromethane?"

9 He said, "Well, he looked like a possum."
Pogo 10 bomber.

11 That is not the quality of evidence that one
would 12 expect in a criminal case.

13 The Government can't handle the truth. They
can't 14 handle Tim McVeigh wanting money from Dave Paulsen and
trading 15 him blasting caps for TNT. They can't handle the truth
that it 16 was McVeigh that reached out to Darlak and Pfaff. They
can't 17 handle the truth that the Belle Arte Motel in Kingman,
Arizona,

No. 2, 18 had a group of people, one of whom resembled John Doe
19 acting up around McVeigh's room.

showed 20 They can't handle the truth that when McVeigh
21 Fortier Geary Lake, he drove him up on a mountain near
Geary 22 Lake -- that hill.

a 23 They can't handle the problem that it would be
bomb in 24 strange bunch of bombers indeed that would mix their
going with 25 full view of a whole bunch of fishermen coming and

14549

when 1 boats and this and that, a story that begins to doubt
2 there is no evidence of tire tracks or soil samples.

the 3 They can't handle the truth of Mr. Farley with
on the 4 beard, with the mentally handicapped daughter, who late
parked well 5 18th sees a bunch of people with ammonium nitrate
Ryder 6 away from the fishing area in an isolated place with a
7 truck.

8 They can't handle the truth that there is no

evidence

9 where Timothy McVeigh stayed on Thursday night.

10 They can't handle the truth that it was Tim
McVeigh

11 who called Terry Nichols on the 11th and not Terry
Nichols who

12 initiated the conversation, exchange of telephone
calls.

13 They can't handle the truth that there is a
Denny's

14 open by the McDonald's and a Texaco station where Ms.
Kindle

15 sees Tim McVeigh later at a time that fits because he
can get

16 to Oklahoma City at an average speed of 65 miles an
hour from

17 there after she says she sees him.

18 And they can't handle the truth about Oklahoma
City on

19 the morning of the 19th. Mr. Cooper says, "I saw
McVeigh and

20 the other guy, and he was with a car and I saw it."

21 Why does McVeigh need somebody to be with him
in

22 Oklahoma City the morning of the 19th when Terry
Nichols is at

23 home? Because the parking area in front of the Murrah
Building

24 at 9:00 in the morning is still being -- it's rush
hour, folks.

25 You see the pictures from the Regency Tower, and you
see that

14550

Why do
little
that's a
20
that there
and when
There
-- you
better
car to
sighting

1 the truck stops for 20 seconds and then starts again.
2 you have to stop? Because there is traffic. That
3 pull-out area in front of the federal building --
4 no-standing zone. He can't leave the truck there for
5 minutes; a cop will come. And he can never be sure
6 is going to be a parking place there when he needs it;
7 he lights that fuse, you know, he better be on his way.
8 is no electric timing device found. Tim McVeigh better
9 know, unless he's going to be consumed in the blast, he
10 go; and so he needs somebody to scout it. He needs a
11 run out there, and that's a reason why Mr. Cooper's
12 makes sense.

for having
--
Hanger.

13 And then Germaine Johnston. They insult us
14 brought her here. Well, it's 77 miles -- a little more
15 maybe 80, up to where Mr. McVeigh is stopped by Trooper

16 There is a map in Oklahoma in evidence. Ms. Johnston
sees him
17 maybe around 9:25. He gets stopped around 9:20 -- or
10:20 --
18 10:20; and you know that McVeigh drives like a maniac.
Lead
19 foot, everybody says. What, you think -- and Trooper
Hanger --
20 he said, "It took me 70 minutes at a speed-limit pace."
21 Okay. Fair inference. Is he going to get out
of
22 there at a speed-limit pace? Is he going to get out of
there
23 at what he thinks he can do, best he can do?
24 He heads north to rejoin his comrades, not to
be with
25 Terry Nichols.

14551

1 So suppose you did look at all the facts and
you
2 respected the presumption of innocence and you didn't
start out
3 saying that Terry Nichols must have done it. Suppose
you saw
4 him as secretive, as insecure. Suppose you saw him on
the 21st
5 as a citizen scared, as you or I would be if we went to
the

6 police station, having seen Janet Reno on the
television and
7 knowing that we knew this guy Tim McVeigh and had been
in
8 business with him and trying to remember it all and
give them
9 the leads: Go get those sheds; I don't know about a
Ryder
10 truck, but I do know about McVeigh; I can tell you
details.
11 Suppose you looked at him as a man who loved
his
12 children and nurtured them. Suppose you looked at him
even in
13 the adversity that he did when Josh's mother wasn't
around.
14 Suppose you looked at him as married and having started
another
15 family. Suppose you looked at him as someone divorced
and yet
16 whose ex-wife was still saying, "Well, Josh can come
and live
17 with you." Suppose you understood that his marriage to
Marife
18 was rocky and difficult, a fact we did not try to hide
from
19 you. Suppose you understood that Marife had said, "No
more
20 McVeigh; I'm jealous, I can't stand it." Suppose you
heard
21 again the voice that morning on Friday when Lana
Padilla had
22 insulted her, "She sleeps too late. What's she doing?"
As

great 23 though it's any of Lana Padilla's business; but as the
stay with 24 American novelist Kinky Friedman said, "ex-wives will
was 25 you through thick." You know, she said it, and Marife

14552

how bad 1 insulted by it; and she said she was going to leave is
18th: "Nice 2 it was. She even remembered in these notes on the
3 night, no arguments."

tell his 4 Maybe a guy with all that wouldn't want to
wouldn't 5 wife, Well, I'm -- I'm going to go help Tim. Maybe he
and the 6 level with her about that because he knew the tension
was 11, 7 stress that was. Maybe he'd say to his son Josh, who
8 "A 10-hour ride in a truck ain't for you."

writes 9 But what happened in November of 1995? Lana
can I 10 him a letter about Josh, and he calls right away, "What
takes 11 do?" And he goes to Las Vegas, changes his whole trip,
do? He's 12 Josh camping for a week. And what's he on his way to

13 on his way to surprise Marife, who has said, "I'm
leaving and
14 I'm leaving for a year with our baby daughter." And
she said
15 he came there. And -- I don't know -- she was on the
campus.
16 She didn't think he was coming. And he said, "Come
back," and
17 he did what he said: "I'll buy a house. I'll get
these
18 things. We'll furnish the house. We'll go to these
gun shows.
19 We'll work them together. We'll do these things,"
printing up
20 his cards in his own name, building his life, pulling
these
21 things together.
22 And when he heard it, not attempting to hide
the
23 Primadet, not attempting to hide any receipt because he
didn't
24 even know it was there, not attempting to hide the
guns,
25 consenting to a search of his house. If you looked at
what he

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1 did and just focused on this or that and said he spread
2 ammonium nitrate and looked at it with a sinister way,
you

3 might reach conclusions. But if you respected the
presumption
4 of innocence, you'd say: Well, we understand. He's
human.
5 He's human.
6 And then we'd understand, too, about Kevin
Nicholas
7 who Tim McVeigh drops in on; the Fortiers, who he drops
in on
8 and then leaves just as abruptly, using these people.
9 Well, we end where we began. It isn't just
reasonable
10 doubt. It is that to convict someone of a conspiracy,
to
11 convict someone of aiding and abetting in this country
today --
12 and it's different in other countries -- you've got to
prove
13 more than mere association. You've got to prove more
than
14 presence at this time or place, and you've got to prove
it all
15 beyond a reasonable doubt.
16 They get a rebuttal, as I have said, and I
will not
17 have the chance to stand up and answer. So there it
is.
18 You'll think of it because the evidence will be there
with you.
19 The charge is a conspiracy to blow up a
building and
20 kill children, Terry Nichols who had gone to the

Philippines

21 and said, "Come back with me," and he had started
another baby,
22 who then was born in December. A conspiracy is charged
to blow
23 up a building and kill children.

24 I have always believed that to make a decision
to
25 bring children into the world is a bargain. It is a --
it's a

14554

1 bargain with the future. It means that you are, in
that word
2 of Timothy McVeigh's, "domesticated."

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

8 168 people died in Oklahoma City. We have
never
9 denied the reality of that.

10 More than 30 years ago, I went to Washington,
D.C.,
11 for the first time. And the very first public building

I ever

12 saw was the building of the Supreme Court of the United
States.

13 And I saw that where it said, "Equal Justice Under
Law." And

14 that means rich or poor, or neighbor or stranger, or a
tax

15 protester or not, or somebody who is different from us,
or not.

16 And wouldn't it be terrible if a memory -- if
a

17 memorial -- if it was thought by anybody that the
fitting

18 memory, a fitting memorial to the 168 who died would be
to go

19 there some dark night and chop those words off where
they are

20 on the lintel above the Supreme Court of the United
States?

21 Members of the jury, I don't envy you the job
that you

22 have. But I tell you this is my brother. He's in your
hands.

23 THE COURT: Mr. Mackey . . .

24 REBUTTAL ARGUMENT

25 MR. MACKEY: May it please the Court.

14555

1 THE COURT: Counsel.

2 MR. MACKEY: Ladies and gentlemen of the jury,
the men
3 and women and children inside the Alfred P. Murrah
Building on
4 April 19 are your brothers and sisters as well, and the
justice
5 that they demand is no more or no less in your hands.
You are
6 moments away from hearing the lawyers conclude,
listening to
7 his Honor provide you the rules of law and taking
charge.
8 That's when you step into control.
9 It is an awesome responsibility, and everyone
inside
10 the well of this courtroom has been most grateful for
the
11 attentive manner, personal sacrifices, and all that you
have
12 done to contribute to this process; but it's at a
close.
13 When I stood before you some seven weeks ago
and told
14 you that in some fashion we would introduce to you each
and
15 every one of the victims of the Oklahoma City bombing,
I told
16 you how we would do it. And in the course of this
trial in an
17 understated and dignified manner, people, living
people, came
18 before you and said: These were my children, these
were my

19 co-workers, these were my friends.
20 And as Mr. Tigar and Mr. Woods told you in
jury
21 selection and opening statement, everyone would be
cross-
22 examined, and they were. And we heard many questions
to those
23 witnesses about smoke, about thick, black smoke.
24 Many of them said: Mr. Tigar, I couldn't tell
you.
25 My face was bleeding, my friends were dying. I didn't
notice

14556

1 the smoke.
2 There was smoke that morning, and it engulfed
the
3 parking lot on the north side of the building, a result
of an
4 immense explosion that ripped that building apart. And
in
5 time, little time, that smoke cleared. The sky was
blue for a
6 moment. And all of America could see what Terry
Nichols and
7 Tim McVeigh had done: A nine-story building ripped
apart.
8 They could only imagine the death inside.
9 In the course of this trial, witness by
witness --

10 because no one witness can tell the entire story --
document by
11 document -- because no one piece of paper explains it
all -- a
12 new picture has emerged as vivid as the one that
America
13 remembers from the morning of April 19. The background
of that
14 picture is that building and that gaping hole and the
lives
15 lost forever.

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

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

24 There is no doubt about it that Ms. Millar
lives among
25 people who believe in a certain ugly way, and she
cannot change

village 1 the ugliness of that by telling you that her city is a
2 and not a compound.

each and 3 You will see the truth through the words of
study 4 every witness. You will see the truth emerge from your
5 of the evidence in this case.

often-stated 6 "Burden of proof," may be the three most
7 words in the course of the defense arguments to you.

It means 8 something to people in this business. It means
something to 9 you. We accept it. We have met it in the evidence of
this 10 case.

questions of 11 But it entitles you to ask the same hard
12 the evidence presented by the defense as that which was
13 presented by the Government. And it is not and should
not be 14 used as some shade to be drawn down in front of you as
you 15 begin to peer in and examine carefully the evidence
offered by 16 the defense in this case.

sense. 17 As you do so, Rule No. 1: Use your common
18 Bring your life experiences to bear. Talk among

yourselves.

19 Ask the hard questions on each side of the evidence,
and don't

20 let the burden of proof become a shade to dissuade you
from

21 doing so.

22 One of the best examples during closing
argument

23 yesterday by Mr. Tigar about how if it gets too
difficult we'll

24 pull the shade of burden of proof down before you is
his

25 explanation to you about the Wal-Mart receipt. How
could one

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1 small piece of paper get so much attention in one long
trial?

2 We know why. It's so very important to what it tells.
It

3 answers the question about what is the proof of when
Terry

4 Nichols and Tim McVeigh first got together in Kansas in
April

5 of 1995. And Mr. Tigar suggested to you that you
should stop

6 and pull down the shade behind the burden of proof and
don't

7 answer any more questions or ask any more questions
because who

dropped 8 knows but that somebody, somebody named Tim McVeigh,
South 9 that oil filter and the receipt off on the porch at 109
that 10 2nd Street in Herington, an explanation for how it was
had seen 11 Terry Nichols might have the receipt and never say he
12 Tim McVeigh.

sense. 13 Well, test that suggestion against your common
have 14 Ask yourself questions like: Tim McVeigh to do so must
apparently 15 driven down to Herington and found no one at home,
there. He 16 didn't call in advance to be sure someone might be
see if 17 was in too big a rush apparently to stick around and
must 18 anybody is there, especially his long-time friend. He
50 miles 19 have been in the neighborhood anyway, even though it's
must 20 round trip between Junction City and Herington; and he
a 21 have loved Terry Nichols to drive that far and give him
22 receipt and a filter worth \$2.54.

23 I mean no disrespect by this, but as Mr. Tigar
have 24 suggested that that's one way that the receipt could
still be 25 gotten to Mr. Nichols and his statement to the FBI

14559

mind. It 1 true, I had a vision of the oil filter ferry cross my

evidence: Does 2 doesn't make sense; and that's the test of the

3 it make sense?

nuts 4 And the real problem with that suggestion, the

drove to 5 and bolts, the bottom-line question, is if Tim McVeigh

friend's 6 Herington, left the oil filter and receipt on his

set? 7 porch, never saw Terry Nichols, where is the television

letter by 8 Remember the origin of the story? It begins with a

you're coming 9 Terry Nichols to his friend and says: Please, if

middle, 10 this way, if you're going west to east, Kansas in the

my son's 11 drop off that television set that has been sitting in

12 garage out in Las Vegas.

Drops off 13 So Mr. McVeigh does so? He brings the TV?

sense. 14 the filter but not the television set? It doesn't make

the way 15 It didn't happen that way. It happened just

way 16 Ms. Wilkinson told you yesterday. It happened just the
17 that the evidence supports.

Friday 18 Terry Nichols and Tim McVeigh got together on
19 or Saturday of April of 1995, 14th or 15th. They met
and they 20 talked about the plans to bomb the Murrah Building.

important, as I 21 The reason the Wal-Mart receipt is so
22 told you in the opening statement, is both cannot be
true.

he said 23 Terry Nichols cannot have told the FBI the truth when
24 the only reason I went to Oklahoma City on April 16 on
Easter 25 was to pick up a used television set. That can't be
true if

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1 Tim and the TV are already in Kansas.
Nichols. It 2 The television set was a cover for Marife
3 was a cover for you. It's a cover like aliases and all
the
4 other evidence in this case that points to deceit and
less-
5 than-truthful conduct on the part of Terry Nichols.
6 You have a job to do, and it soon will be

yours. And

7 people inside the well of this courtroom have been
going about

8 their job for the past several weeks. And it is fair
for

9 defense counsel to comment upon the job done by the
Government.

10 It's fair for me to respond.

11 Mr. Woods has told you that the United States
of

12 America, the FBI in particular, rushed to judgment;
that by

13 April 21, 1995, with Terry Nichols in tow, all else
didn't

14 matter; that within 48 hours of the bombing, everyone's
mind,

15 from Janet Reno to me and everybody in between -- and
there are

16 many -- had all they needed to know. A rush to
judgment.

17 Mr. Tigar said that man after woman after
employee of

18 the FBI came in here and did a sloppy, unethical,
sometimes

19 perhaps borderline-perjurious job before you. And he
said the

20 reason they did so is because they don't care.

21 There has been no rush to judgment in the
22 investigation and prosecution of the Oklahoma City
bombing.

23 The survivors inside that building wouldn't stand for
it. The

wouldn't 24 victims wouldn't stand for it. The people of Oklahoma
judgment 25 stand for it. America would not stand for a rush to

14561

judgment. 1 in that case of all cases. There has been no rush to

thousands 2 There has been 30,000 interviews. There have been

only a 3 upon thousands upon thousands of documents gathered,

4 small portion of which became evidence in this case.

picture 5 What has emerged is a complete and compelling

side by 6 that it was Terry Nichols and Tim McVeigh together,

City and 7 side, who are responsible for the bombing in Oklahoma

8 the deaths of those innocent people.

them -- 9 There were mistakes made, and we heard some of

product of 10 a bit about that. But those mistakes were not the

11 uncaring employees of your Government.

the Murrah 12 Before Terry Nichols and Tim McVeigh bombed

a crime 13 Building on April 19, 1995, this country had never seen

14 of such monumental portions. And unfortunately, there

are now

15 scores of FBI agents around this country who know what
it is to
16 sift through thousands of pounds of debris looking for
the
17 smallest clue, any clue, that will help anyone decide
what
18 truly happened.

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

22 But I will predict one thing: Some things
won't
23 change. And when there are fires engulfing cars near a
bomb
24 scene, people are going to put the fires out. They're
going to
25 do that. They're going to make the situation safe, and
they're

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1 going to step over truck parts and perhaps other
important
2 criminal evidence if it means pulling one more survivor
out of
3 a building.

4 Those were the priorities on April 19, 1995;
and

5 that's just the way they should have been. There was a
cost to
6 that, and we saw some of those costs; but in the long
run, with
7 more than 192 witnesses and scores and scores of
documents, the
8 truth has emerged. We know what happened on April 19
and who
9 caused it to occur.

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

19 Is there any doubt that the Wal-Mart receipt
came out
20 of Terry Nichols' wallet? Is there any doubt that both
Terry
21 Nichols and Tim McVeigh have their prints on it,
whether it's

any 22 two or more or one or more or three or more? Is there

23 doubt?

challenge 24 Is there any doubt who Ted Parker is? Why

lease when 25 Mr. Hupp about his record-keeping on the Ted Parker

14563

Ted 1 they have stipulated and agreed that Terry Nichols is

1994, 2 Parker; that it was him and him alone on November 7,

Arkansas to 3 using that false name moments after the robbery in

4 rent the storage shed?

any doubt 5 And the Shawn Rivers lease? Has there been

name to 6 that it was Tim McVeigh in September of 1994 using that

question. 7 rent the Herington unit? That's the bottom-line

and the 8 The smoke will clear, the answers will emerge,

9 truth will be found.

trials, why 10 There is a good reason, especially in long

information 11 we have 12 jurors or more. There is a lot of

12 flowing your way, and not everybody is going to

remember

13 everything in the same way. That's why deliberations
are so
14 important, why you take your time with each other and
you
15 discuss and review the evidence that you heard.

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

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

25 He said it was Friday or Saturday. You'll
remember

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1 the testimony. She said Saturday and probably Sunday.

2 Sunday night: What was going on on Easter
Sunday,

long
two
stashing the

3 Sunday night, April 16, 1995? It's the tail end of a
4 drive back from Oklahoma City. Tail end of the trip by
5 men, Terry Nichols and Tim McVeigh, side by side,
6 getaway car in Oklahoma City, driving him back to the
7 Dreamland.

Dreamland
Sunday

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

begin
begin is
copies of
only
road map,
you
critical events

11 It is an immense task for you, and you have to
12 somewhere. And I have one suggestion: The place to
13 the indictment. And his Honor will provide to you
14 the indictment, the written charges -- and they are
15 that -- brought in Oklahoma in 1995. It serves as a
16 much like the road map that Ms. Wilkinson displayed to
17 yesterday. It recounts many but not all of the
18 and dates that the Government alleged and that the
19 correspondingly proven.

and

20 And it also recites the names and ages of each

Alfred P. Hurlburt 21 every one of the victims inside the Oklahoma City
22 Murrah Building. You'll be reminded that Dr. Charles
23 and his wife were the two oldest victims, age 73 and
67; that
24 Antonio Cooper was one of the youngest, born six months
before
25 he died, about the time that Terry Nichols was sitting
in a

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go for 1 kitchen in Las Vegas and writing a letter saying, "Tim,
2 it."

you must 3 There are 11 counts in this indictment, and
4 pass judgment on each. They draw into question four
different 5 violations of federal law.

His 6 And I'll speak just very briefly about those.
7 Honor will address them in more detail.

8 They charge that Terry Nichols and Tim McVeigh
9 conspired together, made an agreement among themselves
to use a
bomb, a 10 weapon of mass destruction -- in this case, the truck
11 very, very big truck bomb -- to destroy the Murrah
Building and

12 to kill people inside it. That's Count 1, an agreement
to do

13 so.

14 Count 2 is that Terry Nichols aided and
abetted Tim

15 McVeigh in using that truck bomb against the people
inside that

16 building.

17 And Count 3 is that he aided and abetted Tim
McVeigh

18 in using that truck bomb against the building itself.

19 Counts 4 through 11 are first-degree murder,
naming

20 each of the eight federal law enforcement officers on
duty

21 performing their responsibilities on that day and who
each died

22 in the blast.

23 You'll see from the instructions that each
crime, each

24 of those four crimes has what's called "essential
elements" and

25 will become for you what in effect is a checklist, what
it is

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1 you must satisfy yourself, each and every one of them,
beyond a

2 reasonable doubt before returning a verdict of guilty.

And

3 you'll want to guide your deliberations in that
fashion.

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

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

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

19 Tim McVeigh was alone in Oklahoma City on
April 19.

the
of the
he's
20 Terry Nichols was not there. The law recognizes that
21 responsibility is just the same. If Terry Nichols knew
22 plan and did anything to help make that plan succeed,
23 guilty as if he were sitting side by side.

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

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

attend to
3 MR. MACKEY: One of the elements that you'll
4 is the question of premeditation. First-degree murder
is
5 different than all other murder because of
premeditation. And

what you
6 his Honor will tell you in words and substance that
7 must find is that the evidence proves to you that the
defendant
8 considered and reflected upon preconceived killing at
least
9 long enough to give it a second thought. That's the
definition
10 of "premeditation," and his Honor will explain it

further to

seven 11 you; and in this case -- in this case, ask yourself if

thought, then 12 months is not long enough to give death a second

13 what is.

evidence that 14 There are going to be several pieces of

counts 15 will guide you to a verdict of guilty on each of those

Terry 16 that have to do with interpreting and understanding

intend 17 Nichols' state of mind; and that's important: Did he

off? 18 and did he know someone would die when that bomb went

is a 19 Focus on the murder weapon in this case. This

20 murder case, no doubt. But it's very in many respects

21 different from other murder cases.

fellow 22 This is not a murder case that emanated from a

shooting 23 reaching under his coat and pulling out a gun and

weapon did 24 somebody in a bar. This is a case where the murder

it would. 25 not exist until Terry Nichols and Tim McVeigh decided

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

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

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

17 Gun shows are lots of things, but I don't
think of
18 them when I think of lawn and garden. And yet that's
what

19 Terry Nichols, a man always looking to make something
appear to
20 be something different, intended to do when he said:
My
21 ammonium nitrate is fertilizer.

22 It was an explosive, just like the 4,000
pounds that
23 he bought in the fall of 1994. If you build a 4,000-
pound
24 ammonium nitrate bomb -- if you build it, it will kill.

25 No one expects -- excuse me -- no one would
expect

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1 that Terry Nichols and Tim McVeigh would announce their
coming
2 in Oklahoma City on April 19. But think about it just
for a
3 moment from the perspective of the victims. It was a
crowded
4 Social Security waiting room that morning. It was
Wednesday.
5 Mr. Eric McKisick described to you what it's like to be
in that
6 business and to provide the services that he and his
other
7 employees do. It was a crowded waiting room with a
glass
8 window on the first floor looking out on 5th Street 1.

9 And to this day, we'll never know how many
visitors

10 stood there, looked out that window, and saw a Ryder
truck pull

11 up. One thing we do know is they'd have no reason to
be

12 afraid.

13 It's different now. It's different now. In
America,

14 in front of federal buildings across this country, if a
Ryder

15 truck pulls up, people get nervous. Those victims had
no

16 warning.

17 The weapon, the murder weapon that Terry
Nichols and

18 Tim McVeigh built, was intended to kill; and it was
intended to

19 kill without warning.

20 I want to devote the balance of my time, and
will be

21 relatively brief, not to answering everything that the
defense

22 lawyers have said but attempting to focus on those
things that

23 might most guide your deliberations. And the fact that
Terry

24 Nichols made lengthy statements to the FBI is something
that

25 must be given consideration, and Mr. Woods has talked
about

14570

1 that.

2 He criticized the FBI, Steve Smith in
particular,

3 because on Friday afternoon after he had seen Mr.
Nichols drive

4 first to the Surplus City and then over to the police
station,

5 he decided he'd call in first to see if there was a
hostage

6 situation. At that moment in time, 3 p.m. on Friday,
the work

7 of recovering the bodies out of the Oklahoma City
building was

8 barely, barely started. It would take weeks. There
was death

9 everywhere, and the FBI took the prudent measure of
making sure

10 nobody else -- nobody else might get hurt.

11 It's easy to Monday-morning-quarterback. It
really

12 is. It's so easy.

13 But they did the right thing, and they made
sure at

14 least for the moment that hopefully the unpredictable,
the

15 absolutely unpredictable that had happened 48 hours
earlier in

16 Oklahoma City might not repeat itself even on a small-
scale

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

22 Agent Smith, in the FBI directory, if there
were one,
23 would be right next to the word "conscientious." You
can make
24 your own decisions about his manner and demeanor. But
Agent
25 Smith knew that it was important to write down what
Terry

14571

1 Nichols said and to accurately report it to you, and he
did
2 that in his testimony.

3 Lots of things were said. And what's
important in
4 this case are four things, I would submit to you, four
false
5 statements:

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

reason I 8 Terry Nichols lied when he said, "The only
set." A 9 went to Oklahoma City was to pick up a used television
10 used television set, 10 hours drive, 500 miles. A used
11 television set.

12 He lied when he said, "I was at DRMO all
morning on 13 April 18"; and he lied when he said, "I have no idea
where Tim 14 McVeigh was staying."

Nichols 15 That's what's important about the Terry
16 statement. That's what's important about Steve Smith's
17 testimony. And there is no contradiction. Those were
his 18 statements. That's what he said. And we brought in to
you 19 proof after proof, witness after witness, that
demonstrated 20 that those were false statements.

21 Well, what do you do with that? Why is that
the "go 22 important? Because it is the kind of window, much like
going on 23 for it" letter, that allows you to understand what's
mind 24 in a man's mind at that time and what went on in his
the 25 between September and April, the years or the months of

14572

1 bombing conspiracy.

Michael 2 Yesterday there was some discussion about
this -- 3 Fortier, and I'll respond very briefly. And remember
case 4 and it's true in every criminal case, in every criminal
have 5 where another criminal gets on the stand and says I
other 6 information to share with this jury. And just like any
truth. And 7 witness, they're under oath and they must tell the
plea 8 unlike other witnesses, this witness was bound by a
lead 9 agreement, a contract. The breach of the contract will
10 to -- and you will see it -- very different results for
11 Mr. Fortier.

12 MR. TIGAR: Object to vouching, your Honor.

13 THE COURT: Overruled.

14 MR. MACKEY: But remember this: The events
that were 15 set in motion, that led to December of 1997, when
Michael 16 Fortier testified, started many years ago, 10 years
ago, in 17 friendships born -- it's a common experience, a time in
the

18 U.S. Army, with Tim McVeigh and Terry Nichols. And
before
19 Michael Fortier ever came into this courtroom, it was
Terry
20 Nichols who had his name, his address, and his phone
number in
21 more than one of his phone address books. Those are
22 relationships that existed long before the
investigation
23 discovered that Mr. Fortier knew something about the
bombing.
24 You should consider Mr. Fortier's testimony.
You
25 should. It's part of the evidence in this case. But
do so

14573

1 carefully. That's what the Court will tell you, that's
what I
2 will tell you, and that's what I will remind you of, in
the
3 opening statement.
4 Mr. Fortier is a witness who should be given
credence
5 where you find his testimony was corroborated; and in
this
6 case, one witness out of a hundred witnesses called by
the
7 United States, you'll find that corroboration on each
key

8 important element:

9 He said that Michael -- excuse me -- that
Terry
10 Nichols and Tim McVeigh showed up in Kingman in early
October
11 of 1994; and there is the receipt for the lease in the
Kingman
12 storage shed.

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

15 He is like in many respects someone quite
different
16 from him. Remember Steve Hodge. Ms. Wilkinson talked
to you a
17 little bit about him. Steve Hodge is the lifelong
friend of
18 Mr. McVeigh from New York, a regular correspondent with
19 Mr. McVeigh, 66--some--odd letters, all of which came to
an end,
20 an abrupt end. Years of a relationship ended in the
summer of
21 1994, the same summer that words of hate evolved into a
course
22 of action leading to death and violence.

23 Michael Fortier is another example of Steve
Hodge. By
24 the spring of 1995, by his own description, he made
clear to
25 all of us as, he did to Tim McVeigh: Tim McVeigh, I
understand

14574

criticizing 1 the difference between political rhetoric, between
That's 2 the government, and murdering its innocent employees.
3 how Michael Fortier and Steve Hodge are alike.

Nichols, 4 That's how they're different from Terry
his 5 because in the spring of 1995, when Tim McVeigh left
6 friendship with Michael Fortier and told him, "We're on
led 7 different paths in life," his path, Mr. McVeigh's path,
8 right to Terry Nichols, right to Kansas.

And I 9 Let me speak briefly to the Geary Lake proof.
10 need to remind you of some things that defense counsel
failed 11 to.

reason to 12 Sergeant Richard Wahl, as he told you, had a
with 13 remember his sighting that morning. He told you he was
you that 14 his son who was visiting on spring break. And he told
at 15 he paused and gave caution to going further, to fishing
16 Geary Lake, because of his young son being along and

because

17 something was unusual, a Ryder truck and a second
vehicle. But

18 he told you that he went further, honored his promise
to the

19 son, backed his vehicle up to the lake, and went out on
the

20 boat ramp. And he showed you by way of picture the
angle that

21 he had as he got into the lake in his boat and could
see the

22 vehicles.

23 It's not a front-on view like Mr. Woods
displayed to

24 you. It was several hundred yards, not a distance you
could

25 read the GMC emblem on the face of the truck, but
certainly an

14575

1 angle where he could see the side of the vehicle,
certainly an

2 angle where he could see there was something, as he
described

3 to you, that went beyond the cab of that second
vehicle. And

4 he told you, as he told the grand jury, it was either a
camper

5 top on a pickup or a Blazer-type vehicle where there
was some

6 extension of that cab. Any variation of Mr. Wahl's
testimony

7 is no variation that makes any difference.

8 What's important is time and place and the
description

9 of those vehicles that have been consistent.

10 The defense told you that it's important to
know that

11 there were other Ryder trucks out at Geary Lake on
other days,

12 and they suggested to you that that could be explained
by a

13 desire on Mr. McVeigh's part to do practice runs, as if

14 Mr. McVeigh would go into more than one Eldon Elliott
and rent

15 a truck, making sure for whatever reason that it could
hold the

16 components; that it could drive the right speed -- a
practice

17 run that makes no sense, ladies and gentlemen. If
you're on

18 the road to destruction, you're not going to increase
the risk

19 of detection by renting yet additional trucks.

20 There was only one truck that blew up in
Oklahoma City

21 on April 19. There was only one truck. It was the
same truck

22 that Tim McVeigh picked up on Monday afternoon, walking
in at

23 about 4:22 in the afternoon, displaying a driver's
license that

24 showed a date of birth of April 19, the kind of detail,
the
25 kind of dedication to this crime that can't be
overlooked.

14576

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

4 And the defense either stands by what Terry
Nichols
5 told the FBI as to his whereabouts that day, or they
don't.

6 And his statement without a doubt is: I was there for
six
7 hours, dropped off before 8:00, and picked up by a
friend who
8 broke his promise and didn't come until almost 2.

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

14 Nichols at the DRMO.
15 He was not there until 12:50.
16 And Marife Nichols is wrong in her diary when
she says
17 that Terry came home at 1:30. We know that. We know
that
18 because his bid is time-stamped at 1:37. We also know
it
19 because there is a Kinko's receipt in evidence that
afternoon,
20 April 18, that's time-stamped 2:15. Mr. Nichols left
the DRMO
21 and went to Manhattan, where Kinko's is; and he
conducted a
22 business transaction at 2:15.
23 Mr. Nichols was not home in Herington until
much later
24 that afternoon. He may well have been, as Mrs. Nichols
first
25 said, home briefly around noon where he said, "I'm on
my way to

14577

1 the sealed bid."
2 Mr. Wahl said, "I left around noon. The
trucks were
3 still there."
4 The question that remains about the Roger
Moore part

5 of the proof is how did Terry Nichols end up with the
property.
6 Mr. Tigar suggested to you this morning that he got it
because
7 Tim McVeigh gave it to him.
8 Well, one thing is absolutely clear, and that
is that
9 Tim McVeigh was not the robber. And the proof has
shown that
10 he was a long way away in New York for all of the month
of
11 November of 1994. You know that from Sheila Nicholas'
12 testimony. You know that from Andrea Augustine's
testimony and
13 other proof in this case.
14 You know, for example, if he's in New York in
November
15 of 1994, then how was it that he would have posted the
"SC"
16 letter in the desert in November of 1994? Who was in
the West
17 in November of 1994? Who was in the West so that Mr.
Pipins
18 could have discovered that letter posted in November of
1994?
19 The answer is Terry Nichols.
20 What does that tell you about the relationship
between
21 Tim McVeigh and Terry Nichols? It tells you it's all
over
22 again. This is all over again. It's Michael Fortier,
who has

23 already made well known his intention not to join this
24 conspiracy. It's a letter to another possible co-
conspirator.

25 Tim McVeigh always wanted his cell to grow larger. He
had

14578

1 Terry Nichols in hand, and he wanted others.

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

5 If Tim McVeigh is in a position to hand out
weapons
6 stolen from Roger Moore to Michael Fortier in December
of
7 1994 -- and he was -- the question is how did he get
into the
8 unit? How did he know? And who put it there first?
And the
9 only answer is Terry Nichols. The only answer is he's
the man
10 who robbed Roger Moore and who 48 hours later rented
that
11 storage shed and put inside all of the stolen property.

12 Mr. Tigar pointed out to you that there were
some
13 phone calls in early November, 1994, some of those
November 1

just 14 to the Philippine consulate. Mr. Nichols was, in fact,
country, 15 before the robbery, planning a trip out of this
even with 16 planning ahead, plans that he didn't bother to share
17 his wife, Marife Nichols.

18 And when he made those plans, he did not
include Josh 19 Nichols in them. That's for sure, because as Lana
Padilla 20 described that conversation, in early November we were
like 21 ships passing in the night. I wanted to talk about our
son. 22 He wanted to talk about everything but: Waco, civil
unrest, 23 and the like.

24 There was no nurturing going on in Mr. Terry
Nichols' 25 heart in November of 1994, and Lana Padilla revealed
that.

14579

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

4 show business.

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

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

16 This poor-man's will was a will written by a
man who
17 had stashed \$20,000 in cash in a kitchen drawer, who
had
18 \$38,000 of gold and silver in a storage shed, and who
had lots
19 of other valuables, including jade. And Barry
Osentoski, with
20 no more desire in his heart, I'm sure, than his mother,
came
21 into this courtroom and said, "I got a piece of jade,

and I

22 turned it over." And you now have it. And that's the
piece of
23 jade that started in Royal, Arkansas, among the
possessions of
24 Roger Moore and ended up in a storage shed in Las Vegas
in
25 November of 1994. The robber, Terry Nichols, put it
there.

14580

1 His stepson brought it to you.
2 April 19, 1995, was the second anniversary of
the
3 events in Waco, Texas. And that date cannot be
overlooked as
4 you examine -- and you must -- the question why would
anyone --
5 why would anyone do what was done in Oklahoma City.
And the
6 answer by the date alone is to seek revenge for a
government
7 that they despised because of the events at Waco.
8 It is not irrelevant. It makes a difference
that
9 Terry Nichols inside his home had videos and literature
and
10 other materials about Waco. It should not control your
11 deliberations; but as his Honor will tell you, it is
entirely

12 proper for you to evaluate it in understanding motive,
why it

13 is that anyone would do what was done.

14 We heard discussion yesterday about the
storage sheds

15 and why, oh why, in this case would the FBI not find
any

16 residue of any kind, any evidence linked to this
criminal case

17 in all the storage sheds in all Kansas.

18 And here's the answer: The FBI got there
after they

19 were gone. Terry Nichols is no fool. And as he told
the FBI:

20 I went to the Herington storage shed the morning after
the

21 bombing when I knew Tim McVeigh was not coming back,
and I

22 cleaned it out. He literally cleaned it out. There
was

23 nothing left, nothing in the way of clues.

24 But what's important, what's most telling
about what

25 was once in those storage sheds, is how many storage
sheds

14581

1 there were and all under false names. That's what's
important.

sheds 2 The long list of aliases used by the storage
Nichols as 3 (sic), enough to field a baseball team, with Terry
inside those 4 the player/coach, is the real proof about what was
5 storage sheds.

because 6 As jurors, it must be frustrating at times
7 you're not in control of what witnesses come in the
courtroom,
8 you're not in control of the documents that are
presented. But
here 9 you are in control of your deliberations. We stand
10 silently and we wait. And in your deliberations, keep
your
11 focus on what's important in this case. And what's
important
12 is whether the Government of the United States has
proved
13 beyond a reasonable doubt each of the allegations
against Terry
14 Nichols.

other 15 What's not important is whether there were yet
16 co-conspirators, lots of proof, lots of evidence, and
from many
17 witnesses, quite frankly, with the best intentions at
heart,
18 who have put into question the existence of perhaps
someone
19 else.

20 The question to ask yourself is: If so, so
what?

21 What does the possible existence of yet another co-
conspirator

22 do to negate proof that I have heard from other
witnesses that

23 it was Terry Nichols who bought the ammonium nitrate;
that he

24 burglarized the quarry; that he rented the sheds; that
he

25 traveled across this country; that he robbed Roger
Moore, and

14582

1 on and on and on? It's as if they would substitute --
the

2 defense -- the possibility of a third person for all
the proof

3 about the conduct of their client.

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

5 important is the sufficiency of the evidence about
Terry

6 Nichols.

7 But that area of proof does beg one question,
and that

8 is if there were another man, why didn't he have a car?
Why is

9 it that Tim McVeigh has to call Terry Nichols to come
get him

10 in Oklahoma City? Why is it that Tim McVeigh,
according to his

11 statement, has to call Terry Nichols to loan him his
pickup

12 truck? This third person, if they exist, must be as
Darvin

13 Bates described, a man riding on a bicycle.

14 It doesn't make sense.

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

18 And lead foot or no lead foot: Ladies and
gentlemen,

19 on April 19, 1995, all of the proof points in one
direction:

20 Tim McVeigh lit that bomb and raced out of town. He
didn't

21 stand down the street and ponder the destruction. He'd
learn

22 all about it soon enough.

23 When Charlie Hanger pulled over Tim McVeigh,
remember

24 this: He wasn't speeding. He didn't have a license
plate.

25 That's why Tim McVeigh was pulled over.

9:02 1/2
the speed
delivery
the
York
working on
several
care
they
political
short
from
his
the most
in

1 Tim McVeigh left downtown Oklahoma City at
2 and was arrested just as Charlie Hanger said, driving
3 limit, north of Oklahoma City on his way to Kansas.
4 We have heard in great length and heartfelt
5 about Terry Nichols, the family man, as if a family --
6 family man can't be the terrorist.
7 In November of 1994, Tim McVeigh was in New
8 helping his father clean out his grandfather's home,
9 the estate. We learned that from Ms. Augustine. And
10 months later, he put a truck bomb in front of a day-
11 center. Terrorists have families. The question is how
12 treat them, how they allow the dedication to a
13 principle to corrupt what should be important to them.
14 All of the witnesses -- and there were many in
15 fashion -- who came into this courtroom and said I'm
16 Herington, Kansas, and I helped Terry Nichols register
17 truck, or buy insurance, or the like, never answered
18 important question; and that is, why is Terry Nichols

son, Josh, 19 Herington, Kansas, in 1995? He was nowhere near his
Marife 20 who lived in Las Vegas, and was certainly no place that
central 21 Nichols would have picked. She told you, "I don't like
over the 22 Kansas," so he picked Herington, Kansas, to settle in
bomb 23 needs of his son and the wishes of his wife. He picked
of this 24 Herington, Kansas, for one reason: That's where the
25 components were. That's where the base of operations

14584

Tim 1 plan existed. This choice had everything to do with
2 McVeigh and nothing to do with family.

prove so 3 The events of November, 1994, in Las Vegas,
letter is 4 many things about Terry Nichols. The "go for it"
5 just one of those.

that 6 But picture for yourself the morning that day
task at 7 Lana Padilla described. Terry Nichols focused on the
instructions 8 hand, spending lots of time to write very detailed

9 to a number of people, taking lots of time to prepare
this
10 package, to build the secret compartment in his drawer,
to
11 write two different letters to Tim McVeigh and one to
Lana
12 Padilla.

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

16 When you go back there and look through the
writings
17 that are in evidence, look for the letter to his son,
Josh.

18 You won't find it.

19 Terry Nichols in November of 1994 wanted Tim
McVeigh
20 to know what size the oil filter should be in his GMC
truck.

21 He took no time, no time at all, to write a letter to
his son
22 Josh to say: Josh, whatever you choose to do in life,
go for
23 it. Never bothered. Those words of encouragement he
reserved
24 for someone, something more important.

25 As many criminal cases, this is a case about
intent.

Nichols' 1 There is intent, and then there is intent. And Terry
focused. 2 intent throughout this long conspiracy was uniquely
road to 3 It lasted month after month, step after step, on this
kill. It 4 destruction with Tim McVeigh. It was an intent to
and like 5 was an intent to injure. It was an intent to destroy;
also 6 all acts of terrorism, Terry Nichols and Tim McVeigh
7 intended to terrorize the American people.

He 8 But Terry Nichols intended one other thing:
9 intended to get away with it. He intended to avoid
10 responsibility for his conduct, for his actions.

were 11 Tim McVeigh and Terry Nichols unfortunately
12 partly successful. On that morning of April 19 in
downtown 13 Oklahoma City, their bomb blew up and people's lives
were 14 changed forever.

15 But they did not get away with it. And
despite Terry 16 Nichols' elaborate alibis, despite all of his attempts
to 17 conceal his conduct, despite attempts to shift blame
and to

18 look in every other direction except at his own
conduct, Terry

19 Nichols has not gotten away with it.

20 It's time. It's now time. 32 months since
that truck

21 bomb exploded, 32 months since 168 people ended their
lives, 39

22 months since the time that Terry Nichols bought the
first ton

23 of ammonium nitrate, it's finally time. It is time for

24 justice, and you're in control of that.

25 As jurors, it has fallen to you to render
justice in

14586

We ask 1 this case, the most horrific crime in American history.

2 that you fulfill your oath and that you do justice.

3 On behalf of the victims in Oklahoma City, on
behalf

4 of the United States, I ask now that you return
verdicts of

5 guilty as charged in this case.

6 Thank you.

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

8 the noon recess before completing the trial, which will
be the

9 instructions that I give you regarding the law. And we

do so

10 because it is near the noon hour but also to avoid the
need to

11 interrupt the instructions, because, as I will be
telling you

12 in the instructions, you must consider the instructions
as a

13 whole as they are connected and related to each other,
so I

14 want to do that without breaking in between. And also,
I will

15 tell you that you will have written -- the instructions
in

16 writing as well as my reading them to you.

17 But I think we'll take an hour's recess, then;
and

18 we'll be coming back and I'll instruct you on the law.
And

19 that's the last thing before deliberations. But that
last

20 thing hasn't happened yet, so the trial is not
complete; and

21 therefore, you must not, during the time of this
recess,

22 discuss this case or anything about it among
yourselves, or, of

23 course, with any other person, or permit yourself to be
exposed

24 to anything outside of the evidence which could affect
you.

25 So we have the last stage of the trial yet to
come,

1 which will be my instructions with respect to the
principles of 2 law that the jury apply.

3 Please hold on for yet another hour.

4 You're excused now for an hour recess.

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

6 MR. TIGAR: May we approach, your Honor?

7 THE COURT: Yes.

8 (At the bench:)

9 (Bench Conference 127B2 is not herein transcribed
by court 10 order. It is transcribed as a separate sealed
transcript.)

11

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25

14591

1 (In open court:)
2 THE COURT: We'll recess till 12:45.
3 (Recess at 11:44 a.m.)

4 * * * * *

5 INDEX

Page 6 Item

7 CLOSING ARGUMENTS

14491 8 By Mr. Woods (continued)

14530 9 By Mr. Tigar (continued)

14554 10 Rebuttal Argument By Mr. Mackey

11 * * * * *

12 REPORTERS' CERTIFICATE

13 We certify that the foregoing is a correct
transcript from

Dated 14 the record of proceedings in the above-entitled matter.

15 at Denver, Colorado, this 16th day of December, 1997.

16

17

Paul Zuckerman

18

19

Kara Spitler

20

21

22

23

24

25