

Transcript: Closing Argument by Defense Attorney Peter D. Greenspun

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The following is a transcript of the Nov. 13 closing argument by defense attorney Peter D. Greenspun in the capital murder trial of John Allen Muhammad. This is from a preliminary transcript of court proceedings compiled by court reporters Fiduciary Reporting Inc.

GREENSPUN: Ladies and gentlemen of the jury, may it please the court. . . . This is really our first opportunity given the circumstances to speak directly to you after jury selection. I don't expect that I'm going to take as long as [Prince William Assistant Commonwealth's Attorney Richard A.] Conway did, but it will be more than a few minutes; so if anyone needs a break at any point or anything to stretch your legs, just let me know and I'll ask the court permission to allow that to happen.

Ladies and gentlemen, this is a daunting task and it's a daunting period in this case for Mr. Shapiro, Ms. Leary, and myself on behalf of Mr. Muhammad.

From the first day of this trial, the trial part after you were selected as jurors, in the first moments of it, you saw a skilled and well presented and common sense presentation by Mr. Willett from the time he opened that duffel bag and he put together with skill and dispatch a duplicate Bushmaster firearm. You saw an equally skilled and prepared and cogent presentation by Mr. Conway over the last two hours before your lunch break.

During the course of this case, you heard from 150 witnesses plus, received 400 pieces of evidence plus from the Commonwealth, some 25 or so from us, several witnesses, but certainly there are numbers from us as well. But you saw the ability and the resources and the skill of that presentation. So we are here with a daunting task in light of the skill and the resources, but most realistically the experience and the abilities of these prosecutors and their very large team that they've put together here. So I ask you to hold off a little bit for the time being before you get to that deliberative process, that process of making decision, of coming to a result. And I'll talk about the result process in a second, if I could.

But before I do any of that, ladies and gentlemen, let me say that we are -- and I mean all of us from our side of the table -- are cognizant of the fact that you've heard for three weeks of evidence about victims -- about victims, people who were killed who did not do anything to provoke it. It wasn't a fight that brought about a bad result. About people who were injured who did nothing to provoke it and whose family members, some of whom are here in the courtroom and elsewhere who have suffered tremendous losses without any provocation or anticipation of that. And to those folks we express our sympathies and condolences and hope that the difficulties of going through this process will soon be at an end for them.

The difficulty of the task is if you start, ladies and gentlemen -- I mean you, the members of the jury -- start with the result, then we are starting and have been battling -- if you start with the result -- an uphill battle, which is against the burden of proof, against the directions and the orders of the court to you, and against the instructions of the law, the ones that you read with Judge Millette earlier this morning. If we need to battle the result first as opposed to the evidence of what the result means, then it's an almost impossible task. You saw some of the most horrible things that you'll ever have to see. And I dare say all of yours -- in most of your instances, I certainly hope -- join Mr. Conway in that hope.

You heard from doctors. You heard from medical examiners. You heard from family members and saw pictures of Mr. Meyers in life and Mr. Meyers in death through autopsy pictures. Not something that no matter how prepared for it you were, that I expect that you were prepared enough. Those are about the results, ladies and gentlemen. And if any of you want to look at the results first as a way to get to the result that Judge Millette tells you you must come to -- and that is, is Mr. Muhammad guilty? Is he not guilty? Or is he guilty of some other offense than the Commonwealth asks you to find? Then alls you need to do is to go to this pile right here, which is all of the autopsy reports and all of the photographs that were flashed to you. And that's all you'll need to do. The clerk may revise the order you receive them in or perhaps Mr. Ebert when he responds to what I say. But those results, that inch and a half of papers, is what you need.

I have seen prosecutors talk about how an accused person has rendered the deceased to a piece of paper or a picture; and it's very dramatic by way of argument. But it's looking to the result in order to get the conviction that the prosecution wants as opposed to looking at the evidence as the law requires you to do in order to see how or why or under what circumstances the death result was obtained for each of these victims or the injuries.

So let me talk about that. It's our perspective that's the way we suggest respectfully that you must look at it. And in doing so, the law requires you to keep an open mind. Again, how can you keep an open mind when looking at those pictures? But you have to go back and you have to give us an hour or more or so of open mind, and then you can go to the deliberation process and see where the law steers you, where the evidence steers you as opposed to where the result of the shots being fired steers you. And we hope and expect and respectfully request you in the most vigorous fashion to be able to do that.

Now, the law tells you to do that; and Judge Millette has instructed you -- and this is as much for me as you. You may not be able to read it. Let me move it up a little bit closer.

These are just three of several instructions that you'll have, and you'll have them back in the jury room to be able to go over more carefully.

This first instruction with letter A is presumption of innocence. It really gives you the guidelines of what you heard about a little in the voir dire, the jury selection process, and you heard from the court and here is that instruction again. And it's pretty straightforward. It's really about what your job is.

It's your job to take the Commonwealth's evidence -- and we suggest that you look at their evidence in order to uphold the burden -- sort of a bit skeptically. It doesn't mean that you look at it as if they're trying pull one over on you in the gross scheme of things, but you look at it skeptically. You don't just accept it. You challenge it, and you determine, does it say what Mr. Conway just told you that it says? Are the conclusions he asked you to draw reasonable conclusions? And most importantly, are they based on evidence as opposed to merely argument? Are they based on evidence, and are they reasonable conclusions to draw from the evidence to the exclusion of other conclusions? And so this Instruction A tells you that suspicion or probability of guilt is not enough for a conviction.

So if you think that Mr. Conway's argument makes sense, sort of feel it in your gut. You feel it in your head. You feel it in your heart. But then you start thinking about it and say, well, wait a minute. Do we really know where that shot was fired from? Does it just make sense that it was fired from there, but we really don't know where it was fired from? And then as you talk

about it, you come to the conclusion, Of course it was fired from there. I know in my head and my heart and my gut that it was fired from there. That's not good enough pursuant to these instructions.

The Commonwealth is required to disprove every conceivable circumstance of innocence. That's about circumstantial evidence. The presumption of innocence remains with Mr. Muhammad as we speak here and until such time as you're to find deliberately -- after discussion -- which you've not been able to do so far. You're not allowed to make up your mind by the court's order; and that's very, very difficult to do.

What is proof beyond a reasonable doubt? Well, in Virginia we don't have a specific definition of proof beyond a reasonable doubt. So what is it? Well, it's really what it is to each of you. Sometime it's referred to as a moral certainty. Sometimes it's referred to scoring a touchdown or hitting a grand slam in the bottom of the 9th. It's whatever it means to you. You can use every kind of cliché. They've all been used and heard before.

But perhaps to a moral certainty, ladies and gentlemen, is the fairest way to put it. Your sense of what is a morally correct foundation, that the Commonwealth has proven each and every element that they have to prove in these instructions beyond a reasonable doubt. And you know what that means to you. So that you're not three months, six months, or six years from now when somebody says to you in a personal or social setting, boy, that must have been a job to be on the Muhammad case; and we'll all stipulate to that. None of us will disagree with that. What do you really think happened? And so that you're not going back in three months or six months or a year from now saying, Well, you know, Dean Meyers was shot; and he was part of this killing team that the prosecutor talked about. And your friend or your associate says, but what really happened? Where was he shot from or what happened? Or what was the dynamic between these people? Are you sure someone else wasn't involved? That you'll know that your answer to that person, in the event of a conviction, is with certainty correct.

Anything I say that's an unreasonable suggestion, discard because the Commonwealth only has to exclude reasonable doubts. Not some pie in the sky scheme that defense attorneys may come up with. So that's what this initial instruction talks about. You'll have to come to your own sense of what that is. It's a pretty big burden, though, I would suggest. It's not the greater weight of the evidence. That's a preponderance of the evidence. That's the circumstantial instruction. It's not the clear and convincing evidence which is more than just the greater weight, which is the standard in civil cases. It's beyond a reasonable doubt.

Now, this is Instruction F that you'll have. It's the circumstantial evidence instruction that Mr. Conway read to you. And, again, if I say something that's unreasonable and you go back there and you kick it around and then you kick it out if it's an unreasonable suggestion because I'm not allowed to ask you to make unreasonable conclusions. But this instruction is a key one because Commonwealth has sought to prosecute this case on the circumstantial evidence. It is not necessary that each element of the offense be proved by direct evidence; for an element may be proved by circum -- may also be proved by circumstantial evidence.

You may convict John Allen Muhammad on circumstantial evidence alone -- which is what they've sought to do here effectively -- or on circumstantial evidence combined with other evidence if you believe from all the evidence that he is guilty beyond a reasonable doubt. This is that paragraph -- last two that are key. When the Commonwealth relies upon circumstantial evidence, the circumstances must be consistent with guilt and inconsistent with

innocence. It is not sufficient that the circumstances proved create a suspicion of guilt, however strong, or even a probability of guilt. The evidence as a whole must exclude every reasonable theory of innocence.

So that's where you get into what I call the gut feelings, and I know it, but you can't explain it, and it must have been. This instruction tells you that that is not sufficient to find anyone guilty in a trespass case; but as and most importantly, in a capital murder prosecution. Again, you're going to have to find your own sense of comfort as far as what that is.

Next instruction here is Number 9. That's the one that talks about principals in the first and second degree that Judge Millette read to you. And this is a -- an important instruction in this case. And it's a bit of concepts that -- you know, it's a lot of lawyer talk is really what it comes down to, okay? And what we have here in this is sort of the definitions that you have to look at as you look at those findings instructions. Those are the ones with the elements of the offense and the choices between capital murder, first degree murder, or not guilty at all.

And this instruction here is going to be important to your deliberations here, I believe. As far as the multiple killings within a three-year period, the instruction tells you that you must find that Mr. Muhammad acted as principal in the first degree in the murder of Mr. Meyers. Principal in the first degree is the immediate perpetrator of the offense. So let me stop right there.

Now, these instructions -- your task to use the -- the regular meanings of words and your interpretation of it. There's not another instruction, unfortunately, that tells you what the immediate perpetrator means. Mr. Conway told you what he thinks immediate perpetrator means and his colleagues think it mean. And I will tell you what I think it means in a moment; but that's how you're going to have to collectively look at it. The immediate perpetrator -- when you look at the word immediate, immediate is now. Immediate is certainty. Immediate is do it. Immediate is without equivocation. It's not pretty soon. It's not get to it. It's not when you can, but I really need it. It's not even ASAP. It's now.

So you have the immediate perpetrator being the now person. We suggest to you that what that means is in a shooting case, the person who's holding the gun in his or her hand in a -- you know, there's all kinds of cases. In a case of the different nature, it's the person who is doing the particular act. In a bank robbery which goes bad and the teller is shot, it's the person who does the shooting of the teller, even though the planner or the instigator of the robbery and the person who drove the person to it -- maybe gave him the gun and the mask and so it -- is waiting right outside to speed away. It's the person who went into the bank. And the law makes sense in that regard because it is the person who has the gun in his or her hand or the knife or the crushing rock that counsel spoke of -- it is that person who has the immediate ability to stop this from happening. You know, murder for hire is an offense where it's a capital possible offense. And the hiree, the person who's hired to do the killings, is, of course, subject to the death penalty. But the hirer, who may be on the other side of the world, literally is subject to it too because that is the person that set it in motion, set that act in motion.

But so you say, well, then why is the actual killer subject to it as well? Because that person is the person who could have stopped it even though that wasn't the person who instigated it.

Ladies and gentlemen, the immediate perpetrator is the person who causes the death -- now, we have big dispute about that -- what counsel was talking about. We're going to ask you

to interpret that in that immediate sense because that's what makes sense. The Commonwealth, as I'll talk about, is trying to build this killing team and this killing machine and the urban hide.

Well, the urban hide -- to have a ten or eleven year old Chevy Caprice that's all dragged out, it has faded paint, it is peeling away and apart, it has tinted windows that you can't see through in the land of mini vans and SUV -- is hardly an urban hide in the Northern Virginia area anyway. And I suspect it's very much the same down here.

You know from their evidence it wasn't much of an urban hide because everybody saw this menacing vehicle around. So what kind of urban hide was it? But I'll talk that because the Commonwealth says that that was the killing platform, and that this is a team -- the Malvo-Muhammad team. Muhammad-Malvo team. I'm not trying to put anything off on anyone. And that what you have under these circumstances is this platform and that any involvement by anyone in it is an immediate perpetrator. We suggest respectfully that that is not the case.

When two or more persons take a direct part in inflicting fatal injuries, each joint participant is an immediate perpetrator for the purposes of proving capital murder. Each joint participant is the joint participant in the death.

Mr. Conway used the examples. He told you what that's talking about. The crushing rock or I pour the gas and somebody with me lights the match immediately. We're doing those things at the same time. Those are joint participants. That's not your driver and your shooter. That's not your people who are working together because then there would be no reason to have a -- what's called a principal in the second degree, which is also part of this instruction. Is a person who is present, aiding and abetting by helping in some way in the commission of a crime. Presence and consent alone are not sufficient to constitute aiding and abetting. You can't just be there. You have to be part of it.

It must be shown that the defendant, John Allen Muhammad, intended his words, gestures, signals or actions to in some way encourage, advise, or urge, or in some way to help the person committing the crime to commit it. All right. The rest of this is about the terrorism issue.

This principal in the second degree is obviously referring to a non-actual killer, someone who's not stabbing with someone else or someone who's not beating or dropping the rock on someone else. To that person is a principal in the second degree type of an act or in a matter such as under consideration here. Otherwise, there would be no reason for this principal in the second degree if everyone who works together, every coconspirator, everyone who comes to an agreement to do something that's illegal, you wouldn't have to have the principal in the second degree. So that's a big issue for your consideration.

When I'm done, Mr. Ebert is going to tell you why I'm wrong about that because they get to go last and hopefully you'll remember a little bit about what we've spoken about. And all of the attorneys here, he's been doing this for the longest time. And he'll tell you very skillfully why I'm wrong about that; but hopefully you'll raise at least some recollection and some consideration of it. Why does it have to be an immediate perpetrator and why do you have to have this language if you have principal in the second degree issues to consider?

Because a principal in the second degree, the driver, the planner, those kinds of things, the person assisting is not the joint participant unless one's holding the gun for the other; and that's their theory. Their theory is that this is all a platform. And I suggest, ladies and

gentlemen, that they're trying to come to a result by the results as opposed to by the law and the evidence.

So there's other instructions, and they tell you little bits and pieces of what the law is and how to handle things. There's one on credibility of the witnesses, which you can go along to as far as credibility of the evidence. And we went for days on end, it seemed like, without talking to witnesses. The medical examiners, the family members, the EMTs for most part, and many of the evidence technicians who picked up things and so on because they're not really what the case is about.

The emotional pounding that you took doesn't move you forward as far as these decisions that you have to come to; and so there was, first of all, no reason for us -- Mr. Shapiro and I -- to intrude on family members. There was really no reason for us to ask medical examiners a question. Remember the medical examiners. And you have to look at why? You can analyze it. Why did you have to go through all that? And counsel will have an answer in rebuttal argument; but remember on Mrs. Ballenger's shooting that the medical examiner, Dr. Kramer, came up. And you'll recall that there was a stake that we raised about having to look at -- you having to look at that picture and so on because it was another tough one to look at. And the Commonwealth has the doctor to show the trajectory. Well, that picture was on the screen for minute after minute after minute; and Dr. Kramer sat in that witness stand there and used his jaw. He never once used the picture except to identify it; and he showed you through his jaw where he thought the trajectory was by using his finger and his own jaw, and he did that several times. And so that emotional pounding was there. Why do we ask -- what question do we need to ask Dr. Kramer or these medical examiners in these circumstances? The result is not the question. And as you look at the evidence, folks, what you have to do is you have to consider the timeline; but more important than the timeline is what's included within the timeline. A big part of the Commonwealth's effort in this case is to try to make Mr. Muhammad the controller, the orderer, the director of Mr. Malvo. There's no secret that that's part of their theory. And in order to do that, the Commonwealth has brought on witnesses -- Mr. Reverend Archer and Mr. Holmes and Charlene Anderson and that's really about it -- some of the people at the Y and so on -- who are witnesses to testify about a relationship.

Now, you heard from four people, I think it was -- the actual names will come up -- that Mr. Malvo was obedient, an obedient kid. It wasn't that he was even obedient. What you never heard -- to Mr. Muhammad. What you never heard was that Mr. Malvo was ever disobedient or that anyone observed him in a posture where why did you stay out that late, Lee? You were supposed to be home at 10:00 and you came home at 12:00 and now you have to be grounded or you have to do this or that; or Lee disputed that he needed to be home at 10:00, and so that Mr. Muhammad said you got to be home at 10:00 and Lee then came home at 10:00 because Mr. Muhammad told him that. You know nothing about the relationship between Mr. Muhammad and Mr. Malvo except that it's apparently a close one; and by gross -- and by gross I mean outward observations -- it's in the nature of a father-son type of relationship. That's all you know.

Reverend Archer. What a delightful man. He's just a credit to humanity. He really is. And how much pain he was in just having to be here under these circumstances. Reverend Archer testifies about what he observed about Mr. Muhammad and his much younger children, and you can't say much better things. And it was obvious how Reverend Archer felt about Mr.

Muhammad's relationship with his children and that he was -- Mr. Muhammad was appropriately scared -- or not scared but sad, I think is the word he used, when the children were taken from him in this custody dispute to whatever extent there was one. But that Mr. Muhammad carried on and that Mr. Arch -- Reverend Archer stopped paying as much attention because the little kids weren't there for him to be protective of during that time frame.

And so the timeline -- well, to this point -- Mr. Muhammad and Mr. Malvo starts at about that time frame. Now I'm just going to walk forward with this before we start talking about the shootings and that kind of thing itself. Everything that you know about Mr. Muhammad and everything you know about Mr. Malvo together -- I'm not talking about an observation by somebody during the October of last year time frame -- is, I believe, on this chart. That's all it is. And so all this is is a summary of what I believe accurately reflects what you've heard over the past few days, because that's what most of this came about.

On Aug. 6 Mr. Muhammad arrives at the Light House Mission. He's not back until Aug. 16th, and he's there through Sept. 1st. He stays there with his children. His children actually leave on the 31st. No Mr. Malvo. No Mr. Malvo.

And then after the children leave, Mr. Muhammad leaves the mission until Oct. 3rd. No evidence of Muhammad or Malvo at all of any nature. And then Oct. 3rd to the 10th, Mr. Muhammad is back. No Mr. Malvo yet. Can everybody see this? Can you see it? Now, Mr. Muhammad stays at the mission from the 14th through the 26th; and Mr. Malvo, here in bold, comes from the 20th to the 26th. So you have six days together there at that time. From the 28th to November 2nd, both Mr. Muhammad and Mr. Malvo stay at the Light House Mission. From Nov. 6 to 16th, they're both there. From Nov. 18th to 30th, Mr. Malvo stays at the mission; but interestingly, for three days he's there without Mr. Muhammad. He's there independent and alone and separate from Mr. Muhammad during that 18th to 21st time frame. They both are not there after November 30th. On December 2nd to 14th, if that's -- I'm reading it correctly, Mr. Malvo stays there; but Mr. Muhammad's not there for the first two days of that visit.

Now, the 14th is when Una James comes. That's Mr. Malvo's mother. And he's gone -- sounded like overnight to maybe he's back because of these living logistics. And then Mr. Malvo is picked up by Border Patrol folks on about the 19th.

Mr. Muhammad is there during that time period, but there's not any evidence of any interaction after Mr. Malvo is with his mother or certainly not after he's picked up by the Border Patrol as they were described.

Then there's no evidence of Mr. Muhammad having any contact with Mr. Malvo from then until early March. Mr. -- Reverend Archer sees Mr. Malvo with his mother when they were going trying to cash that check she got from the immigration people; and you don't hear of any complaints about Muhammad or anything about Mr. Muhammad or Mr. Malvo during that time frame. Early March -- and actually there just wasn't room; that early March should be a late February, early March -- Robert Holmes said that that's when he sees Mr. Muhammad and Mr. Malvo for, I believe it was, a three-day time period, three or four days. We put a few days because he equivocated somewhat on what it was. But it was only a few days. It was three or four days. And then he doesn't see them again until -- Mr. Holmes, that is -- until later on into the summer of 2002.

Maria Dancy sees them for one one-to-two week visit. Not for the whole spring. It's not for months. Not on and off again. It's for one one-to-two week visit. And during that visit she said that Mr. Malvo was there and she was introduced to him as Lee. She said that the relationship was in the nature of a father-son. And then when asked by Mr. Ebert -- it was a leading question -- was he obedient? She said, Yeah, he was obedient. Yeah.

Now, again, there's no evidence with this obedient word of what does it mean? What does the obedient word mean in the context of this relationship? You have people who see Mr. Muhammad and Mr. Malvo for very limited periods of time; and I guess what it means is Mr. Malvo was not disobedient. He didn't go run off. He didn't -- he wasn't disrespectful to everyone, so he was pleasant and nice, I guess. And that's now being turned into some obedience standard because the Commonwealth has no evidence of direction or control or indoctrination or ordering or hierarchy by Mr. Muhammad over Mr. Malvo. And so what they're to do is to say, He was obedient. He was obedient in the spring of last year and, therefore, in September or October, Mr. Muhammad made him do it. That's really what their whole theory comes down to. And so trying to have these snippets of contact around other people. And they lead the questions, if you remember are, was he obedient? Yeah, he was obedient, without any demonstration as to where that comes from. I would suggest that cooperative, nice, friendly, close relationship does not equal obedient in the sense of any sort of direction or order or control. That's Ms. Dancy.

Now, she says, Yeah. My husband had firearms. I think she said two pistols and one rifle or long gun. I think she said rifle. And that every other day that they talked about going to the range. It wasn't Mr. Muhammad said, let's go, Lee. I want you to practice your shooting. I want you to practice your sniping. I want you to practice your ability to hit a target from inside of a trunk. It's, Let's go to the range; or we're -- it's not "let's" because we don't know who is doing - - it's discussion about going to the range. If they were there for a week, that's maybe three or four times maybe. If it's there for two weeks, it's maybe six, seven, perhaps even eight times during that time frame; but you don't know because the Commonwealth hasn't provided you with the specifics of that evidence.

And I suggest if we're going to interpret evidence, that you interpret it against the Commonwealth as far as any such suggestions. Instead of assuming it was two weeks, the assumption should be it's one week because they have the burden of proof. But you'll deal with that in your own sense in your own way. And that's what you have. You have two weeks roughly at the end of June, beginning of July with Robert Holmes.

Now, what does Robert Holmes -- you know, Mr. Ebert had the Bushmaster out. He was showing it to Mr. Holmes who's a big nice guy. Just a pleasant guy. Sort of a character. Just a decent folk. And he's holding it up there and all about the gun and taking it to zero it in and so on. Did you see it? Yeah, and all this stuff about guns.

And then on cross-examination, Mr. Holmes, was this gun a big part of what was going on during that time frame? Because he said -- he told you that he didn't see it during the spring of the year. And he says, no. It mostly sat in a bag behind the couch, I think he said, or in a room somewhere. So it wasn't a big part of it. It's now a focus of this case and so the prosecution tries to make it as much of a focus as you can, but it certainly wasn't a focus out there. He doesn't tell you that Mr. Muhammad said, where -- what range should I go to? Where should I go? When can we go?

He says that once, maybe twice there was a comment about going to zero it in. Well, if you have a rifle and it has a scope, then it needs to be zeroed in to be what it is. And so maybe there was one other time. That's the firearm evidence from Robert Holmes. That's end of it except for seeing the case, which he believe but didn't know -- and by the way, could I have Exhibit Number 1, please?

You know, I'm not a military person and I don't have training in this, so I'm probably holding it all wrong. Somebody here, I know, can tell me the right way to hold it. But the -- this is not necessarily the rifle that Robert Holmes saw. He said it had a different stock. He called it a military stock. I don't know if this is a military stock or not, but it was different stock; and it didn't have this scope on it. And at one point that he saw it, it had a different scope on it; but then one time he saw it it didn't have any scope at all. So we don't even know if this is it.

Mr. Conway was talking about a .308, and whether I heard him wrong, or in any event my recollection isn't -- but yours controls -- is what Mr. Holmes said was in the 1998 time frame, that Mr. Muhammad had a .308. That's a different kind of a rifle. And that that's when he said to him, Go and get -- why don't you get an M16. That's what you know about. And then after that, he knows that Mr. Muhammad got a Bushmaster .223 which he believed was the same .223 during the summer of 2002 when he saw Mr. Muhammad there with a rifle. But we don't even know when we're talking about facts whether or not this is the same rifle or different rifle and all that kind of thing because you simply don't have that evidence.

But look at the assumption that there are. Mr. Holmes assumes that this was the one from 1998, '99 time frame after he suggested to Mr. Muhammad that maybe you should get something else. But all this suggestion that there is this focus on firearms and so on is just not in evidence. It's just not in fact.

So then Mr. Holmes sees -- back to this chart -- Lee Malvo and Mr. Muhammad at the end of August, I believe it was, or the beginning of September for three days or so. That's when they were trying to get the school records so that Mr. Malvo could go to flight school in Florida. And that's what he sees there.

Now, what he does notice is that Mr. Muhammad, over the period of time since he saw him, which is only in the latter half of -- in 2002, is deteriorating to some extent as far as his manner, his appearance. He had been fastidious in his appearance. No long was. And he had concerns about him in that regard. He doesn't say anything about Mr. Muhammad mistreating, being aggressive, Lee needing obedience, needing control, needing direction or order. His relationship -- Mr. Holmes, that is -- was with Mr. Muhammad. And as far as Holmes was concerned, it's pretty clear that Lee was just there and there weren't any problems. That's their concept.

The only other evidence you have of any contact at all Charlene Anderson. Folks, you'll make your own assessment of Charlene Anderson and her credibility. Commonwealth brings her flying back between yesterday and today to testify that Mr. Myland, the investigator, obviously is lying about what he said.

Now, why in the world would he do that? If she got there and said, I don't think I told him about the gun. I was busy. I was scattered, whatever the case may be, and that's credibility. But why in the world would this come up from Baton Rouge, Louisiana as an investigator to come and to have a made-up story about what she says? It really doesn't make sense. I could say a lot about that, but it really just doesn't make sense at all for us to make that point if it's

being made up in any way, shape or form. As opposed to she is called back to say, oh, do you remember now? All of a sudden she remembers. She knows she was questioned about it on the witness stand. Now, all of a sudden, she remembers. So you'll determine your own credibility determination on her. But the most that you get out of this is that she has -- she sees Mr. Malvo as she walks through her house in her living room with her daughter who he was having a grand ole time with and she was apparently having a good ole time as teenagers would with him. And that Mr. Muhammad and she have this conversation in the kitchen, which very quickly and easily lead to this mission discussion about the C4 being shipped around and marijuana around trying to get that. There is no evidence and she did not say that Mr. Muhammad trained Mr. Malvo for anything. The wording was -- and it was very carefully noted -- that he is highly trained; that they are on a mission with others and so on. And she found Mr. Muhammad's manner to be credible as far as that's concerned. Although she thought this whole thing was somewhat strange that here he is telling this to a police officer and that kind of thing. She didn't object to his asking for ammunition or anything like that or where you can get it or that kind of jazz. This was a conversation to her that I guess now she feels has some greater meaning or something. The contact that she has with Mr. Malvo and Mr. Muhammad is Malvo comes into the kitchen when Mr. Muhammad's telling her about the secret mission, in the middle of that. And Malvo offers some sort of food out of a can or something to Mr. Muhammad; and he says, Go sit down back out there. And Mr. Malvo looked a little bit disconcerted about that, is I think the fair inference from that.

That the Commonwealth's sole sum and substance of direction or order. They're trying to turn these contacts into that. Now, there are a couple of other points. At the YMCA, which was at the end of August or beginning of September through various times -- and we didn't have specific dates to put in there because they didn't have specific dates -- but you recall that both Mr. Kane and Ms. Douglas said that they saw Mr. Malvo alone, independent; and they saw Mr. Muhammad alone, independent of Mr. Malvo; then they saw them when they were there together, but not even a discussion of them being in the gym together with Mr. Muhammad saying, Pump that iron and lift it and da-da-da-de-da and that kind of thing.

You recall -- and there's -- everyone's trying to help in this case. And there's good reason because of what happened a year ago. But Ms. Douglas who said, "Oh, yeah. I thought that he was a very strict parent." And then on cross-examination, she said she never saw them do anything. She never heard them say a word to each other. She didn't know any discussion point. She had no basis to say that. And I think one of the last questions we asked her was something about what she had heard in the media and so on; and so that's turned into, "Oh, yes. He was very strict" as opposed to what she saw, which was really two fairly pleasant guys who came in and out and used the Y. That's really all that she particularly observed.

And that's what Mr. Cane observed as well. No domination, no control, no discussion, not even a great deal of interaction between Mr. Muhammad and Mr. Malvo.

Mr. Malvo, you know, stays at the US Inn in Triangle, Va. That's up our way. And stays -- may not be the right word; and somehow or another, he gets into a room. There's positive identification. There's no reference to the Caprice or Mr. Muhammad or anything along those line.

So, ladies and gentlemen, you have in you notes and your recollection what may seem by the Commonwealth bringing these witnesses on as a great deal of time together is a matter

of a few days in the year 2002. It's a month and a half or two months -- almost two months in 2001 at the mission; but at that point Lee was going to a public high school that Rev. Archer said was a competent and well resourced high school. He was outdoors during the days. He was interacting with students and teachers. Mr. Muhammad was going to work and things of that nature. And the most that Rev. Archer saw -- and he really didn't pay any attention to them once the young kids were gone. He didn't have a reason to. He saw that Lee was a serious kid and that they had a caring relationship to the extent he paid attention to it at all. He saw that sometimes together they would read and discuss things together. That's it for this relationship which the Commonwealth relies on as far as their explanation of the case is concerned.

So when you go to your jury instructions and it talks about direction or order, the clear theory by the prosecution is Muhammad directing or ordering Malvo to do different things within this criminal scheme. The next question that they're going to suggest -- and Mr. Ebert is going to pound you with it -- is direction or order by Muhammad over Malvo in a hierarchal sense.

Well, it's not just, Son, do the dishes, I would suggest. It's a direction or an order to be involved in a killing scheme that they talk about, and that one is the leader of the other. What it is not, folks, is -- it must make sense that Mr. Muhammad who's older and Mr. Muhammad -- Mr. Malvo who's younger and Mr. Muhammad's who bigger physically, and Mr. Malvo who's smaller of course -- Muhammad is the leader. If size had anything to do with it, I shouldn't even be talking to you at all. If the age had anything to do with it, then, again, I'll get the military stuff wrong. It's a bad place down here to do it. But you get somebody who comes out of a ROTC program or out of one of the academies; and they're an officer. And they're ordering around somebody who has years and years of experience. And the person with the years of expertise is going, you know, Oh, my God. And yet that officer has the ability under the military structure to be able to do that.

The judge has the ability to order you around. Look at what you've gone through since Oct. 14th. You were told when to come, when to go, consequences would take place if once you were selected for the jury if you just read the newspaper -- if you just read the newspaper or if you just watched the TV news, the things that you do in your everyday life or if you talked to a coworker who says, "What did you do yesterday?" "Well, I was in a trial, but I can't tell you about it." That's not normal. And you've been ordered and directed by the court not to do that. That has a hierarchal context to it. There's the judge who has the ability over you as jurors to tell you when to come and go. You've been told that you can't even think and deliberate about this case at this point. You're locked away for hours on end while we're out here arguing about something or another and you have to think of other things to talk about or things to read and to bring about because you've been ordered not to deliberate on this case up to this point.

So, ladies and gentlemen, if the concept is that Mr. Muhammad must have ordered in the hierarchy of this duo that the Commonwealth talks about, must have been the ordering party because he's older or bigger or more worldly -- and they haven't given you any evidence of his worldliness except that he was in the military. That's all you know. That's all you know.

Then there's, again, nothing that we can do or say about it because it's not in evidence. There's no evidence of what went on between Mr. Muhammad and Mr. Malvo in that regard.

Mr. Conway points to the Muhammad assassination. Well, one of the books is titled that. It's in the car or something like that. The -- he points to -- I can point to on the computer

the identification thing in the Windows XP is L. Well, it's not John Allen Muhammad. That's Lee. So does that mean that he's in the hierarchal position there?

There's -- and you'll have an exhibit that's the little jet fighter. You know he was interested in flight school; and that the icon for the identification sign-on is a little jet fighter. Well, so what does that mean? Who's more involved with the computers and things of that nature?

When they were arrested, the computer was in the floor of the driver's seat of the car. Mr. Malvo was in the front seat of the car, so he was closer to the computer. Does that mean anything? Of course it doesn't mean, but it means no more, no less than the type of suggestion the prosecutors make out of these pieces of evidence.

You know, they've done a grand job of probably showing that this menacing car is involved, and they've done a great case of proving what Mr. Malvo is attached to forensically -- DNA, trace evidence, things of that nature. But there is just a gap -- it's more than a gap. There is a canyon of evidence -- or lack of evidence about Mr. Muhammad.

And, again, the easy thing to do and the reasonable thing to want to do is to just fill in the gaps, but you can't. So let me go to these other exhibits. Mr. Conway had -- we just don't have the graphic ability to do it. And this stuff is great. These things are just tremendous, and they're a big aid; but we do it with typewriters and this blow-up.

And let me start with the Meyers shooting because that's where the evidence started. And I don't mean for you to read this. Again, this is as much for me just to go along. But you have the witnesses and then the evidence that was put in and so that I'm not going through, I promise, every one of these pictures and things in any stretch or every witnesses.

But these are the witnesses [as] far as the witnesses at the Meyers scene. That's the case that's charged here, that Mr. Muhammad is charged with capital murder with.

You have Mr. Meyers pumping gas. You have Jason Salazar was at the next pump over. And he hears a noise, and then he sees Mr. Meyers is in a terrible situation there and he goes in and call for 911. Mr. Salazar is important because he says he doesn't really know where the noise came from, but he thinks that it came from across the street. You know, this was on the gizmo, so it stays because they erased it; but let me show you what I recall.

Is everybody okay?

It was not his testimony that he's in this pump area here and that he heard the noise from here. It wasn't over here. The line was along this street by the median area. As far as the line is concerned, we're here on this cross street. So it was here. And if you can -- he didn't continue it. He stopped it and started it. But it was either here or in this area. He never pointed to the Bob Evans. He never pointed to the Bob Evans parking lot. He never went into this end or this end. If there's anything that's reasonable out of this, then it would have been -- that it's from this whole area. He never suggested that it was from a still location as opposed to some sort of drive-by shooting in any fashion.

Now, Mr. Ebert, Mr. Willett, and Mr. Conway will tell you, of course, everyone knows it was from here. The map was over here. That means that the shooting was over here. Even though no one sees Mr. Malvo -- only Mr. Muhammad is seen -- and it was in the area of this red or black car because that's where the map book was found right as I recall, right in that area anyhow. And so that's where it came from. And that Chevy Caprice was backed into that parking space and that's -- it was through the hole in the trunk.

Well, let's talk about the hole in the trunk. Let's talk about the backed into the parking space because there's no evidence it was backed into the parking space. And as a matter of fact, there is no evidence that the hole was in the trunk on Dec. 9th of 2002. There's no evidence that the hole was in the trunk at any time before the date of arrest. Nobody else describes a hole in the trunk before that date. No one else sees a shooting from the hole in the trunk before -- no one ever sees that.

You have -- at the Paschal Charlot shooting, there's a reference to, if you remember the football coach. Nice guy. Everybody's a nice guy. It's a stipulation in this case. The family members. Everybody's nice and good and decent. And he circled around the whole end of the street there where Kamalia Street intersects with Georgia Avenue. He didn't put right next to the parking area. There was a lot of questions of the Tropicanna workers about was there a car in the parking space or not adjacent to the store and all that kind of thing. He -- his circle was one that intersected that whole intersection there as I recall. And your recollection is, of course, control all that.

So there's big problems here because the prosecution wants you to make an assumption that it was from over here because that will give you a clear shot to over there except that there's no evidence of that. There's no evidence that if Mr. Malvo was the shooter - - and I'm not suggesting that he was or he wasn't -- that he wasn't in some other place, that he wasn't behind something. He wasn't laying down and no one saw him; that he wasn't next to the car as opposed to out of the trunk. You don't know that because there's no evidence of that and the Commonwealth wants you to speculate about all that, folks.

So Mr. Salazar didn't know that he was such an important witness when he came back. He's the guy that left the gas station and then came back. But he is because he provides evidence that this shooting was from north of the gas station towards Route 66 as opposed to only from across the street as the prosecution tends to indicate.

You have a lot of police officers and so on, the fingerprint identification from the map book, which is in the Bob Evans parking lot. And you have the crime scene officer. You have Tue Vu. Now, let me talk to you for a second about Linda Thompson who testified as one of the Commonwealth's first witnesses. She told you that she called back and she spoke with Tue Vu. So we talked to Tue Vu; and Tue Vu was brought here to tell you that she never spoke to me.

Now, you only saw Karen Bisset, I think her name is, today briefly and obviously there was an investigator who spoke with her. And she confirms that it wasn't a very clear conversation. And from her manner on the witness stand -- maybe it was the way I asked questions, who knows -- can you see that being the case? But the credibility of Ms. Hamilton comes down to she told you that she spoke to Tue Vu. Alls that means is if she was wrong about that, that there's reasons to question her credibility to some extent. Remember what Mr. Ebert did. He showed -- he asked her about the car. And she said it was a light colored car. And as soon as they show the dark blue Chevy Caprice, all of a sudden, that's the car. And that's happened over and over again in this case, ladies and gentlemen. Is this the car? Is this the car? So it's not the end-all-be-all of the case, but it helps you to try to analyze credibility issues to some extent or another. And that's really what the evidence is in the Meyers case.

Mr. Muhammad is, according to Officer Bailey, confronted. As I recall, the time line would be that there's no way that Bailey would have been able to be there. The shooting's at 8:18. His sergeant gets a report. And then there's some discussion about who goes where. And

he's got to gather his stuff and get out to his cruiser and then get his cruiser together and then go. And he goes with lights and sirens at that point. Certainly couldn't have been before 8:30 that he arrives at the Bob Evans. And he says he doesn't see a car with Mr. Muhammad until about twenty minutes or so after that. So it's quarter of 9:00 or so at least by that point.

Well, by the Commonwealth's theory, Mr. Muhammad, in his urban hide -- which is different than just about every other car you'll see in every one of these pictures -- is waiting around for the police to come and question him before he leaves? They're sniper scape scenario here, which I'll talk about momentarily, doesn't fit that note.

You slide in, you slide out. You don't go peeling wheels out of the Bob Evans parking lot; but you certainly don't wait for Officer Bailey or one of his colleagues to show up.

And then you go back to -- and I'm going to go through these quickly -- to Mr. La Ruffa. Another neat guy, entrepreneurial sort, probably a great place to go and get something to eat. And Mr. La Ruffa is there. You know about the shooting. You saw picture after picture. And you heard the 911 calls and things like that. And you heard from the doctor. You know that his computer is stolen and a pretty fair amount of money is stolen from Mr. La Ruffa at that point. And then there's all these pictures and pieces of evidence and so on that go with that.

But there's no evidence that Mr. Muhammad is there. There's no evidence, of course, the car being involved in any way. There's no evidence that Mr. Muhammad is with Mr. Malvo at that time. In fact, this seems to overlap a bit the timing of the testimony of Robert Holmes when he says -- and he's not specific, but that Mr. Muhammad was in Washington state around the time frame of the first of September. But there's no Muhammad there. And so you can't get a Muhammad there by the Commonwealth wanting Muhammad to be there.

You have Sept. 15th is Muhammad Rashid. Delightful person, poignant. 911 call. There's a -- but -- and a terrible situation there. At best what they get out of this -- there's no identification of Mr. Muhammad. There's no identification of a car. He didn't identify the car. As you recall, he said that there was a car. He saw the very front part of it, and that's all that he could see at some point before he left out the front of the store.

Ladies and gentlemen, you can be sure that if that car was still there, that the police would have been all over it. And if the car wasn't still there, that they would have been all over that fact as well. And you heard nothing about that at all. But there's no sightings of Mr. Muhammad there.

Now, is there a reasonable inference that there's two people if Mr. Rashid is correct about the noises that he felt were shots going by him, two shots and then the person he later identifies is to a fair extent Mr. Malvo is nearby very quickly? Sure, there is. But can you draw from that to be it's Mr. Muhammad as opposed to some other person, as opposed to some other associate?

You'll have to determine that for yourself. Is that an unreasonable thing that I'm suggesting there? If you think it's unreasonable, discard it. Don't hold that against Mr. Muhammad. Hold that against the stupid lawyer. But that's something for you all to consider.

What they, the prosecution, want you to assume as opposed to what they proved to you.

Claudine Parker and Kellie Adams, another terrible, terrible situation for Kellie Adams and Ms. Parker's family. But even here -- and Mr. Gray was a -- is a neat guy and Lieutenant Graboy is a neat police officer; but that 49 doesn't provide evidence because they're neat

about Mr. Muhammad. There is no evidence that Mr. Muhammad was there. There is no evidence that the car was there. And because the Commonwealth's says the shot was from a distance per Kellie Adams -- and remember, she had just been shot, so as far as the timing is concerned. The Commonwealth wants you to infer, to believe that as a fact that Mr. Muhammad's out in a parked car somewhere and that he's in the trunk of the car and this is what it is when there's no evidence of that at all.

As far as Mr. Gray is concerned, Mr. Gray -- I'm not sure law enforcement evidence would suggest that he did what he did, but Mr. Gray falls into a category of people who are trying to help. He tried to help that night; and didn't, ladies and gentlemen, in his testimony, he tried to help here. Remember, he told you he had the fifteen second or so look at the person he identifies as Mr. Malvo. And then he did it by the watch, and it was about four seconds because that's the way people recall things under these circumstances.

Mr. Conway can suggest all kinds of different things about it's a hat, it's a different situation because of the fingerprint and so on; but then there was no reason to put on Mr. Gray. When the Commonwealth puts on Mr. Gray, they're asserting that there is a reason to do that.

Well, Mr. Gray was -- tells you that he was in McDonald's. He went down here by the CITGO and that he sees something discarded here and that the person runs behind Krystals and Captain Ds and he figures he was going to be able to cut them off so he -- if they cut back up, so he was going to cut to the front. Remember, he told you that he thought the distance looking down the alley -- and you have pictures of that -- down the alley between -- I think it was Krystals and Captain Ds. It may have been Captain Ds 260 -- I'm sorry. That's not right. I think it was 2660 and 2670. That it was only about forty feet or so -- the length of this courtroom. You can use your own judgment as to how far that was.

But remember he told you that he saw Mr. Malvo, the person he identifies as Mr. Malvo looking from here back to here, that he was back by this street pole or pole that's back there and that the person was squatted down a little bit and looked there for a few seconds, and then went on his way.

So then you have Lieutenant Graboys who tells you that when he comes down here, that a police officer is following Mr. -- who reasonably can be referred to as being Mr. Gray -- and that Graboys is the one who gets down there first, that the other folks hadn't even got a look down the alley at that point.

He is described as having a hat on. I didn't make the description. He made the description as having a hat. Graboys says no hat. There's discrepancies in those descriptions. It doesn't mean that it's a different person. Obviously it's not a different person, but it shows you the weakness and frailties in the Commonwealth's assertions in that regard and with regard to a number of these matters because people are trying to help. And, again, why wouldn't they and why shouldn't they?

The .22 is found. And if you believe the forensics, it's forensically tied to the La Ruffa and Rashid shootings, which the Commonwealth may have done a good job of tying Mr. Malvo to, but they have done no evidence tying Mr. Muhammad to those.

On the Ballenger case, you have the same kind of thing. A lot of police officers and so on. And the key witnesses in the Ballenger case are Tina Leonard -- as Mr. Conway explained to you -- and Ebert Shaw. Ms. Leonard, I believe, was -- she was over here at the dollar store,

Dollar Buster store. And she sees this car going back and forth here, which is what caught her attention. And Ms. Ballenger's car was over here at the far end of the parking lot. She sees the person who she later identifies as Mr. Malvo running up the parking lot towards Florida Street or Boulevard. That's what I recall her testimony to be, but yours will control.

And that that person sees her and sort of has eye contact and so turns around and he goes the other direction. She's the lady who told you that he had patches or braid-like hair and so on. Nobody has told you anything about that about Mr. Malvo at any time.

Then you have Ebert Shaw who says that the Chevy Caprice was parked not under the trees, but sort of behind the tree. And as I recall -- your recollection will control -- in this fashion here on an angle -- not perpendicular to Connell Street at all, but on a pretty acute angle here. So if by where that hole is in the trunk, you'd never be able to fire out of that if that's even the same car.

But interestingly, if that is the car that's relevant to this, then why in the world would the person identified as Malvo be running out to Florida Avenue as opposed to just over to the Caprice so he can get in and get the heck out of there at that point. And then when he's seen, why not do exactly that. It's got tinted windows supposedly and all that kind of stuff. Why not go that way instead of across here where then you have Ms. Shaw, who -- and by the way, Ms. Leonard doesn't say anything about seeing a car come out. And she was in a perfect position to be able to do that.

Ms. Shaw is the lady who said that it was really several months later that she made her identification after having flashbacks at night after seeing various news reports and so on.

And she ran from the front of her house to the back of her house to the back window with her binoculars in hand and that's how she could identify him, yet he would have been running away at that point.

So everyone's trying to help, but that doesn't provide evidence that leads to proof beyond a reasonable doubt, I would suggest.

Now, there is a contact with Mr. Goins that night. There's nothing remarkable about that except there's a contact about eight o'clock at night for about a half hour as I recall at Mr. Goins' church. He had no interaction with Mr. Malvo and didn't see any interaction between Mr. Malvo and Mr. Muhammad as far as them doing or talking about anything. Yet he says that he was obedient. Well, how -- again, there's -- where is that? Where does that all come from? Does it come from media reports? Does it come from preparation for trial?

I'm not saying anyone told anyone to say anything, but it's the kind of thing that would come out of that.

There's no connection as far as the Walekar shooting is concerned on October 3rd to a Caprice or to Mr. Muhammad. Sara Ramos, Silver Spring. You do have the testimony of Kerry Turner there. And everybody in this case who sees that car is an expert in old cars, it appears to be. Again, use your common sense. Are these really descriptions of a Chevy Caprice, or is after the arrest and the publicity and it's all -- all these things are coming forth at that point? Are all these people of very different sorts coming up with it was a 1990 Chevy Caprice kind of a description. Where does that really come from? But there's no evidence at all of Mr. Muhammad being present at that time and no sighting of anyone attributed to be Mr. Malvo at that point.

Lori Ann Lewis-Rivera in Silver Spring. At some point earlier there was that very nice gentleman who was driving home to be with a contractor or something. He says he saw a Chevy Caprice. He has an interest in cars. That's why he knew about it. But he described it with having a large and unusual rust spot on the hood or somewhere. And there's nothing like that. I mean, this car is old -- the arrest car is certainly old; but there's no evidence of any sort of a rust spot. So, again, is he making that up? I don't believe that he's making it up. But can you rely on that identification?

There's no sighting of Mr. Muhammad and Mr. Malvo, which Mr. Ebert will tell you in his closing is because their urban hide and so on, yet there's no evidence of that. That's the imagination of counsel as opposed to there being facts of that.

Paschal Charlot. I talked about that a little bit. Remember that Gail Howard says that she sees the Caprice ride by, yet Mr. Largie says that she had already left out of the other end of the parking lot by the time of that and his absolute identification of that vehicle is in that open space in the parking lot there -- whatever it is -- the length of this courtroom. Even at a slow speed, it's a real quick read on it to be able to say, That's the car. That everybody can say, That's the car. There's no sighting of Mr. Muhammad at that scene.

Now, Ms. Sewell, very nice and fortunate lady. There you have Mr. Jones. And Mr. Jones is not a hundred percent sure as far as his identification of the vehicle. I think the most you can get out of that is it was a -- perhaps an older model vehicle that looked unusual to him. Again, no identification of Mr. Muhammad or Mr. Malvo.

Iran Brown. We talked about Dr. Drischoll was the man who was at the light. Now, we've got our -- if you believe the prosecution's inference, our \$20 an hour investigator because we're -- we use \$20 an hour investigators when we can. Our \$20 an hour investigator is going to come here and say he couldn't see or could see what he really couldn't see or vice versa of whatever I said there. The fact of the matter is as Dr. Drischoll also tells you, that he's had flashbacks. You use your judgment about Dr. Drischoll.

He's at the intersection of Collins Road and London Road, but is he someone trying to help? He called the police a number of times during all this. He was obviously concerned. And that's good. That's not bad. He prioritized this as far as the things he told the police. But he can see these people in this car on the wrong side of the median looking at him. I mean, talk about an urban hide.

The Spicer theory is that you're trying to detract attention from yourself, to avoid attention, not to build attention to yourself. And so it's the opposite of what the theory is. You're on wrong side of the road, and you're out there with your window down, your tinted window down, grinning away at somebody in sort of a flippant or arrogant manner as opposed to Dr. Drischoll simply being mistaken about that.

He didn't talk to the police for a long, long time afterwards. And he's in a situation -- Dr. Drischoll, that is -- where he's talking about flashbacks. And I suggest, ladies and gentlemen, anyone who's talking about flashback, that you have to very carefully weigh the credibility of their testimony. He also said that the vehicle looked exactly as it did in the -- those same exhibits over and over again that were used. I believe it's 19, 20 and 27. But it's various views of the car that you saw over and over again.

And I believe he was specifically asked about tires and hub caps as well. And it's not a big point, but it's a point. The car at arrest had hub caps on it, and so it's just another point of

somebody trying to help because Mr. -- Dr. Drischoll would have believed that that's the car. Why would counsel have been showing him a car that's not the car.

Mr. Polk sees a Caprice. He also sees a white box truck at the time of all this; but, again, there's no identification by Mr. Polk of Mr. Muhammad being anywhere around there and subject only to Drischoll's testimony, you'll have to interpret that.

Now, let me talk about the pin for a minute, the pin barrel. It's not a pin. Remember that the trainee, the police trainee Troy Mason who found the pin in the cartridge case and was very excited about being able to help. And that's a good thing. But Mr. Mason said that he actually had to trim away the tree -- fairly large bush, I guess. And he was just doing his job. That's what he was doing. This nest, as counsel called it, was some distance away. The tree -- the bush was well back, about eight steps from the wood line where the shot of Iran Brown would have had to have come from by the Commonwealth's theory. And the pin barrel -- first of all, the DNA is very evidence -- is very limited to that. It's not that it's Mr. Muhammad. It's Mr. Muhammad, or depending on how Brendon Shay -- he's the DNA guy -- did his math, it's either 15 or 30 other people or more.

But you look at that pin barrel, and you make your own judgment as to whether that's something that was just there and dropped at the time the cartridge was -- spent cartridge was there or that had been there for days, weeks, months, or even longer. And you just look at it and use your own common experience, I would suggest there. It's -- and then make your own judgment based on Brendon Shay's expert testimony as to whether or not you can reasonably infer Mr. Muhammad's DNA is on that pin barrel.

The shooting of Mr. Bridges. You'll have all these pictures back there to look at better. But you remember the testimony there, particularly of Ms. Bradshaw and Ms. Goodwin. Ms. Goodwin was very self-confident, self-assured, and she sort of -- turned her on to ask her questions and she went and why and why she was so concerned and was very emotional for her. And I understand the emotion. But when someone is that emotional and that fixed in their mind about something, under these circumstances, concern for her pregnancy, concern for her child and so on, then you have to consider that as far as valuing her testimony.

And then you have Ms. Bradshaw. And with Ms. Bradshaw, she said that she was seated at the booth that Mr. Menna described and she looked out. She saw this blue Caprice. Again, she's a car nut I guess too. She sees this blue Caprice going across Mart, down Market Street, towards the entrance, into the entrance of the Ramada Inn, coming back to the Ramada Inn and she loses it. Well, as you'll be able to see from these diagrams -- I won't take the time to get them now -- you can't even see the entrance into the Ramada Inn from where she was seated. And because of where the Exxon Mart is, you can't see -- most from the Waffle House. You can only see from that end seat. And you can barely see, given the topography, the way that the hills are on there, you barely see the road at all.

So she was down here in the Waffle House. This is looking back through the pumps that she would have been looking at.

Now, this picture or letter T gives you to some extent a better idea of the topography that she would have been looking up and over and through pumps and vehicles. And you can look at the actual crime scene pictures to see what other cars were around and so on.

But even so, it would have been, I suggest -- and you can look at these pictures carefully yourselves -- virtually impossible to see a car well enough to be able to identify it under those circumstances.

And then there was this whole thing about the tires and the hub caps. And at first -- then she said that she couldn't see the tires; and then she told Mr. Ebert in redirect that she could see the tops of the tires and things like that and so on. So it's another witness who was trying to help, I would suggest.

But in any event, even if you accept the descriptions that the car was there, there's no evidence that Mr. Muhammad was.

Linda Franklin was a terrible situation. There's just no evidence, though, of the vehicle of Mr. Muhammad or for that matter Mr. Malvo being around that area at that point. You have Officer Goodwin who's nine miles away, twenty to thirty minutes or so after the shooting on a highway; and she says that she's the car -- sees the car being driven by Mr. Malvo. No one else that she sees in the car, but she couldn't really see in the car. You know, the officer had come from a restaurant. She had had about three beers. Just like all of our clients, have about three beers. And I'm not suggesting that she was committing a crime or driving while intoxicated; but those are little credibility points, that point.

And, you know, you were hit with those pictures of Ms. Franklin, and they're awful, and the 911 tape of Mr. Franklin. And the question, ladies and gentlemen, what that added to your decision making process here in this case.

Jeffrey Hopper in Ashland. Mr. Conway told you about all the evidence that was found in the woods. I won't go over that again. You can look at that videotape. We'll make arrangements for you to see it over and over and see if you can say that that's Mr. Muhammad in the Big Lots store. You'll make your own judgment on that.

Remember, they're saying that that's him. Not someone that looks like him, and so you'll make your own collective judgment as far as that's concerned.

The -- but as far as I recall, the car's never seen there. There's no other identifications at the Ponderosa scene. And that's the same with the Conrad Johnson scene as well. No evidence of the car or Mr. Muhammad being seen there in any fashion or another at all.

Let me -- so I said that I wasn't going to do this, go on this long, but it's hard, you know. After four weeks what -- what you say, what you don't say, that you feel you should have said, then there's no taking it back. So in every case I say I'm not going to do it and there I go and I do it. I should learn that about myself and have told you it was going to take two hours. Does -- and if anybody needs to stand up or take a break? Yes? No? Okay.

Let me talk for a moment, if I could, about the Commonwealth's theme. What the Commonwealth knew and they've done a huge amount of work and we've done a huge amount of work and the court in setting this up away from home and the court personnel and the Sheriff and now you guys because now is the point when we lawyers -- we can stop talking for a while pretty soon and the judge can stop ruling unless there's a question or something pretty soon and we dump it in your laps. And so to this point your job is to be -- to be sponges, to accept it all, to be receptacles of all of this information from these screenings from the witness stand and so on and to take it all in.

And boy it may have seemed obvious and so on if you let yourself think a little bit about it, but that's really what your job is and now you have instructions. You have a way to apply all

of these things that you like sponges have been taking in. Now you have to try to deal with it and see what the evidence really is. And as hard a job as these prosecutors have and we have on behalf of Mr. Muhammad and the court has in managing us, it ain't nothing compared to the job that you guys have coming up in the next hour or so because there's a lot of pressure to come to a verdict on this case. There's a lot of people looking and what the law is is that you've got to do your job under the law and that is to follow the law, to uphold the burden of proofs, to uphold the presumption of innocence, to uphold Mr. Muhammad's right not to testify.

You know, courtrooms are artificial places. In the real world which is at home, it's at work, it's at soccer with your kid, it's wherever it is. And somebody can say to you, sir, tell me why you did it this way, and you got to tell the boss why you did it that way. Or, honey, where were you last night or whatever the case may be. I don't mean to minimize any of this, but that's real world kind of stuff. But you're in an artificial place. This courtroom is artificial. It's not anything you've probably ever hoped for or you ever want to experience again being told to do as -- and I want to repeat what -- what and where and when and all that kind of thing. And that you got to follow Judge Millette rules which are the Commonwealth's rules that he's given to you.

So none of this is particularly simple, but what the Commonwealth really has done here folks is to invite you to use suspicion, to use speculation, to use innuendo, to use inference in the absence of proof. They want you to infer that because there's no witness then that's because Mr. Muhammad was so good at doing what he was doing that he must have been there. They want you to infer and to assume and they want you to believe in your heart of hearts despite the fact that the evidence doesn't support it that Mr. Muhammad directed or ordered Lee Boyd Malvo.

They want you to believe that -- going back to the instructions -- that Instruction Number 9, that immediate perpetrator means something other than what it means. They want you to believe that joint participant means something other than two people beating on or pounding on or doing some specific joint immediate perpetration of the offense despite the fact that there's no evidence of that.

And because they know there's no evidence of any of that, they found Sergeant Major Spicer because they needed a theme. So two and a half weeks before October 14th Sergeant Major Spicer came in and met with these prosecutors and he met with law enforcement and he looked at the car and he looked at stuff. And Sergeant Major Spicer then provided the theme. And what a great presentation. What a cool guy, you know. I'll probably get in trouble for saying this. He's sort of a man's man kind of a guy, you know, and he's -- he knew his stuff and he had his presentation. And, Mr. Ebert, Screen 6; and, Mr. Ebert, Screen 8, and so on. And it was down like that.

The problem is Sergeant Major Spicer talks about an urban hide. You don't get a ten, eleven year old Chevy Caprice with tinted windows and a menacing look with those tinted windows to drive in the land of minivans and SUVs. Everybody saw it and identified it. So why would you do that? Why would you open the window and smile at Dr. Driscoll? Why would you be around -- hanging around at the bank a half mile from where your purported shooting of Mr. Meyers was going to be if you were under your urban hide mode. Why would you do any of those things at all. Why wouldn't you wear at that point ball caps and sunglasses and try to

blend in and disguise yourself according to Sergeant Major's theme. Because it's all speculation. It's all suspicion and it's all innuendo as far as the Commonwealth needing a theme.

You heard Mr. Willett use the terms -- I don't think he referred to Sergeant Major Spicer by name initially, but you heard him use all the sniper scape and so on terms in his opening statement and of course Mr. Conway referred to sniper over and over and over again as far as that is concerned. And in doing so, ladies and gentlemen, let me just make a couple of specific points about his testimony.

First of all, I suggest to you that's all speculative because Sergeant Major Spicer didn't know anything. He knew about a car that they told him about and things that were in the car, but it's all hypothetical. His background and training is from a military perspective. He's written a book on being a sniper. Different certainly, but he's written the book on that. He knows more about sniper-dom than anybody, I guess, because I guess we don't have kind of sniper training in the United States Army or Marines or Navy because we had to go to England to bring Sergeant Major Spicer here to testify about sniping issues that they have there instead of bringing someone from here, which leads you to reasonably infer, ladies and gentlemen, that we don't have such training here. Isn't that a reasonable inference on that? There's a regular soldier and you have no information and you shouldn't let counsel persuade you that you do about Mr. Muhammad's military record to build that up to being a SEAL or a sniper or -- a SEAL would be wrong branch, but to be a green beret with special skills in the Army or anything of that nature.

He was described as having a marksman capability which is a marksman capability. It's not any description of it being an extraordinary training or skill and a noncommissioned officer after 10 years in the military. It's certainly not described, it would seem to be, as the highest achieving record. But the Commonwealth could have given you some of those records and the specifics, but obviously you can infer reasonably that it didn't do you any good to have that information or else they surely would have given it to you under those circumstances.

But all his training and background is -- is what is there. What he knows. What he does. What he does in his sniper training program with there being no evidence that Mr. Muhammad had any of that kind of background. There's no evidence of that at all. Maybe there's some evidence because Lee Malvo was wearing a shirt that said sniper that he's got that kind of training and that's why he was introduced as that or maybe it's just talk or conversation. Mr. Spicer says that the primary job of the shooter was to use a .308. It's a more accurate firearm than to use a .223, that that's what the spotter uses. It's an inconsistency with what we have here. The -- you recall that there were some objections at the beginning of his testimony as to -- because there's no evidence that Mr. Muhammad had any of this sort of training and Mr. Ebert in front of you said that that goes to the weight and not the admissibility. I suggest, ladies and gentlemen, that Sergeant Major's testimony, as interesting as it may have been, really adds very little to this case except that it gave them the urban hide phrase and they built it to a theme of being a team. And that one is as important to the other and therefore they needed a theme to get someone because they knew this was their theory of law to be a joint participant. So they had to find a way to make to make Mr. Muhammad with Mr. Malvo a joint participant even though they didn't have the evidence to do that. So the way that they did it is by bringing in a soldier from the United Kingdom to come in and talk about all this kind of thing.

Let me suggest that the nature and manner of his testimony, can you really have any doubt that he was shown the car and the contents and that he understood the legal obligation that the Commonwealth was going to pursue through this prosecution and the need for a joint participant kind of a theory and that's what he came up with, you know. The GPS, the this, the that, the other thing, they're all out of the sniper craft. They're all also innocent items. They're all items that are readily available and that kind of thing. His -- he's a hypothetical witness about an incomplete and unknown person to him. That is Mr. Muhammad. In fact, the Commonwealth wants to use Sergeant Major Spicer as their ability to get this case from either a not guilty verdict or a first degree murder verdict to a capital verdict so that they can seek the death penalty. Sergeant Major Spicer is the platform around which the Commonwealth is trying to build this theory. Well, if they're going to use him to do that, without presenting to you evidence as to the specifics of Mr. Muhammad's background and training and knowledge and intent and whereabouts on these various occasions, just trying to believe that he was there and he was -- and he was involved with Malvo and they've tied Malvo to it. So therefore they've tied Muhammad to it is to ask you to use suspicion, speculation and innuendo. They have no evidence of direction or order. They have only suspicious -- speculation in that regard because they have that very little contact on that other chart. They have no evidence of that. They have no evidence of the conversations between the two if they're both involved. And there's scant evidence of that as far as Mr. Muhammad is concerned. But they have scant evidence of that and so they need to build the car into a platform and their platform to do it is Sergeant Major Spicer.

Just a couple sort of quick points. There's other prints on various pieces of evidence. We don't know who they're from. There's other DNA on significant pieces of evidence you heard. We don't know who that's from. The shotgun shell in the car, you heard that that was a cop car -- a police car. You don't know -- you weren't told when that was last used as a police car. And whether or not it had been used and if any firing had taken place out of it, any weapons had been stored in it, whether or not there was there was any other reason that nitroglycerin . . . you'll see from that lab report gun powder particles would be in there. They haven't told you where they are. Where are these swabs from? What if they're from some very unusual place? What if the swab is way over in the corner nowhere near where the hole is in the trunk of the car? And the witness, Mr. Bender, I think it was, he didn't know where they were from. They were -- some of these things were just given to him.

Interestingly, you saw in that video and I know we objected like crazy to that video, but you saw on that video that when they fired the bullet out of there and there was a slow motion shot, that there was all this gas and fumes coming out of it. Well, why haven't they given any evidence that there was on the transom -- on the rear-end of the car -- on this end of the car around the trunk lid or the area under the trunk or the license plate area. Why haven't they given you any evidence because they certainly tested just about everything else it seems like of gunshot residue or nitroglycerin or the gasses involved. Or been able to pinpoint on the photo - - I don't have it here -- but with the trunk open -- you saw those other photos -- that the nitroglycerin would have matched up right with the or where the hole is or that kind of thing. It's because they have no evidence of that. If they have no evidence of that that certainly calls into suspicion the theory that this car is used as a shooting platform, as an urban hide.

No nitroglycerin or powder on the -- on the glove in the hole. There's no evidence that the gun and the condition it was in when it was found had scratch marks and everything from being in and around that hole of metal of cut metal. Nothing like that at all. On the organizer, there's no identification of who the identified user is. There's -- there's several names listed on that. There's no identification tying who those people are to it except to some reference to Travis, but I believe there was a reference in Charlene Anderson's testimony that Lee knew Travis because when they left a few days later Travis brought them over or there was some contact there as I recall. The notes, Mr. Conway had that chart with all the communications. All of the handwritten notes from here, this would be the tarot card and the Ponderosa and the Conrad Johnson scene, but also there's a whole lot of papers and so on in the car. No handwriting analysis to say that these are the same. And there's some similarities by appearance, but of all the forensic record that they've done in this case to say that these are the same or that they're the same as writings in the car or that they're the same as the handwriting of Mr. Muhammad and for that matter Mr. Malvo. So you can certainly consider that in your deliberative process.

Talk about -- again, I'm getting there -- firing lines. You know, the Commonwealth has shown you and you recall we objected, the points that they obviously felt was a viewing area -- an area where a shot could be taken from. They said it's a picture of a gas pump, but it's from a view point that they obviously wanted you to believe in some fashion or another.

And this is the Home Depot and remember everything that was shown to you basically was from this area across the street, across Route 50, that's Arlington Boulevard, looking both ways. That there was this whole parking area here. And remember how many questions we had to ask Jeff Miller, who took all these pictures and did most of these diagrams, in order for him to just agree that there was an open area of parking lot here to the left end and the way this is oriented of this picture. We had to go find other pictures and so on and finally he agreed that was in fact the case. On the Meyer's shooting, the Commonwealth wants you to believe that Mr. Malvo was in the trunk of the vehicle and from over in this area over here. That's where the map was found and that's where their suggestion is. And from over here in this area when you look at the pictures looking back the other way is higher than here. Well if a car's backed into a space here and it's if because there's no evidence of that, but if it's backed into a space down at this right-hand end of the parking lot which is south from a direction point of view. Given the close area according to Sergeant Spicer of the room in that trunk and so on and the space and this area's higher as you can see looking back the other direction. We have all these pictures. So a person shooting down from inside a confined space would have to be up higher in a closed trunk. It simply doesn't make sense. Yet the Commonwealth wants to provide you with by the way that they took the pictures and where they took the pictures from with their theory of that being where a particular shot was fired without there being any evidence of it. So don't fall into the trap. I would suggest, ladies and gentlemen, of assuming that because a picture is from here that that means that's where a car was or a shot was fired from or things of that nature where there's no evidence of it.

The question we asked earlier of Mr. Dandridge -- Mr. Dandridge is a neat guy, what a great manner and appearance. You'll use your recollections, but didn't he sort of fall apart on cross-examination on simple points. Is it subjective. Instead of saying yes, we had to get into this big back and forth about it, art versus science and subject or not. Remember I just asked

him if it's subjective and he went on to that long talk about how he compared all of the evidence and so on. I think I was standing right over here at the time of that until finally I was able to cut him off on that. He initially told you that the ballistics is like fingerprints and he held up -- I think it was a thumb -- but he held up his thumb -- thumb finger and said it's like fingerprints. When Mr. Conway was asking him to explain ballistics. And then when I was questioning him, it turns into no longer being like fingerprints and it got to be somewhat confusing. He said that these are a match to the exclusion of all others. Well, obviously he hadn't -- he hasn't fired every Bushmaster or anything of that nature. And that it's subjective. Eventually he would agree that it was subjective, but that was only with a battle. He's apparently perfect according to him as far as his evaluations are concerned, but that's only on his testing and he probably is very, very good as far as that expertise is concerned. But he was so emotional about it, once cross-examination started that, ladies and gentlemen, you have to look at what is it that he is really trying to sell there as far as the certainty of it. Not disbelief, he clearly believes it, but as far as his scientific certainty of it.

He told you that ammo variances, weight, size, and so on of ammo doesn't make a difference although common -- although he initially said it did and then he backed off of that on cross-examination and said that it didn't, but you know that it does because Alan Jackson from PG County, their ballistics fellow who did the revolver. He has way more experience than Mr. Dandridge does and he's been teaching ballistics over and over and over again. And he told you, oh, yes, with certainty, of course that the ammunition makes a difference. So you have a discrepancy between the two of them.

Here's my note. On direct examination Mr. Dandridge said it is work. It's just like a fingerprint. On cross-examination he said it's not like a fingerprint. He said it's unlike a fingerprints. You don't -- and then he goes on to say you don't need points of identification and we went on and on and on about well, how much do you need. And his only response then eventually is it's just enough to know. And that really is -- that's their standard, I guess. But enough to know is not something that you can easily challenge. Where's the -- there's cigarettes in the car and you'll see -- we just put in evidence today a DNA report that says one of the cigarettes they couldn't get enough of a sample off of. Another one has DNA from a female. Didn't have another one to compare it to. What does all that mean?

Several of these witnesses with the hubcaps and they're so sure because they want to help so much. No hubcaps, yet there's hubcaps of course.

The drama of the demonstration. The video demonstration -- well, first, the trunk. You walk out of the jury room and here's the trunk of a car in front of you. Pretty neat how in a week during the course of the trial that guy got the parts and put it together and spray painted it and did all of that kind of stuff. Your government at work and they do it very well. But, ladies and gentlemen, you know, during the middle of the trial they go ahead and they do that. It's because you've got to be overwhelmed with the drama as opposed to the facts.

Is there any way in the world that that really helped you? You saw the car, but the car is devoid of all of the stuff that was in it. It was not as it is in the photographs. They want you to believe that it's just as easy to pick up that seat; and yet two police officers -- Officer Daigneau and another officer -- I forget who it was on the other side -- and they pulled that seat up. You saw them do it to almost like a click position there. And the fact of the matter is, ladies and

gentlemen, that with stuff in it and blankets and clothes and other paraphernalia that was around there, it would be virtually impossible to do that.

The drama of it, though, seeing it because of what the Commonwealth attributes to the car is significant and I hope that you can just put that into its proper place and perspective.

You know about the reenactment. That's the Fairfax County police officers in the videotape that Crime Scene Analyst Daigneau orchestrated -- I didn't mean orchestrated. You saw him on the witness stand. Officer, did the -- to that officer -- Did the officer who were doing this scenario in the car practice it before?

Just like Mr. Muhammad could have -- Just like your client could have. He never used his name.

Well, that tells you -- it shows the raw emotion, with reason, that this case brings about. But it also calls into mind why you must be very, very careful in dealing with that emotion in every single circumstance.

Overall credibility is something that you need to look at. Dr. Fuller -- and you got to see why in the world does the Commonwealth have this much concern about counting on you? Just like with the 911 tapes and the autopsy and the photos of those who were injured or deceased.

Dr. Fuller. They had just put on four witnesses to say how the school systems were impacted, which is okay. They put on those witnesses. And last Thursday they called Dr. Fuller at George Mason University, this talking head to the media on a variety apparently on any issue that anyone's calling about -- and Dr. Fuller is there. And he can't multiply 29.50 times three hours times 60,000 before court in order to know what the figure is. Remember he told you he thought it was 1.2 billion. And then he said, No. 604 million. Well, it's 5.4 million.

It's still a lot of money. The money isn't the point. It's why was that necessary to show that there is an economic impact. If anyone doesn't know from common sense that people sitting in traffic -- whether it's a traffic jam or some terrible situation like this, then, you know, that's common sense.

So when it comes down to it, ladies and gentlemen, what we're going to ask you to do is to use common sense. Let me just point out one thing and then I'll talk about that.

Mr. Curtis had gone on, and he's the ATF supervisor. He supervised the ATF aspect of this. Remember he had to come and testify that when the firearm was found when the seat was lifted that he had to make it safe before they removed it or anything. And he told you -- and it was very dramatic -- that the gun was in the firing position. The theory being, I guess, that Mr. Muhammad being seated in the back seat could have somehow got himself off of the back, lift up the back of the back seat in order to get the gun in order to potentially get into some sort of dire circumstance. It was ready to further this vehicle as a killing machine.

And then we showed you the photograph of the position. Remember, he told you it was in the firing position. It was ready to go. I guess this is the safety finger. And that, in fact, that's in the fire position. That's what? Vertical? It's up and down. Okay. And when you pull the trigger in that position, a shot would be fired. And that when the safety is on, when it's full down on the safety, you can't pull the trigger. And it makes sense that you have to be on full fire in order to be able to pull the trigger as opposed to some inter-mediate degree. This makes sense that it would be that.

And that when you look at the picture -- I think I have it right around where that picture is. Look at this more particularly. When you look at the picture and you look at where the safety is, you can't fire that.

Now, that's just a mistake by Mr. Curtis. I don't believe that he's lying. I don't believe that he's making it up. I think that's just a mistake. It wasn't in the safe position, so he assumed it was in the fire position. They were all excited. They were -- adrenalin was flowing; and that's what that was. But it was presented here like that in order to make a big splash, in order to make some drama that this gun was ready to be used out of this killing platform.

So, ladies and gentlemen, this is where I finish. And I'll sit down, and I'm going to think of the five things that I should have talked to you about; and then tonight I'm going to think about the next five, and tomorrow the next five.

But I -- you know, they've had a whole lot of trials. We've had a number of trials ourselves. And I don't know that -- I think I can speak for everyone about the attentiveness of you individually and collectively, you know. I think we all sort of steal glances from each other from time-to-time. And we lawyers think, What are they thinking? And are they going -- how are they going to do this such important job in this terrible case where it's so important to the Commonwealth, the prosecutors, the law enforcement, to the Meyers family and the other families and injured people, and so obviously important to Mr. Muhammad and those who you saw some of them who obviously care about him.

And can you do it? Well, you have to do it because the judge has ordered you to do it. He has directed you to do it. And he has the ability to order and direct you to do that, to compel that. And if you don't do your job within the law, then there can be a consequence for that -- for Mr. Muhammad, for the Commonwealth, and ultimately if it's something really off the wall, for whoever on the jury doesn't do what they're supposed to do under the law.

Please, ladies and gentlemen, don't let the joint -- don't let the prosecution -- unless you think that's the way it should be -- take the result, that inch and a half over there and compel you to make your findings of fact and your evaluation of evidence based upon the result. If that's what you ultimately come to and it's based on the evidence and it's based on the law and it's based on your individual moral certainty and your collective moral certainty, then so be it.

But I suggest -- it's not my job at this point to tell -- but I suggest to you that the Commonwealth has failed to prove beyond a reasonable doubt, to prove to moral certainty the elements of the offenses that are in these instructions.

If that's the case, ladies and gentlemen, then your verdict is one of two. It's not guilty if they haven't proven it at all, and we suggest that they haven't. But it's certainly not capital murder under either of the theories -- under the multiple killing theory. Look at how they've tried to use Sergeant Major Spicer to build a theory so that they can push you toward the theory through that single witness who has no knowledge of Mr. Muhammad, of his background, of his training and experience.

You have a terrible burden; and, frankly, I'm glad -- and I think I can speak for John Shapiro and Christie and those who have been here helping us -- that we're thankful that we're not in your position. We can work hard and we can present away and we can try to do what we're supposed to do with a professional perspective. But our job is easy compared to yours. Good luck.