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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)	
)	Case No. 6:10-CR-60066-HO
Plaintiff,)	
)	
v.)	June 21, 2012
)	
STEVEN DWIGHT HAMMOND (1) and)	
DWIGHT LINCOLN HAMMOND, JR., (2),)	
)	
Defendants.)	
<hr/>		Pendleton, Oregon

TRANSCRIPT OF PROCEEDINGS
(Excerpt of Closing Arguments)

BEFORE THE HONORABLE MICHAEL R. HOGAN, DISTRICT JUDGE

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Closing Argument - By Mr. Papagni

1 (Excerpt of Closing Arguments held Wednesday, June
2 20, 2012; 12:50 p.m.)

3

4 P R O C E E D I N G S

5

6 (Jurors enter.)

7 THE COURT: Mr. Papagni.

8 MR. PAPAGNI: May it please the Court, Mr. Blackman,
9 Mr. Schroeder, and Mr. Matasar, and co-counsel.

10 Members of the Jury, this case kind of ends, after
11 40-some witnesses, kind of like the beginning in many respects.

12 It -- it really is, and the Government submits to
13 you, what you need to decide is what those original people
14 would put on behind here about a week and a half ago, that
15 those folks are reliable and believable. We've heard lots of
16 experts, and the expert testimony we'll talk about a little
17 bit, not a lot.

18 The Government submits to you that this case should
19 be decided upon the testimony of those people who were there,
20 experienced it. Whether it was little hotshot firefighter
21 Megargee, or was it the young man, Dusty Hammond. Or it was
22 Lance Okeson yelling at Dwight to stop, or whether it was Joe
23 Glascock who went to the Frenchglen Hotel and was told it would
24 be blamed on him by Mr. Steven Hammond. The story kind of
25 weaves together. You folks now have the complete story.

Closing Argument - By Mr. Papagni

1 Now, the experts were a lot of fun, and we got to
2 learn about grazing land. And we got to learn about fire cause
3 investigation and which side a tree burns on, and that's all
4 real good if that helps you reach a just verdict in this case;
5 or, in this case, just verdicts. That's wonderful. But I'm
6 going to be talking to you for the next 45 minutes, maybe an
7 hour. Take a while. There's a lot of fires. I'm going to
8 break them down for you as simply as I can, and talk about the
9 people who were there.

10 And the final analysis, the Government submits to
11 you, is whether you believe those folks who had boots on the
12 ground, those folks that were trying to fight the fire, those
13 folks who tried to do the right thing under some very, very
14 stressful circumstances. That's what this case is about.

15 We have to prove to you, beyond a reasonable doubt,
16 the truth of this case. I represent the Government. The
17 Government's obligation to a jury is to give you the truth the
18 best we can.

19 The defense lawyer's job is to contest that truth.
20 No matter what your verdicts are concerned, the United States
21 always wins because the idea is to do justice. And that's your
22 job, not mine.

23 My job was to get these facts out to you, the best I
24 can, with the help of my co-counsel. And sometimes that takes
25 awhile, especially when we're talking about several fires and

Closing Argument - By Mr. Papagni

1 thousands of acres and people's lives that are affected. And
2 as you probably gathered from the testimony, the -- inside the
3 Hammond family, relationships they had with each other.

4 This is a very powerful case in many respects, so it
5 requires that we be very objective about it. And with that in
6 mind, we start with the first.

7 We ask you to ask yourselves, once we find the truth,
8 from the truth, what do we apply that to? In other words,
9 members of the jury, what are you going to be asked to decide
10 here in a couple hours or so? Well, the first charge, as the
11 judge already talked to you about is the conspiracy charges.

12 Now, conspiracy is not complicated at all. It sounds
13 complicated. We read about it in the papers. Oh, there's a
14 big conspiracy here between the banks, or whoever. It's not
15 that complicated. It's simply an agreement to commit a crime
16 between two people. That's a conspiracy.

17 In this particular case, the agreement is between a
18 father and a son. And their conspiracy is not that
19 complicated, really.

20 In the eyes of the law -- I think it was Mr. Blackman
21 made some comment to Mr. Okeson about how lawyers speak
22 differently, and Mr. Okeson agreed with him. Because we have a
23 process that we go through. And we try to use that process to
24 get the truth out for you, so you can make your decision.
25 Again, it's your decision, not mine. I wasn't there, as the

Closing Argument - By Mr. Papagni

1 Court pointed out. Lawyers aren't witnesses.

2 My job is to try to assist you to find the truth. If
3 I say something wrong, you don't follow it. You use your own
4 recollection.

5 So let's go through the analysis.

6 We had lots of maps. And if you weren't confused by
7 them, you weren't following along, folks. This -- these maps
8 take you all over the place. But you're now in a position,
9 when you go back to the jury room, to have these maps, if you
10 need them. Along with where the photographs were taken, which
11 will be helpful, especially since there's some claim or some
12 concern about where these fires or ignitions were at. The
13 photographs help you. That's what they're for.

14 The conspiracy though, here, was Mr. Hammond and his
15 son decided to start fires. Now, these fires, if they are
16 accidental fires -- if it was the one in 1999 where Mr. Steven
17 Hammond admittedly -- oh, the fire got out of control, and it
18 just kind of trespassed onto public land, that's an accident.
19 That's negligence. That's reckless. That's not a crime here.
20 You can't find him guilty based upon that. It's not right.
21 They handled that matter in 1999 correctly. They simply said,
22 Don't do it again and don't lose control of your fire. And if
23 you do, there's going to be a consequence.

24 They're sitting here today because of that
25 consequence. They had an option too. And the option was, if

Closing Argument - By Mr. Papagni

1 you want to burn this land, this public land -- it's not yours.
2 You do what you want with your property. There should have
3 been a witness who took the stand in the case who said, Well,
4 we're the Government, and we're going to tell you what to do on
5 your property.

6 Remember Mr. Ward? He wouldn't even look over the
7 fence line very far because in 2001 he wasn't supposed to go on
8 their property and tell them what to do.

9 The respect should be mutual. They don't have a
10 right to do to public land something they think is good for
11 them. That's not the way it works. If it's public land, it's
12 public. We all have different opinions as to how that land
13 should be used. Some of us think it's great for ranching.
14 Some of us may think it's good to go hunting, like Mr. Choate.
15 Some of us just like to get away from lawyers and bankers and
16 go up there and camp. And we don't want our campground to look
17 like pastureland. We want it to look like a place we can get
18 away, and that's why it's public.

19 We can all disagree, as Americans, as to what should
20 be done with this land. But no one, no one should agree that
21 we get to do what we want with it without going through the
22 process. And all of us -- especially Mr. Davies told us, doing
23 something on public land takes quite a process, folks. There
24 is no argument in that regard.

25 But if you think about it, it's because everyone

Closing Argument - By Mr. Papagni

1 should be able to participate in it. We all get our say. Just
2 like you folks will have when you go back in the jury room.
3 That's the way it's supposed to be. And then we decide what to
4 do, as Americans, and move forward.

5 But here, the conspiracy, we have an agreement
6 between two people, father and son, to use fire. And they did
7 or attempted to intentionally, maliciously damage and destroy
8 U.S. property.

9 And this part here, folks, is what I'll be talking a
10 lot about. By doing so, created a substantial risk of injury
11 to people. Property -- you know, we heard testimony about
12 reseeded, about fences. We heard about fixed-wing aircraft
13 dropping the seed on Mr. Otley's property. We heard about sage
14 grouse -- whatever -- hens. We heard about a lot of things.
15 We heard about the elks and the mule deer.

16 But Mr. Okeson probably said it best when he told
17 Mr. Hammond, Don't be doing this. You're lighting fires
18 underneath our people. Someone's going to get hurt. He told
19 Dwight Hammond, Don't be doing this. If someone dies, you're
20 going to get faced with manslaughter charges.

21 If in this case you think on any of these fires they
22 accidentally set those fires, then you acquit, because that's
23 what you should do. But if they intentionally lit those fires,
24 that's a substantial step. The judge told you about attempt.
25 Okay?

Closing Argument - By Mr. Papagni

1 Flying an aircraft to see where the B.L.M. people are
2 on Antelope Reservoir, that's not an attempt of a crime. They
3 could have been thinking about it. They could have wanted to
4 know where the B.L.M. people were at seven o'clock at night on
5 the 22nd, but that's not an attempted crime.

6 Lighting a fire, knowing where your people are at,
7 that's an intentional act. And it's a malicious act, if people
8 are around, or you intend to have that property burn without
9 having to go through the process that apparently Mr. Otley and
10 Mr. Davies, as ranchers, are supposed to do, and do.

11 Next, please.

12 Damage more than a thousand dollars worth of United
13 States property. That one, I've already talked about. You
14 heard the damage assessments. The defense lawyers may want to
15 talk about that. I'm not going to spend any more time with
16 that. Been here a long time.

17 Go on to the next one, please.

18 This one takes some time because this is a little
19 unusual. Was there an agreement to -- either to start a fire?
20 Did they attempt -- did or attempt to intentionally or
21 maliciously damage or destroy real or personal property used in
22 the interstate commerce, or any activity affecting interstate
23 commerce. And it says the Otley property.

24 This is an exception to what we're talking about.

25 This is the one count, the conspiracy count that caused

1 Mr. Otley to take the stand. And that's why Mr. Otley got to
2 talk to you about the damage he sustained as a private citizen;
3 because of the fires, we submit, Dwight and Steven Hammond set
4 right after they left Chad and Lisa back cutting that juniper
5 tree.

6 The timing of that ignition, that leaves no doubt.
7 That wasn't some embers flying in the -- you know, the
8 whirlwind, or -- was it the devil -- dirt devil, or whatever it
9 was? It just makes no sense. Because we know from the diagram
10 and we know from the testimony, right after they were cutting
11 the tree, the only people in the area that could set that
12 ignition were these two. And it was a fresh ignition, because
13 Chad and Lisa wanted to put it out.

14 What did that ignition do? Ignition 3 here, on this
15 better map -- shows you here -- burned all of this area. Very
16 little of it was B.L.M. property. This is all Mr. Otley's
17 ranch. And that's what this count and that charge contain --
18 concerns.

19 So when you get to that particular checklist, if you
20 will, on the verdict form, ascertain the questions: Did they
21 intentionally, maliciously start the fire? And did it damage
22 that property? Did they know, when they lit it at that
23 location, that if it took off, like it did, Mr. Otley's place
24 would be burned? And it was.

25 Next, please.

1 This case begins, really, in 2001. Although we don't
2 find out about it, really, until 2009. This is the part of the
3 case that you, members of the jury, probably sticks most out in
4 your mind because of the testimony of the young man Mr. Dusty
5 Hammond. And Dusty Hammond's 13 years old. And the defense
6 talked about all sorts of things. They talked about we're
7 going to put on evidence that really Russell Hammond was
8 wearing a white cowboy hat. And then, of course, once the two
9 Nelsons from Utah took a look at the hat and said, Nope, that
10 ain't the hat, well, then they put Jacon Taylor on the stand.
11 And Jacon Taylor was sure of what? Well, he wasn't sure much
12 at all. His memory didn't get better until the defense
13 contacted him. And so you have that issue come up.

14 If you believe Jacon Taylor, by the way, you have to
15 acquit on this count, because he said he wasn't there. Dusty
16 Hammond said he was.

17 Now, one of the things you learn as you get a little
18 older, is you learn that details are good about the truth. You
19 know, when someone's talking to you, and you're trying to say
20 to yourself, well, is this person telling me the truth or not?
21 And one of the questions you've got to ask yourself is, you
22 know, what about the details? Does that make sense? Well,
23 when Dusty was talking here, this lower area here, the old
24 gravel pit -- now, that didn't seem like a real significant
25 fact at the time, did it?

Closing Argument - By Mr. Papagni

1 But what happened to Jacon Taylor that morning that
2 stuck out in Dusty's mind? Well, those of us that have been on
3 trips -- and it sounds a little -- how should I say --
4 indelicate. You know, Jacon had had an upset stomach. And
5 they all teased him about smelling up the camp. A 13-year-old
6 boy might remember that. A little detail. That kind of tells
7 you what? Then he said what they had for breakfast. But he is
8 a 13-year-old kid after all, you know. Dusty, you know,
9 maybe -- maybe he just tells real good stories.

10 But he remembers the gravel pit. He remembers being
11 there that morning. He remembers his Grandpa going up in an
12 airplane. And his grandpa saw hunters on the mountain. And
13 remember where Gordon Choate parked his vehicle? Right at the
14 area the Hammonds were going to go hunting. How did Dusty know
15 when Grandpa went home -- Dwight Hammond -- that he said there
16 were hunters on the mountain? Dusty wasn't interviewed until
17 2009. Mr. Choate told you where he parked the pickup before he
18 took the Nelsons, you know, 200 yards up, so they could get
19 their good buck. Dusty knew that fact. It wasn't significant
20 to him. Saw Grandpa's plane go up in the morning, and comes
21 back, and hunters on the mountain.

22 Now, I made a statement in my opening about what
23 Dusty said about hunters on the mountain. That was not
24 established by Dusty. You may not consider that. I
25 anticipated it. I was wrong. That you can't consider. But

Closing Argument - By Mr. Papagni

1 what about the rest of what Dusty said? Well, you can't just
2 rely on a 13-year-old child to make a decision in this case,
3 can you? It's very important to the grandfather and uncle.

4 But what else do we have, though? He describes how
5 they go hunting, and he remembers the Rock Jack Gate, that he's
6 thirsty. The kid's thirsty. And he remembers the hats. And
7 the white cowboy hat all of a sudden becomes significant. He
8 doesn't talk about it until 2009, does he?

9 He remembers his dad wearing a golf hat. And it's
10 not a golf hat like we all thought it was. Dusty said it was a
11 hat that his dad said he bought at a golf shop. That's why it
12 was a golf hat. And then he talks about his hat. That it was
13 cold that morning. Well, that makes sense because we see him
14 in a baseball cap in the photographs the defendants find.

15 But what else does he say? They go up here. And
16 before they get over this ridge here, we stop the story. We
17 stop the story. Lawyers call it corroboration. You folks
18 might say, well, it's an affirmation, or it confirms something.
19 So-and-so said such-and-such, and someone else unknowingly says
20 the same thing, and they come together. And all of a sudden a
21 13-year-old young man's story about the hunting trip starts to
22 make sense, and you start to believe him. Why?

23 Dusty Hammond describes how his uncle was the first
24 over the ridge. That's Steven Hammond. The defense has tried
25 to put a reasonable doubt in your mind who that was. They

1 tried to do it with his hat that supposedly Russell wore. It
2 didn't work.

3 The Nelsons from Utah said, That ain't the hat. They
4 tried to say, Is that the size man you saw come over the ridge?
5 The answer was no. That didn't work. The Nelsons said they --
6 it was a thin, taller man.

7 Who's the thin, taller man between the two? The guy
8 you saw in the photo or the guy on trial?

9 The Nelsons have nothing to gain or lose in this
10 case, folks. They came out, a father and son from Utah, to get
11 a deer and go back to Utah. And they gave their statement in
12 2001.

13 First person Dusty says goes over the ridge is his
14 uncle, who's wearing a white cowboy hat. What does Gordon
15 Choate, what does Dustin Nelson, what does Dennis Nelson, the
16 father, say the person was wearing when they came over the top
17 of that ridge? Who was the first person they saw? A man in a
18 white cowboy hat.

19 Gordon Choate was 95 percent sure it was the
20 landowner's son, Steven Hammond.

21 Dusty has nothing to do with that. All he said is
22 Uncle Steve went over the top of the ridge, I hear shots.

23 Well, guess what? What does Gordon Choate and the
24 Nelsons say? They've got the binoculars. It's been a
25 beautiful morning, great day, clear sky, no lightning. And

1 they see the shots, and they see these deer getting hit. Not
2 just one person said that. All three of them.

3 Now, why would they lie? What -- what back -- back
4 in 2001, why?

5 Dusty says, My father took off like a freight train.
6 He's the second one over the top, and there's some more shots
7 fired.

8 Remember, Mr. Choate and Mr. Nelson talking about how
9 there were additional shots being fired? How come this all
10 comes together this way? How come?

11 They were two different hunting parties that come
12 together.

13 What happens next? Dusty gets over the top of the
14 hill.

15 Now, we heard a nice story from the defense saying,
16 Well, it was Dusty's fault. You know, he shot these deer from
17 way far out, and his dad was cleaning up the mess. Well, that
18 never was testified to on the stand.

19 Now, the defense don't have to prove anything. In
20 this country, they don't have to prove anything. The burden is
21 upon us. But if they're going to say they're going to present
22 some stuff to you and they don't, it is perfectly appropriate
23 for you folks to say, well, okay, now we can evaluate the
24 Government's story.

25 Dusty gets to the top. He's scoping the mountain.

Closing Argument - By Mr. Papagni

1 He's trying to see something, and he sees nothing. He doesn't
2 even see the Choate pickup or the people there. And he tells
3 you why. If Dusty was a young man trying to say something
4 that's not true, he could have lied about that, but he didn't.
5 He didn't even see it.

6 The guy in the white hat, Mr. Steven Hammond, he
7 apparently recognizes the pickup down below. Now, what does he
8 do? Does he stand up and wave at the hunters, say, Hey, try to
9 get mine? No, he hides behind the sagebrush, squats down. Why
10 does he do that? Why?

11 You know, these are questions you get to ask yourself
12 when you evaluate the facts.

13 Well, we know. Rod Spannus told us about it, the
14 game officer. He had a land-use tag. And where he was at was
15 public land.

16 Now, he had grazing rights on it, but he didn't a
17 license to do what he was doing. Just like he doesn't have
18 rights to burn public land without permission of the public.

19 Next over is Jacon Taylor, the person with the bad
20 memory. The only witness that takes the stand, and his
21 testimony before a grand jury is he can't remember anything
22 about 2001, and he repeatedly said that when he testified in
23 2010.

24 But when he takes the stand here, he says, Oh, yeah,
25 I saw that elk photo and now I remember things.

Closing Argument - By Mr. Papagni

18

1 Well, according to Dusty, Jacon is off here
2 somewhere. And there's how many people on the top of the hill?
3 How many people did Choate say he saw on the top of the hill?
4 He saw four.

5 What did the Nelsons say? At least two or three.
6 Okay. Why a difference?

7 You saw how he turned his pickup around, to try and
8 leave. Looked in the rear-view mirror, see what was behind
9 him. Sometimes people see things differently. But we all know
10 on the top of that hill, when those deer had been hit, that was
11 a memory those three men aren't going to forget.

12 It upset Gordon so much, he called the game cop that
13 night. They take off, and they go.

14 According to Dusty, what happens next is his dad
15 comes back, and they go along the fence line, up here to the
16 rock crib. And when Dusty gets to the rock crib, apparently he
17 and his dad are the first there.

18 And he gets a water -- water bottle, and he sees
19 grandpa pull up, and he sees Uncle Steve. And all Dusty is
20 concerned about is drinking some water. And his dad calls him
21 over to where his grandfather and Uncle Steve is at and Jacon
22 Taylor is at. And what happens at that location? Well, you
23 know, depends on who you want to believe. Nothing. But Dusty
24 said something happens.

25 Remember, we talked about intentional and malicious?

Closing Argument - By Mr. Papagni

1 When you pass out boxes of matches to a 13-year-old kid and you
2 say, Light up the whole country, and walk along the fence line,
3 that's no accident. That's intentional. And why does Dusty
4 remember this?

5 Did his dad stay with him the whole time and take
6 care of his son, to make sure his son wouldn't get caught in
7 this fire? No, his dad shows you how you light a bunch of
8 them, and you get the cheat grass going; because Dusty kept
9 dropping the matches, and they would go out. Another detail
10 that makes Dusty so believable.

11 This afternoon we had the defense expert take the
12 stand. He could try to connect this lower one, the one at the
13 rock crib, where the other fire that was on private land -- you
14 know, we had that nice little aerial photo. But the one to the
15 north, the one that was in the direction where Dusty last saw
16 his Uncle Steve walking, that was right along the property
17 line. There was no connection to a fire over here on private
18 land.

19 You'll have the defense exhibit. You can make your
20 own comparison. You saw it this morning.

21 So Mr. Hogue is trying to say the fire from over here
22 on the private property, way out here where someone may have
23 driven their pickup on the road, and may have lit their private
24 property on fire, somehow managed to only burn to this area.
25 But this one up here, well, truth is in the details.

Closing Argument - By Mr. Papagni

1 Fire set up there was intentional. Dusty started an
2 intentional fire. Technically, he's an accomplice. And why
3 does he remember all of this at age 13?

4 Well, use your own common sense. You're entitled to,
5 as a jury. If you almost get burned up in a fire, where the
6 flames are over your head, and your father's not there to help
7 you, and your uncle's left you and says, Just walk that
8 direction. I'll see you down there. And your grandfather's
9 not around because he just went ahead and helped his son give
10 you the matches to burn this place up, and all you can do is
11 get on a rock ledge and wait until the fire goes by you, it
12 might stick in your memory. Just might stick in your memory.

13 Just like, you know, if you look at the date of
14 September 30th, 2001 -- a lot of us can remember September
15 11th, 2001; where we were and what we did.

16 So what we've got here is Dusty Hammond's testimony
17 saying that his uncle and his grandfather -- actually, his
18 father and his cousin and himself, all set fire. And it goes
19 in this direction (indicating).

20 And how do we know Dusty is telling the truth? How
21 do we know this young man's not lying to us?

22 Dennis Nelson's back at camp. It's about ten
23 o'clock. And what does he smell? Smoke. And Gordon Choate
24 then packs them up and they leave.

25 What time in the morning did those folks say it was?

1 It was 10:00 in the morning.

2 Now, Dusty doesn't know what time it is. He just
3 knows that after he sets this fire, and he manages to escape
4 it, he goes down here and he goes down to the cattle guard.
5 And he's the last one. And no one's waiting for him.

6 So he starts walking down the road. And his
7 grandfather comes and picks him up, Dwight. And takes him back
8 to the cabin. They all get in vehicles, except for Uncle
9 Steve, who gets in his Jeep. And they all head back to the
10 ranch.

11 Now, for a 13-year-old kid, what's important when you
12 get back to the ranch? Lunch. That's what he's interested in.
13 But is that good enough?

14 Well, wait a second. We have the Nelsons, and
15 they're camped up here. And all of a sudden there's this smoke
16 from this fire. And they know that Dwight Hammond was in the
17 area because Gordon Choate was moving his pickup so they could
18 get their buck in it, and here comes Dwight. And Dwight says,
19 Where are you guys camped? And Gordon just kind of says, Well,
20 up in this area. And then Dwight says, We've got some hunters
21 coming over the hill.

22 Remember the testimony of Mr. Choate? Dwight
23 Hammond's own statements confirmed Dusty Hammond's statements.
24 It's not just Gordon Choate and Nelson. It's Dwight Hammond
25 himself who gives you the evidence that they committed this

Closing Argument - By Mr. Papagni

1 crime. He just didn't know it at the time. Mr. Choate
2 remembered.

3 So they go ahead and they leave because now the fire
4 is burning. And Mr. Schroeder here says, Well, you weren't
5 leaving just because of the fire. You were planning on going
6 home anyway. And he said, Yeah, we were. I wanted to get back
7 to work.

8 But when they left, they went clear up here and they
9 came down here. And what time did they finally get back down
10 here (pointing). What did the Nelsons say?

11 It was noon. They're going to head back to Utah.
12 It's a long drive. They know what time it is. And how long
13 has the fire been burning, causing them to leave the camp, so
14 they had to go all the way back down here?

15 That's why they thought it was ten o'clock. Around
16 ten o'clock, they got the smoke. That's when the fire was
17 burning.

18 Was it just Dwight Hammond that can give us enough
19 evidence to convict them for that particular count, Count
20 No. 2? Oh, no, Steve Hammond helps. What does he do? He
21 calls B.L.M. two hours after they started the fire. Hey, is it
22 okay if a guy does a controlled burn here? A little gal for
23 summer help says, Sure. There's -- all restrictions are out.
24 We've got a fire going down 20 miles south. No problem.

25 One would -- you know, suspicious mind, like a

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1 prosecutor, probably would say it's like someone doing
2 something with their car, realizing it's wrong, and two hours
3 after they've done something with their car, they call it up to
4 say it's stolen. It's called a consciousness of guilt.

5 But it gets better. How does it get better to show
6 the proof beyond a reasonable doubt? When they get back to the
7 ranch, if all they did was what they did in 1999, have a fire
8 that got away from them -- right? It's an accident. Then it's
9 like no big deal. It's like, Okay, well, we'll pay the fire
10 trespass. Whatever it costs. We've got the money. We've got
11 a ranch here. Just part of the cost of doing business.

12 Well, what do they tell Dusty Hammond? When you
13 jurors are back there, ask yourself, Why did they say the
14 following to this kid? Don't tell anybody. Not just Dwight,
15 but Steven does too, when he gets back in his Jeep. Keep your
16 mouth shut. Why? He had done nothing wrong. If he had done
17 nothing wrong, you don't have to tell some 13-year-old kid
18 never to repeat it. And that 13-year-old kid should never be
19 afraid for the next seven, eight years of his life to say
20 anything.

21 But he keeps his mouth shut, until he takes the stand
22 here; until he's interviewed by an investigator. Because he
23 isn't afraid anymore, is he?

24 Next fire.

25 Oh, by the way, the damage on that fire that we just

Closing Argument - By Mr. Papagni

1 looked at, what was it? A couple of growing seasons, 400, 450
2 bucks. Not much, but enough.

3 Then we have the Lower Bridge Creek. Now, it's kind
4 of funny because this is actually the fire that gets us heading
5 Dusty's direction; the Government investigators, or whatever.

6 Before this fire, we have evidence -- and it's only
7 going to be used for motive. Okay? It doesn't say -- in this
8 country, we get to have free speech. We get to say the
9 government's lousy or the B.L.M. doesn't know what they're
10 doing. B.L.M. managers, if you took an X-ray, you wouldn't
11 find a backbone. You know, we can say all of that stuff. And
12 it may be true. And we're entitled to say it, as Americans.

13 We may even say, Well, you know, why bother with all
14 of this prescription burn stuff, what two matches can do in
15 August? You have the right to say that. That's not illegal.
16 But it's when you use those matches, like he did in 2001, with
17 Dusty.

18 Isn't that a remarkable coincidence? I mean, did you
19 see irony in that? Dusty Hammond's giving these matches that
20 we need to photograph and show you what they look like.
21 Probably all of you have seen them before. And then he's --
22 he's -- he's going to these meetings, and he's saying, use the
23 two matches. And then in 2001, that's what he gave his nephew
24 to use to burn property.

25 Oh, well.

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1 He tells Karla Bird, when she first meets him, he's
2 pretty bold. He points to the map and says, Well, I set this
3 fire, I set that fire, I set this fire, and you guys never
4 caught us. What?

5 If you're setting fire on your own property, that's
6 fine. What's this catching us stuff? And Ms. Bird remembers
7 that. That's something you would remember.

8 That's in 2003. She's brand-new. She puts it on her
9 calendar. But saying it ain't proving it. She can't prove it.

10 And Joe Glascock, on the 17th of August -- how many
11 days before the 22nd? He's out flagging a fence, which turns
12 out to be pretty important for a lot of reasons. And he's
13 commenting because -- you've heard testimony. If it's done
14 right and safely, then burning isn't bad for the land out
15 there.

16 And he makes a comment to Steve about how the burn
17 looked pretty good. The grass is coming in well. And
18 Mr. Hammond says, Well, you know, my dad and I have been doing
19 it for years. Drop little matches in a straight line. And
20 matches pop up again. Reference back to Dusty's case.
21 Reference back to Stacey Davey's involvement.

22 So six -- then he says, The next lightning storm,
23 don't be surprised if you see another fire. And then Joe
24 notices that all of the cattle is supposed to be in this
25 pasture over here. There's a lot of cattle up there, a little

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1 ahead of time.

2 Now, Mr. Steninger here keeps testifying, you know,
3 this is a reasonable and prudent thing to do, to move these
4 cattle, you know, to that location. And if you look at the AUM
5 report, it -- Mr. Schroeder spent a lot of time with -- you
6 know, if you believe Steven Hammonds filled out that report
7 correctly, well, then Mr. Glascock is wrong, isn't he?

8 But Mr. Steninger, we dealt with that yesterday, had
9 to rely only on that report. It was signed by who? If that
10 report was accurate, Steve Hammond was a truthful honest guy,
11 then Joe Glascock shouldn't have seen any cattle up in that
12 neck of the woods. And Mr. Steninger, all of these
13 statements -- if you get the wrong information up front, even
14 if you're a very wise man with 87 years of experience, the end
15 result is going to be wrong, because it's unreliable
16 information. Unreliable information from Steven Hammond.

17 But it wasn't a big deal. I mean, people move their
18 cattle, you know, at a different time because of the year. And
19 Mr. Steninger didn't talk to Mr. Glascock about that. So
20 there's no way he would know.

21 So Lower Bridge Creek. This is -- witness --
22 Ms. Bird tells us about what the issue was ahead of time. Joe
23 Glascock tells us what he did.

24 He gets there, and he had the Hammond pickup trailer
25 here. And Mr. Vogler is already headed south, to get his

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1 tractor ticket. He's going at a pretty good rate of speed.
2 And they've got their pickup here. And Joe sees the Hammond
3 children. And he sees Dwight and Steve Hammond are moving --
4 there's some cattle being moved along here.

5 And he goes ahead, and he goes around the perimeter.
6 And the fire is out. It's around 10:30. And you'll see it on
7 the map. Fire is out. And he goes to the fire location,
8 because this lightning storm has set a lot of fires. No one
9 has ever said to the contrary.

10 But he feels pretty safe because he reports in that
11 that's not -- nothing is going on there. It's out. Couple of
12 internal burning locations. We've got those on the map.

13 But then he finds out, down here, this little area
14 here, we have Mr. Lambert, the guy in the airplane, who says,
15 well, that's strange. I have never seen that before, in all of
16 the years that I've been flying. The wind is going this
17 direction, and then we have one down here, near a road.

18 Remember, I asked -- was it Mr. Hogue -- about
19 incendiary indicators could be fires next to a road? Well, you
20 know, that's not going to happen. But also the wind indicator
21 by Mr. Lambert would indicate -- Lambert would indicate that
22 fire set shouldn't have been there.

23 And after Mr. Glascock -- before he leaves, and this
24 2500 acres had been burned -- he says something to Dwight
25 Hammond. Tells him the size of the burn. 2500 acres. Or

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1 25,000 acres. Whatever it was, it was big.

2 And Dwight Hammond says what? Too bad it wasn't
3 bigger. Well, free speech. You know, all he said was what he
4 thought. You know, he's entitled to say that.

5 But next thing Joe knows is that he comes -- it's
6 reported back here. And now, in this area, a fire's taken off.
7 And, boy, it's going upcountry. And over here, too. Where did
8 those come from?

9 So Joe goes down here. And he's going down here, and
10 he bumps into Steve Hammond. And he's talking to Steve, and
11 Steve is walking his dad's horse.

12 Now, we have a little difference of opinion here.
13 We've got Mr. Steninger who says, you know, walking your cattle
14 or herding your cattle on foot, you can do that for six miles.
15 It's good exercise.

16 Mr. Toney, on the other hand, when he testified --
17 remember, Mr. Toney? The guy who talks about the ranch he has
18 and -- I guess he's a team roper, and stuff. He says, You
19 don't move cattle on foot.

20 Difference of opinion, I suppose. You folks decide
21 what makes the most sense.

22 But what we've got here is the fire is starting to
23 take off over Steve Hammond's shoulder. And as Joe is talking
24 to him. Steven Hammond says, Whoa, that fire really took off.

25 Where's your dad?

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1 Remember, the charge the judge read to you about
2 aiding and abetting the conspiracy? When you put the facts
3 together, if you are working in conjunction with someone else
4 to commit a crime, both of you are legally obligated and
5 responsible.

6 So how do we know where Dwight is? Well, he's
7 supposed to be up here, opening gates. And, you know, those of
8 us that don't anything about cattle would wonder if you're
9 moving your cattle this way, like Mr. Steninger says, why are
10 you opening gates up here? Doesn't matter anyway because they
11 were closed when Joe found them, except for a few he designated
12 for you. But that's not enough. That's not beyond a
13 reasonable doubt.

14 That doesn't leave you firmly convinced much of
15 anything except there's some good circumstances -- which is
16 like direct evidence. But we have a lady named Alice Elshoff.
17 Her testimony was kind of interesting because it was about the
18 same time in the afternoon Joe's back here talking to Steve.
19 And the times are not real good.

20 Mr. Blackman did his best to get everyone to say what
21 time it was. And I guess when you're in that type of country,
22 you don't look at your watch every five minutes.

23 So Alice is here, and they moved the tractor. And if
24 Mr. Blackman was standing up here, he would say, Well, someone
25 called her up and said the fire jumped the creek, and that's

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1 why they had to move it. But that person never took the stand.

2 We don't know how the fire jumped the creek, do we?

3 But we do know that Alice, after she moves the
4 tractor, they come to this little corner here with her husband,
5 and they're watching the fire move this direction (pointing)
6 because this is all out and cold.

7 How do we know that? Made her write it down. It's
8 on the map for you folks.

9 And while she's standing there, something happens.

10 Now, we know Dwight's not with Steve because Steve's
11 got his horse. And we know up here there's a man walking
12 toward the Hammond pickup and horse trailer. And we know the
13 man is not a B.L.M. person because, as Ms. Elshoff said, he was
14 wearing working clothes, like the rest of us, and wearing a
15 ball cap. And -- and he's got something in his hand.

16 And when she calls out, like a good neighbor to say,
17 Hey, can we give you a ride, give you a lift, help you out? He
18 keeps on walking.

19 And as Mr. Blackman objected correctly, he keeps
20 walking and he can't -- she just sees him going off in the
21 direction toward the pickup and the trailer, and that's the
22 last we see of him. But the fire takes off.

23 Mr. Holland, when you look at his map -- and we'll
24 show you where all of the lightning strikes were. And sure
25 enough, you know, it's possible that outside the lightning here

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1 and here, that somehow you could have had one clear on the
2 other side of the Bridge Creek.

3 That's not what Ms. Star -- Starbuck said. You might
4 remember in that tape-recorded statement that was given by the
5 defense, she said it was south of Bridge Creek and north of the
6 loop road.

7 So what else do we have? Well, we have Jeff Rose.
8 And he talks about the thousands and thousands of dollars that
9 it cost to take care of that.

10 So let's go on to the next counts.

11 So that's burning on the 22nd. Okay? So that's the
12 Lower Bridge Creek fire.

13 Now, maybe, by itself you folks would say, Well, you
14 know, Mr. Papagni, that's pretty thin. You know, sure, there's
15 some good circumstances there.

16 But you see, if you put it in conjunction -- because
17 you're entitled to consider all of the evidence in this case.
18 If we put it in conjunction with what Dusty's already told you
19 and what happened in 2001, then the puzzle pieces start to go
20 together and you start to get a better and a clearer picture.

21 Then we go to Krumbo. Now, Krumbo is kind of
22 interesting here because we have Mr. Hogue tell us here about,
23 you know, this was a backfire. And he based it upon the
24 landowner's comments that were given to Mr. Okeson. And that's
25 perfectly appropriate. No problem with that. But you can't be

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1 selective. If you're going to listen to Mr. Okeson about one
2 set of statements, why don't you listen to him about another
3 set of statements?

4 He took the set of statements Steve Hammond told
5 Lance Okeson the next day, saying, Well, you know, I was doing
6 a backfire up there to save my winter feed. Mr. Hogue was more
7 than happy to use that. But he didn't use the other statements
8 that Dwight Hammond said, did he? Nor did he talk to the other
9 firefighters.

10 Remember, my case to you is based upon the people
11 with the boots on the ground. If the experts put a reasonable
12 doubt in your mind, if Mr. Hogue put a reasonable doubt in your
13 mind, you're going to have to acquit. But we have not one
14 expert, we've got a lot. And we put three on the stand. And
15 they disagree about Ignition 1. You don't have Ignition 1 to
16 check off. That's not on the table. So what happens here?

17 Well, the funny part about this one, folks, is this
18 ignition, here, you can't see from up where Mr. Dunten was.
19 Mr. Bird made that clear with these photos.

20 So, okay. Why are we even considering this thing?
21 Why in the world are we even here talking about Krumbo Butte?
22 I mean, it was, what? 800 acres? Not much bigger than the one
23 in 2001.

24 And there was a lightning strike here. And
25 apparently, according to Mr. Bird, it burned up the butte here.

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1 Which makes some sense because Mr. Dunten said there was a fire
2 below this little creek area. You'll have his own map, by the
3 way, that he did. None of this fancy job. You get one the
4 young man did himself.

5 And right in this area here (pointing), there are
6 three spot fires in a row. Three in a row. Now, what does
7 that remind you of?

8 Some of us, you know, watch TV shows and some crime
9 shows. And there's something called Method of Operation, MO.
10 What did Steve Hammond say to Joe Glascock a few days earlier
11 before the 22nd? Drop the matches in straight lines. Just
12 walk in a straight line and drop the matches.

13 Here on Krumbo, we have the three sets. That's the
14 one that got everyone asking questions. Not the one down here.

15 And Mr. Bird, you know, he was subject to a lot of
16 cross-examination, which he should have been. You test your
17 experts, like I did with Mr. Hogue. But Mr. Bird didn't say
18 that there were any ignitions up here because he couldn't find
19 them. They had been burned over.

20 And we have those three fires there that
21 Mr. Dunten sees. And it bothers him enough for the safety he
22 has for his colleagues that are on top of the butte, that he
23 photographs them.

24 Sadly, we don't have them. Nowadays, we take cell
25 phone movies or we take cell phone photos. Everything's pretty

Closing Argument - By Mr. Papagni

1 much documented. It's pretty hard to have some privacy now.
2 But the fact of the matter is the young man took the photos.
3 And he took the stand, and he said he did it. And he showed
4 them to Lance Okeson. And because he showed them to Lance
5 Okeson, the next day Steve Hammond got confronted by an angry
6 Lance Okeson, who was concerned about his guys and gals on the
7 butte, the kids on the butte. That's what got Lance riled up.
8 And it was only because of these fires up here that Mr. Okeson
9 confronted Steve Hammond the next day.

10 But we go ahead, and we find a fire down here. Kind
11 of close to the fence line. It's public property.

12 Now, they've come up with their reason for doing it.
13 And if you believe that that was set by Mr. Steven Hammond only
14 to save his winter feed, well, then that's an acquittal. You
15 find him not guilty. You have to.

16 But if you believe Mr. Hammond set this fire not to
17 save his winter feed but to burn this area in through here, the
18 grazing allotment area, and set these fires up there, well, the
19 verdict should be something different.

20 Next one, please.

21 This is kind of an appropriate name in some respects.
22 Now, folks, I understand that's misspelled.

23 But in this case, we've had the B.L.M. get some
24 reports wrong and dates. They say September 31st. It doesn't
25 exist. The forms were filled out. And, you know, they made

Closing Argument - By Mr. Papagni

1 their mistakes. We all do. In fact we kind of teased each
2 other about that a little bit. Okay? And that's fair.

3 But the fact of the matter, this is the one that
4 concerns us the most, and it has the most witnesses.

5 And you can kind of just enlarge this area along
6 Bridge Creek.

7 We've seen it a lot. I want you to see it one more
8 time. But now this big map is starting to make some sense to
9 you folks.

10 Mr. Okeson, he gets up here in this area of Antelope
11 Reservoir, and he takes his photos. Joe Glascock takes him up
12 here. And the photos are on the board. You'll find a number
13 inside -- you'll have the photos to show you.

14 Mr. Okeson is here. He takes his photos and he's at
15 Antelope Reservoir with Joe. And this is a bad situation.
16 Okay?

17 It would be better to have -- I think Mr. Matasar
18 mentioned in his opening statement, it would be better to have
19 four fire engine trucks with plenty of water. It would be
20 better to have a bunch more crew folks and firefighters out
21 there. It would be better not to be doing backburns with just
22 two guys. But we do the best we can with resources, whether
23 you're a firefighter or in the military. You do the best you
24 can with what you've got. And this is a bad time. We all
25 agree with that.

Closing Argument - By Mr. Papagni

1 So Mr. Okeson's up here, and overhead goes an
2 airplane. Now, that probably didn't seem too significant to
3 you folks when you heard that testimony. It probably didn't
4 seem too -- too significant at all. But it shows you
5 something.

6 Mr. Dwight Hammond and Steve Hammond were in their
7 plane, and they saw what? They knew there were B.L.M. people
8 in the area. They knew firefighters were on the hill. They
9 knew there was a fire. And this is before Krumbo Butte. This
10 is before Dunten looked over the ridge and saw those fires.
11 This is -- this means Mr. Steven Hammond and Dwight Hammond
12 knew people were up on that ridge where the fires were burning,
13 and that's significant.

14 You know people are up there. You wouldn't be
15 setting fires. There's a burning ban in effect, anyway,
16 according to Chris Riles (phonetic). And if you are going
17 to -- let's say, you know, people are up there, what do you do?
18 You've got to communicate.

19 Could you give me the next slide, please, about the
20 communication.

21 Mr. Steve Hammond wrote this letter, and I took --
22 and, look, let's be fair. You're going to have the letter in
23 there. It's like three, four pages long. It talks about a lot
24 of things. And you should read the whole thing, if you need
25 to. And, you know, lawyers can take things out of context.

Closing Argument - By Mr. Papagni

1 Investigators can put words in people's mouths. So I'm trying
2 not to do that. Okay?

3 But this letter was written by [sic] Dave Ward.
4 Steve Hammond wrote it. That's his signature. And this part
5 is the most important, and this is going to be the rest of my
6 argument:

7 Trust and reliable communication needs to exist to
8 have a cooperative, mutually beneficial
9 relationship.

10 And then he goes on to ask that basically you fire
11 Dave. Okay? Dave Ward. The guy who was, you know, going to
12 Iraq, and didn't work out.

13 Trust and reliable communication needs to exist to
14 have a cooperative, mutually beneficial
15 relationship.

16 We can go back to the ignitions.

17 On Krumbo -- Krumbo Butte -- take a moment.

18 On Krumbo Butte, all Steve Hammond had to do was to
19 call up and say, Hey, I'm thinking of doing a backfire up
20 there. I know there's B.L.M. people on the hill up there
21 because my dad and I flew over Antelope Reservoir, and I'm
22 going to do this backburn to save my winter feed. Please
23 notify your firefighters I'm going up there to burn. Case
24 closed. You're not here. We don't have to be here for two
25 weeks.

Closing Argument - By Mr. Papagni

1 Did he do that? Did he do that?

2 35,000 pages. But -- what Mr. Hogue said, 30-some
3 thousand pages of government documents. Did he do that? No.
4 They would have found it.

5 These are three very fine lawyers. They work well
6 with their computers. I use a notepad. Don't mean better or
7 worse. We just do things differently.

8 If Steven Hammond had called him up and said, Hey,
9 I'm doing this backburn, he wouldn't be here on that charge.
10 But he didn't.

11 Next one, please.

12 And, again, highlight the area. It's the last of my
13 argument here.

14 You've heard the story about the black line, and I'm
15 just not going to go through it again. You know, you either
16 believe Lisa Megargee, Chad Rott, Lance Okeson, and Joe
17 Glascock that that black line was out. And if you don't want
18 to believe them because you think they're foolish, think about
19 their lives beyond the line.

20 Some of us -- some of these folks have served in the
21 military. You put your life in the hands of the person next to
22 you. It's the way it works. You're fighting fires, no
23 different. That line's got to be out. And no expert you hire
24 who says, well, spotting from three miles away, can change it.
25 That fire's got to be out.

Closing Argument - By Mr. Papagni

1 Lisa Megargee told you about putting her hands in it,
2 for crying out loud. So you can bring all of the experts in
3 here you want to say that she's wrong, and I submit to you,
4 she's right. And she's a little stubborn.

5 So the black line is out.

6 Okeson says it. Rott says it. And in fairness to
7 Mr. Blackman -- you'll find it in the transcript, because I
8 did -- there was a couple of burning junipers on the ground.
9 But the tree across the road was out.

10 And what happens here, in this little area right up
11 here, between Ignition 2, and Ignition 3? There's the tree.

12 And here's Ignition 2, and we don't talk much about
13 that. We have the -- the tire tracks that Joe Glascock seems
14 to be enamored with. And he's coming off Knox Spring Road.
15 The testimony says there's like a right turn of tracks there
16 that Joe sees when he's having the fencing contractors
17 evacuate.

18 So Dwight and Steve come down this road, and they go
19 by Ignition 2. And then they come behind Mr. Rott and
20 Ms. Megargee. And if you remember Mr. Rott's testimony,
21 there's some yelling on and some hand movements. And all of a
22 sudden Steve gets out and says, How long are you going to take?
23 Not, Can I help you? How long are you going to take? Well,
24 I've got to cut it out. I've got to do the chainsaw here.

25 And he's cutting the tree up, so he knows there's no

Closing Argument - By Mr. Papagni

1 burning going on the other side. And that's part of their job.

2 Well, takes too long. Backs it up, and up the hill
3 you go. You see the photos. They go around, and lickety-split
4 down the road they go. Remember I just pointed -- mutual trust
5 and communication. Mutual trust and communication.
6 Substantial risk to another person.

7 What should these two men have told those two kids
8 who were cutting the log? By the way, we just came by a spot
9 here, and there was some burning going on up there. They don't
10 have to say they did it. They should have said, Hey, we're
11 coming down the road behind you here, there's something
12 burning. You guys better go back up there and take care of it.

13 Is that what they did? 30,000 pages of discovery.
14 No documents saying they said that word at all. But even if
15 you didn't have the discovery, you've got these two kids.

16 Chad Rott's eyes get big when he sees Steven Hammond.
17 He remembers him.

18 The right thing to do is to tell those kids that they
19 saw that ignition. But the defense lawyer could stand up and
20 say, Well, maybe they didn't see it, Mr. Papagni. It's not
21 fair to hold Ignition No. 2 against them.

22 What happens next? Lickety-split they leave. And
23 finally Chad and Lisa get done cutting the tree, down the road
24 they go, and they see Ignition 3. It's on the wrong side of
25 the road, it's big, and it's fresh. And they can't put it out.

Closing Argument - By Mr. Papagni

1 Now, Chad starts to get a little upset.

2 Who were the last people to come down the road?

3 Because we know Lance and Joe did, because they went down this
4 little test fire area down here. The little test fire area.

5 So the only people that come after -- the only people in
6 between Chad Rott and Lisa and Joe and Lance are? The men on
7 trial. Hmm. And then we have an ignition.

8 Now, think about this for a second. I'm -- this is a
9 lawyer making an argument. You start a fire behind these kids,
10 and you start a fire in front of these kids.

11 Now, if you believe the defense, there's a reasonable
12 doubt they didn't start those fires. Mr. Hogue says it's
13 spotting. Spotting.

14 I asked specifically, Did you see any embers? Did
15 you see any lightning, Chad? Did you see any embers, Lisa?
16 Any firebrands going overhead? Answer is no. But Mr. Hogue
17 says, I'm an expert. It's spotty. Believe me, the weather
18 conditions were bad.

19 That's why I had this map that shows how many miles
20 it was. And Mr. Bates, the air guy says, There was no spotting
21 in between. Never seen it before in my career. It was the
22 first time. And how many miles had he had -- or air miles or
23 air time, had he had?

24 Ignition No. 4 is a small one.

25 Ignition No. 5, well, we heard about the juniper cut.

Closing Argument - By Mr. Papagni

1 But Ignition 5 is up the hill a way.

2 Well, Mr. Hogue says it's spotting.

3 The experts that we have, Mr. White -- who helped
4 write the book -- says -- and Mr. Bird said, Nope. And, by the
5 way, Mr. White, you know, he didn't say all of the ignitions
6 were arsons. He said, No. 1, I disagreed with that guy.

7 We don't know. You don't convict somebody on we
8 don't know. You can't. You have to be firmly convinced of a
9 person's guilt.

10 Ignition 5 is starting to burn. They can't do
11 anything about that. Down the road they go.

12 And they finally get down the road and there's these
13 fires. We call them trail fires, Ignitions 6, 7, and 8.

14 Well, they get down the road. And Chad gets to the
15 test area, and he's all upset. And Joe has gone up the road to
16 get rid of the fencing contractors.

17 But before Joe leaves, we have a little discussion
18 there between Steve Hammond, which is very, very important to
19 the case. And I want to make sure my worthy adversaries get a
20 chance to address it.

21 When Steve Hammond comes over the hill, he's by
22 himself. Where did dad go? You know, some of us use the term,
23 Where's Waldo? It's a joke, but it's not a very good one in
24 this case. Where did Dwight Hammond go?

25 When Steve Hammond came over the hill and he sees

Closing Argument - By Mr. Papagni

1 these two B.L.M. guys down there and he talks to Joe, and Joe
2 does the Harney County Howdy Doody. He says, How are you
3 doing, Steve?

4 I'm doing good. You too?

5 And Lance, of course, says, Hey, what are you doing
6 lighting underneath my kids?

7 Well, I'm protecting my winter feed.

8 Well, you can't be doing that. You've got to
9 communicate. Communicate. Just like the letter he wrote years
10 earlier. It doesn't go one way. It's mutual. Remember the
11 word "mutual" in that?

12 Steve Hammond should be saying, Hey, you've got a
13 couple of kids up the road there, and we were coming down the
14 road, my dad and I, and we saw these fires. You better take
15 care of your kids up there, your firefighters up there.

16 Well, where's your dad, Steve?

17 Well, he's out opening gates for the cattle. Well,
18 Steve, do you want us to go out there and help look for your
19 dad?

20 Well, that would be nice of you guys to do.

21 Did you hear any of that?

22 Steve Hammond doesn't even say his father's not with
23 him. He drops his father off, and his father's wandering
24 around in an area where -- if you believe Mr. Hogue -- we've
25 got embers coming, we've got fire coming, we've got lightning.

Closing Argument - By Mr. Papagni

1 He's in danger on foot upcountry.

2 A good son would say, Hey, boys, could you help me
3 get my dad? I didn't realize it was so bad up here.

4 None of those words are said.

5 Instead, Lance Okeson is not happy because his kids
6 on the butte, someone was lighting underneath them. And we
7 know who that is because Mr. Steven Hammond admitted it.

8 And they have their going back and forth. Don't you
9 be doing that. You've got to communicate.

10 Well, you guys better just clear out, Mr. Steve
11 Hammond says.

12 Well, we're not, says Okeson. He bulls it in. We're
13 staying here because we've got a job to do. Well, I've got to
14 open the gates, says Steve, and down the road he goes. Not one
15 word about his dad.

16 Members of the jury, I can't answer the question for
17 you. When you're in the jury room, answer the question, why
18 not? Why didn't Steve Hammond say, Hey, my dad's upcountry
19 opening gates, if that is in fact what he was doing? But dad's
20 taking care of the cows on foot. Those are the why questions.

21 Why does the son not say that, and say, I dropped my
22 dad off. Well, we'll know in a few minutes, won't we?

23 Because Lance decides to protect his -- his -- his
24 kids. And he goes back up, and he gets to that location -- and
25 I'm going to finish in five more minutes. I'm going to make it

Closing Argument - By Mr. Papagni

1 quick.

2 He gets back to that location. And as he gets to
3 that location, he's looking upcountry, and he sees this fire.
4 And he's going -- he's looking over here, miles away is the
5 Lower Bridge Creek fire. And he's looking, and it's all on
6 this side of the road. And he's scratching and he's wondering,
7 sitting on his quad. And he sees white smoke. Not black
8 smoke. White smoke. Puffing. And then he sees someone
9 walking away from it. And it's Dwight Hammond.

10 He recognizes him. Lance is a home-grown boy. He
11 was raised in Burns. He knows that -- he hunted the Steens.
12 And he waits until Dwight hits the road. And at that moment,
13 folks, we respectfully submit to you there should be no
14 reasonable doubt for those charges and those ignitions because
15 Dwight says the right word. Dwight, stop, Okeson says. And he
16 doesn't.

17 Now, in that country, he would have stopped and said,
18 Oh, hi, Lance. Hey, glad to see you. Can you give me a ride
19 to my son? I was here doing the gates, and that's a long walk
20 to go catch up with Steve. Just like when he told Dusty to
21 keep his mouth shut, Dwight then tries to get away. He flees,
22 is what Mr. Okeson testifies to.

23 And Dwight's not going to let him go. And you folks
24 know the rest of the story. He guns up his quad. He gets off
25 his quad. He runs after him. Trips, sprains his ankle.

Closing Argument - By Mr. Papagni

1 Catches up with Dwight. Finally says, Dwight -- I know it's
2 you. I'm not going to let you go. And they confront each
3 other.

4 When I finish my argument -- I get one more chance to
5 argue here this afternoon because we have the burden. We get
6 the last word.

7 Mr. Blackman and Mr. Matasar get to talk to you each.
8 And I get one more chance because I've got the burden, I get
9 the last word.

10 But what does Dwight say to Mr. Okeson? Well, you
11 know what he says. I'm going to repeat it for you, again, in
12 my next argument.

13 But it's what he doesn't say that I want the defense
14 lawyers to address, because that's their job. To raise a
15 reasonable doubt, to make you say, These guys are not guilty.
16 The Government hasn't proven their case.

17 Dwight Hammond doesn't look at Lance Okeson and say,
18 I wasn't doing anything wrong. I was just opening the gates
19 here, guys. Boy, you got it all wrong, you know. I saw that
20 tree puffing, and I was trying to put it out or run away from
21 it because there's a fire around here. But he's got something.
22 He has his hands like this. And he turns around and he does
23 something. We don't know what it is. But the fire cause
24 investigators, they all say it's something about ignition
25 devices, the portable ones -- one of them mentioned a lighter.

Closing Argument - By Mr. Papagni

1 What was her name? Ms. Bilbao?

2 Dwight doesn't say, I've done nothing wrong. And,
3 Lance, don't be calling law enforcement. I've done nothing
4 wrong here. He wasn't an indignant American saying, This is
5 wrong. I'm being detained unlawfully.

6 He says, What? Don't -- don't call law enforcement.
7 You're just going to get a lot of people excited. You know,
8 why don't you boys come on down to the ranch tonight, and we'll
9 work this out. We'll take care of this.

10 Well, he picked the wrong man. Mr. Okeson was having
11 none of it. But he didn't know what to do because he is not a
12 cop. So he and Joe walk away.

13 Oh, before they walk away, Joe Glascock says, How you
14 doing, Dwight? Not so good.

15 Here comes the part, ladies and gentlemen of the
16 jury, that we submit to you where you lose any doubt in this
17 case.

18 I said five minutes. I've got two to go.

19 Ignition No. 9. Mr. Bates is overhead. He's
20 circling. He's there because he sees fire in the distance. He
21 doesn't know what's going on. He comes down Bridge Creek. He
22 sees the two quads.

23 He sees two B.L.M. boys walking back to their quads.
24 And what's behind them?

25 What's burning behind them, where they left Dwight

Closing Argument - By Mr. Matasar

1 Hammond? A fire.

2 The last words Lance Okeson says to Mr. Hammond is,
3 Don't be setting fires. It's dangerous out here. And he
4 starts a fire behind them. He traps him in between two fires.
5 That's what he does. That's a substantial risk of injury to
6 these men.

7 Ignition No. 9 -- everyone thinks ignition No. 8 is
8 the important one, because that's where he's running from.
9 It's not. It's No. 9. That's the one he sets after he knows
10 those men are there. They're not going to come down to the
11 ranch. They're going to make the call to law enforcement. And
12 he can't talk them out of it, and he sets another fire behind
13 them.

14 That's why we're here today. That's why we've been
15 here for two weeks, and that's why we're going to be here a
16 little longer. Thank you.

17 THE COURT: Why don't you stand and stretch for a
18 second.

19 Go ahead and have a seat when you're ready.

20 Mr. Matasar, go ahead.

21 MR. MATASAR: Thank you, your Honor.

22 Mr. Papagni, can I have a corner of your table?

23 MR. PAPAGNI: You can have whatever you want.

24 MR. MATASAR: Mr. Hammond, Mr. Hammond, Counsel.

25 First I want to thank you for your service.

Closing Argument - By Mr. Matasar

1 To be fair, I often do that when I'm giving my
2 closing argument. However, I'm told your service has been
3 extraordinary. It's rare that people drive 30, 40, 50, 60,
4 hundreds of miles to do jury service. And don't think we don't
5 appreciate it. It's -- you all know that this a better way to
6 do it.

7 You can tell the respect we give to Judge Hogan, the
8 importance of having a judge in the case. But the jury system
9 is the best way to decide these important questions.

10 And don't think that both sides don't appreciate your
11 service here. I'll be short. Much shorter than Mr. Papagni.
12 In part because I trust you to have followed the evidence. In
13 part because Mr. Blackman is also going to talk for a while.
14 And, of course, in part because I think Judge Hogan and you all
15 would rather have this be as short as possible.

16 There's one thing, you know -- it's in the -- the
17 nature of our argument here that we prepare it, and then we
18 hear the prosecution, which causes us to think about different
19 things to say. Because, in part, we have to respond to that.
20 We don't get to talk again. This is it. This is my last
21 chance. And so I want to start by talking about something that
22 Mr. Papagni repeated again and again as an extremely important
23 part of his case. And that is that -- why did the Hammonds,
24 Steven, Suzanne, and Dwight, why did they tell Dusty Hammond to
25 be quiet? Why did they do that? It traumatized his entire

Closing Argument - By Mr. Matasar

1 life. That's very important.

2 Well, I suggest to you that there's a different
3 question that you should ask because we don't think that
4 happened. Okay? They didn't tell Dusty Hammond to be quiet.
5 There's no reason to tell Dusty Hammond to be quiet.

6 Steven Hammond called B.L.M. and said, I'm burning.
7 B.L.M. knew that Steven Hammond was burning. There's no reason
8 to tell him that, and they didn't tell him that.

9 Another thing that Mr. Papagni said -- and I know
10 Mr. Blackman's going to talk about this, but I have to talk
11 about it too. He talked about how -- what the Hammonds do and
12 what they say they do is they drop a few matches in a line.
13 And that's why these fires are in a line. They take these
14 wooden matches, and they drop them in a line, and that's how
15 the fires are started. That's what the Hammonds do. They use
16 that MO, or whatever. In one part of his statement.

17 Well, what do we know now?

18 We know that if you start a fire with a match, these
19 people are going to find it. They're going to find the
20 matches. And no matches are found.

21 If the Government's theory is that the Hammonds set
22 matches -- set fires with matches in a line, that's not this
23 case.

24 I was going to talk a little bit about the damages,
25 but Mr. Papagni doesn't seem to think it's important, so I

Closing Argument - By Mr. Matasar

1 won't say very much either. Only to say that in 2001 the
2 evidence is the range conditions improved. That's what I think
3 it was Mr. Ward said in his report. And 2006 and 2007, as
4 Mr. Schroeder's questions brought out clearly, rangeland health
5 standards were achieved. So I'm not going to say more.

6 I do want to talk a bit about Mr. Papagni's criticism
7 of Mr. Hogue because his name isn't on the book; the go-to book
8 that Mr. Papagni calls it. The wildlife investigation -- *The*
9 *Wildfire Investigation Handbook* that Ms. Bilbao, Mr. White are
10 among the authors.

11 Now, you have to decide, but it didn't seem to me
12 that it was a book that was worth very much of anything. It's
13 a -- it's not like our books. It's nothing like a law book, I
14 can tell you that. Because the law book, you better follow the
15 book. Okay?

16 You've got to follow it. Thou shalt do this or that.
17 There are some reasons when you can maybe say you don't, but
18 you better follow that, again and again and again and again.
19 The most important things in that book were not followed.

20 And when we asked Mr. White or Ms. Bilbao, Why didn't
21 you follow it, they didn't say, Oh, I'm -- I -- I made a
22 mistake there. I should have done this, I should have done
23 that, I should have done this. It was a mistake. They said,
24 Well, you know, it's just a recommendation. It's just a guide.

25 So if I were Mr. Hogue, I wouldn't feel troubled that

Closing Argument - By Mr. Matasar

1 I wasn't a part of that.

2 Just one -- one more thing Mr. Papagni talked about.
3 That's if you're up in that part of the country, you're not
4 looking at your watch every five minutes.

5 Well, that's true, I suppose, except for Mr. Choate.
6 I mean, he knew -- he had this story about he did -- they woke
7 up early. They drove. They went hunting. They were
8 successful. They got the deer. They did all of this. All of
9 this happened, ten o'clock. All by ten o'clock.

10 Whereas Dusty Hammond said -- even Dusty Hammond
11 said -- and I'm going to talk about him a bit later. Even he
12 said they had been hunting all day before anything happened.

13 And he said -- he didn't exactly say it was lunch
14 that he ate when he got there. As Mr. Blackman asked him a few
15 questions, it was the lunch meal, and it was much later than
16 lunch.

17 The 2001 fires -- fire, I'm just going to say a
18 little bit about.

19 You have got the time line, and we have Exhibit 1109.
20 Steve Hammond calls to ask about burning at noon. Actually,
21 12:00 noon, and 19 hundredths of a second after. Pete Revak
22 calls. Sees a fire at 1:09. They say that's the Hammonds.

23 And Mr. Choate, who is so upset about all of this
24 stuff happening at ten o'clock in the morning, he's just -- you
25 saw him on the stand. He seems to be very upset about it,

Closing Argument - By Mr. Matasar

1 which he now says is ten o'clock in the morning, he doesn't
2 call till 5:57 at night. And he adds, from the stand, he has
3 very good cell phone reception. His timing is way, way off.

4 This is a case that went nowhere, as the Government
5 has said. It went nowhere because there was really nowhere to
6 go. Nowhere for it to go.

7 Mr. Choate -- Mr. Choate guessed that maybe Steven
8 Hammond was involved in something. The case went nowhere until
9 B.L.M.'s Dennis Shrader went up to talk to Dusty Hammond in
10 2009. Okay?

11 Dennis Shrader is the same guy, if you recall, who in
12 November of 2001, when he wanted to talk to Steven Hammond, he
13 threatened him with the grand jury. Threatened him with
14 prosecution by the United States attorney.

15 He is a tough customer, and that also explains what I
16 think I call the testy conversation that they had, and I think
17 Mr. Papagni may have talked about it, in November.

18 And there's one thing I want to say that I think is
19 an interesting insight into Steven Hammond, and that is, you
20 heard at one point in this trial that he got upset about an
21 accusation. Right?

22 You didn't hear him get mad at Dennis Shrader for
23 threatening the -- taking him to the grand jury. You didn't
24 hear him complain about prosecution. But when they said he --
25 he did something bad as a hunter, that got him mad. He didn't

Closing Argument - By Mr. Matasar

1 want people to think that he was an unethical hunter or that he
2 would do something wrong. In our view, that's a good thing to
3 get mad at.

4 Now, I -- I'm just going to say a few things about
5 Jacon Taylor. He was asked to testify in the grand jury, and
6 he said what he remembered. After that, the Hammonds saw some
7 photos. He looked at the photos. That refreshed his memory.
8 Is that so bad? Does that make him a liar? We don't think so.

9 Not only that, you saw the hunting tags. You know
10 that he had no hunting tag to hunt at Hammond ranches in the
11 deer season. Okay? Only in the elk season. You heard he was
12 busy. You heard he was -- he was working. And we submit to
13 you that he was not there. You saw him testify. He just
14 wasn't there.

15 And all of these things that are a superficial
16 detail -- like Dusty Hammond says that Jacon Taylor was
17 smelling up the hunt, Dusty Hammond remembers what his lunch
18 is. Those kinds of facts, those kinds of details have nothing
19 to do with true real memory. You could be confused 11 years
20 later.

21 There's no -- no reason to believe that your
22 certainty is related to your accuracy. We all know people like
23 this. Some people are certain that something happened. They
24 say they're certain. But, really, they're no more likely to be
25 true than people who say I think it was this way. Dusty

Closing Argument - By Mr. Matasar

1 Hammond's testimony, in our view, is not sufficient.

2 There's another thing I wanted to say about some of
3 the defense witnesses, which I think is important.

4 Scott Gustafson, for example. The insurance guy. He
5 got some things wrong. Remember? He said -- and I'm guessing
6 Mr. Papagni may have saved this for later, or maybe not. I
7 don't know. But he got some things wrong. He wasn't sure. Or
8 he said he was sure. He said it was the first day of the
9 hunting season. He said it was a Saturday.

10 Well, September 30th, 2001, was a Sunday, not a
11 Saturday. Okay? He got that wrong. He got other things
12 wrong, as did Jacon Taylor.

13 And how about Jody Starbuck? Remember when
14 Mr. Blackman said, Didn't you call a second time about the
15 fires? And she said, No, I only called once. Well, she was
16 wrong.

17 But there's one way you can get people's stories
18 closer together and to get them more harmonized and to say the
19 same thing. And that is by getting them together to talk about
20 what happened all at the same time. Okay?

21 That's not what happened with Scott Gustafson or
22 Jacon Taylor or Jody Starbuck.

23 It is, however, what happened with Gordon Choate, the
24 two Nelsons, and Mr. Ward. All together, talking about the
25 case, getting ready for trial.

Closing Argument - By Mr. Matasar

1 In fact -- and in some ways, it's hard -- it's hard
2 to say some of the things I have to say here. But I think
3 they're brought out in this case, and I just have to do it.

4 This trial was, in many ways, nothing like what a
5 trial should be. What you saw here in many parts of the
6 Government's case was a play.

7 It was people putting together a movie, or a
8 presentation, and then playing it for you. Okay? That's not
9 what a trial is supposed to be.

10 Mr. Choate, who was the -- it was the worst for
11 Mr. Choate, than Mr. Okeson. Mr. Choate was shown a video --
12 which I suppose he prepared. Right? I'm not saying that
13 they're telling him, you've got to -- you know, here, you've
14 got to say this and all of that. I'm sure he was involved in
15 the preparation. But he was -- he was giving you his sort of
16 re-creation and being led every step of the way.

17 You know, if there's anything that you -- there's
18 probably a few things you learned in this trial. One, hearsay
19 is bad. Right?

20 I think we all can say that we've learned from this
21 that you're not supposed to get on the witness stand and say
22 somebody told me something, because you get an objection.

23 The other thing is leading questions. Okay? Not
24 supposed to have leading questions, tell the witness what to
25 say ahead of time. The witness is supposed to say that from

Closing Argument - By Mr. Matasar

1 the witness stand.

2 But, again and again and again, I want you to look at
3 that. It says, Choate's conversation with Dwight Hammond. Is
4 that where you were when that happened? The Nelsons. There's
5 a couple of bucks. Is that where that happened? Is that when
6 this happened? How did it go? Again, and again and again.

7 Mr. Okeson's Google Earth, just as bad, if not worse.
8 You can tell, even though they tried, as best they could -- as
9 the judge did -- to slow him down, he was ready. Lance Okeson
10 had these things to say, and he was saying them as fast as he
11 could. He was just going and going and going. And Mr. Okeson
12 is really everywhere on this case. Okay? He's -- he's very,
13 very much in the entire case.

14 Now, he's everywhere. He's the burn boss. He knows
15 more than the fire behavior expert. Remember, he says, It's
16 the trend that matters. Right? Which is not true.

17 It's -- seems to me common sense, but their expert
18 explained it to you. What matters as far as whether or not the
19 fire is going to spread is the humidity, not the trend of the
20 humidity. If it's damp, it's not going to spread. If it's
21 dry, it's going to spread. What does it matter if it's 4 or 12
22 percent or if it's actually 18 percent?

23 If -- if it's dry, it's going to spread. He knows
24 more than their fire track -- their tracking specialist. They
25 have some guy, who you've seen in the picture, a tracking

Closing Argument - By Mr. Matasar

1 expert. Okay? This guy Joe Flores, who wasn't here.

2 Mr. Okeson, though, he's their boot specialist,
3 not -- not this Joe Flores. Mr. Okeson, he's -- they could
4 make him a fire investigator. He's on some of the fire
5 reports. No training for that.

6 For them, for people like Mr. Okeson and Mr. Bird --
7 who I'm going to talk about in a minute -- it's not about
8 science. It's about sort of being on the ground and just
9 knowing what happened.

10 Mr. Bird, from West Virginia, he talked about a fire.
11 And I'm going to spare you all the map.

12 There's a fire. There's a plane flying over.
13 There's a fire here. Okay? (Pointing.) There's lightning
14 strikes here. And somehow, the cause of the fire for him --
15 even though there's nothing seen on the corner -- he says the
16 origin of the fire is this other completely different place;
17 because he's on the ground, and that's what he knows. That
18 it's the Hammonds that are the point of origin for the entire
19 fire. He knows that, despite the fact that the airplane is
20 seeing fire in other places, and we've seen lightning-struck
21 trees everywhere -- not everywhere. In a few places.

22 There's another thing about consistency that's
23 important in this case. The air attack.

24 When Mr. Bird was asked about the accuracy of the
25 overflight on the ground, can they pinpoint the flame? Because

Closing Argument - By Mr. Matasar

1 he knows that it's not good for him if the flame is where air
2 attack says it is. He says, Naw. You know, they don't know
3 when they're pushing a button right.

4 And, you know, I was actually asking -- I think it
5 was Mr. Lampert that I asked -- I didn't ask Mr. Bates because
6 it was pretty clear from Mr. Lampert. Well, Mr. Lampert said,
7 No, we're over a fire. We push it, and it's automatic. But
8 not for Mr. Bird. And, of course, if Mr. Bird is right, if
9 Mr. Bird is right and air attack does not get the exact points,
10 then what does that say about the front of the fire for where
11 Mr. Bates said it was? If he's a mile or two off, then the
12 fire is way further down.

13 And also remember, also remember that while the
14 Government asked Mr. Holle, a real scientist, about lightning
15 strike data and he was on for -- whatever -- 20, 30 minutes,
16 talking about the confidence circles and how accurate they
17 could measure them. And I still, as I stand here, don't
18 understand the difference between the 50 percent accurate
19 within 500 meters or 99 percent accurate within that circle.
20 If you're only 50 percent accurate within 500 meters, that's
21 not very accurate at all.

22 But the one thing they didn't ask him is how likely
23 is your machine to pick up a lightning stroke? And Mr. Holle
24 said 70 percent. Which means that if it's a hundred -- if they
25 counted 115 lightning strokes on this storm, there could be 35

Closing Argument - By Mr. Matasar

1 or more additional ones that they didn't see with the machine.

2 So one more thing about Mr. Okeson, and then we'll
3 come back to this. He -- he's -- I mentioned he's the
4 footprint guy, too, besides the burn boss and the fire
5 investigator. He lets everybody know about the 14-inch
6 footprint. Okay?

7 You heard Mr. Bird say it was shown to him. It was
8 exactly 14 inches. And soon, what happens? Everybody sees
9 14-inch footprints.

10 Joe Glascock, another one of the key witnesses that
11 they had. Now, one of the case -- one of the charges that I'm
12 not going to talk to you about here today, which I did talk to
13 you about before, is tampering with a witness. That's not in
14 the case anymore. Okay? But -- and it's not -- I'm not going
15 to talk to you about the elements of tampering with a witness.

16 But what Joe Glascock did in this case was completely
17 outrageous. That he called an important defense witness, said,
18 I'm working for this big company. Maybe we can hire you to do
19 some business. But, by the way, why are you helping the
20 Hammonds? Just outrageous.

21 And one thing I want to say, by the way, you saw
22 Mr. Papagni during this. It is not him. This is not his -- he
23 didn't know. When he -- I doubt that when he asked
24 Mr. Steninger, You didn't talk to Joe Glascock, did you? And
25 Mr. Steninger said, Oh, yes, I did. I'm sure he was as

Closing Argument - By Mr. Matasar

1 surprised as any of us.

2 A few words about Mr. White. And his role as one of
3 the lead investigators in this case. He -- he is in the
4 association -- the International Association of Arson
5 Investigators. And he talked about one of their main ethical
6 principles. One of the ten ethical principles is you are a
7 truth seeker, not a case maker.

8 And yet when you saw his materials, when you saw what
9 he teaches people, when you see what's going on in this case,
10 you see something which is a bit troubling; which I suggest
11 should be troubling to you.

12 In part, it shows kind of a maybe a misunderstanding
13 of the United States Attorney's Office because if you've been
14 in any other federal trials, and what you've seen here, they
15 don't really need convincing. They're smart people that know
16 what's right and know what to do. Okay?

17 His view, however, is to convince the attorney that
18 they know -- fire investigators know what they're talking
19 about. Convince the attorney that the information they have
20 collected is sufficient to prove the case. And convince the
21 attorney that he or she can win the case. There's been way too
22 much of that going on here. Not enough of the impartial
23 investigation. Mr. White is a case maker.

24 And, finally, I'm going to talk about the footprints.
25 I'm going to try to show you the footprints in a second.

Closing Argument - By Mr. Matasar

1 So Lance Okeson tells everybody about these 14-inch
2 footprints. And make no mistake about it. This is about the
3 most important part of almost every single fire investigator's
4 report. We don't see anything else. We see a lot of
5 footprints. They all resemble each other. That's why we say
6 it's an arson fire.

7 What happened is one of the footprints, which I
8 showed in my opening and I'm going to show now, we know is
9 Dwight Hammond's footprint. Okay? It's a good one. It's 197,
10 198, 199. I'm going to show it to you in a minute.

11 Is it on?

12 MR. SCHROEDER: It's on.

13 MR. MATASAR: Okay. If I can have a pointer. Is
14 that --

15 MR. BLACKMAN: I think it's on the witness stand.

16 MR. MATASAR: Okay. So we have this footprint. I
17 used 198 because I thought it was better. I hope yours is a
18 little better than the one on the screen, but you can see it.
19 This is Dwight Hammond's footprint. I don't think there's much
20 dispute about that.

21 And what they didn't do is -- let me just show the
22 rest of it. Okay. So what I tried to do here is -- and this
23 is just a demonstrative. What I'm doing here is just pretend
24 that I have a picture, and I'm putting pins right next to it.
25 Okay? So this is what you -- what you could do here.

Closing Argument - By Mr. Matasar

1 Well, first -- okay. First, you think -- you can do
2 this in the jury room. I guess where to put the start, okay,
3 with that red line.

4 All right. I could have done it with the yellow
5 line, but I decided I would do -- I would go with the red line.
6 And then what I did was I laid these pens next to each other.
7 Okay? And then I put another red line there.

8 Again, could have done that one, but this.

9 So what you see is -- at least in this picture --
10 which you have and you can recreate -- we have -- we know the
11 pen's measured at 5 5/8 inches.

12 And while I am no math wizard, I'm a little better at
13 math than I am at geography. So I've calculated that's 5.625.
14 And guesstimated 2.2 pens, if you look at that.

15 And what size of footprint do you get when you do
16 that? About 12.3, which is way different than 14 inches. And
17 they know this. Mr. Bird, Mr. Bilbao know this, Ms. Bilbao
18 knows this. They know it.

19 And you know what else they know? They know that we
20 have this print there, which is 198, and they had another
21 print. This is one of the better ones.

22 You're going to look and look and look at all of
23 these pictures, and you're not going to find very many
24 bootprints that are any good of the person they're calling the
25 arsonist. But this is one of the better ones. And apart from

Closing Argument - By Mr. Matasar

1 the fact that it's 14 inches -- okay -- it looks nothing like a
2 footprint.

3 What -- it's rounded. You look at the other ones.
4 You've got a rounded toe. It's not the same footprint.

5 And what's more important than that is, really --
6 well, two things. One, they pretty much throw up their hands
7 and don't even try to explain it; or bring in their super-duper
8 Joe Flores human tracker to explain it. Instead -- and they
9 don't say, You know, I have no answer for it. Instead --
10 instead of Carrie Bilbao, like what she said in the previous
11 hearing, which is, I believe more likely than not a person who
12 leaves a 14-inch footprint is the person that set the fire --
13 she goes back on that and doesn't say it. She says, No, I
14 don't know what it is. I don't know.

15 And Mr. Bird, even worse. Because Mr. Bird, the day
16 before he testified, he learned that the bootprints -- well, he
17 measured four -- or he took 40 bootprints, all 14 inches. The
18 day before is when he decided that these bootprints, well, they
19 weren't 14 inches. Okay? The sworn statements had been --
20 have been changed, over the years. Strong opinions have been
21 changed. That's not guilt beyond a reasonable doubt. That's
22 not sufficient to show that Steven Hammond and Dwight Hammond
23 lit up the field where their cows were going to. That's not
24 proof beyond a reasonable doubt.

25 And I ask that you find Steven Hammond, my client,

Closing Argument - By Mr. Blackman

1 not guilty of all of the charges.

2 The verdict form is kind of confusing, when you see
3 it. But if you look at it carefully, you'll see you don't have
4 to answer the complicated questions if you find -- as we're
5 confident you will -- that the first question on each count is
6 not guilty. And that's what you should find on all of the
7 counts: Not guilty.

8 Thank you.

9 THE COURT: Thank you.

10 Mr. Blackman.

11 MR. BLACKMAN: Ladies and gentlemen, Counsel,
12 Mr. Hammond, Mr. Hammond.

13 I'm just going to talk to you. I'm not going to do a
14 dog and pony show. I'm not going to give you a re-review of
15 all of the exhibits that are going to be with you in the jury
16 room, or quote you verbatim a lot of the testimony that you've
17 heard.

18 What I'm going to do is talk about how this case was
19 developed and how the evidence was created, and whether that
20 creates a circumstance under which you could reliably judge
21 what happened almost six years ago; for the most part, since
22 most of this case is about in 2006. Whether you could reliably
23 make any decision based on the evidence that was created back
24 then and mod -- moderated over time since then.

25 At the very beginning of this case, when I was giving

Closing Argument - By Mr. Blackman

1 my opening statement, I asked you to please commit to keeping
2 your minds open until you heard all of the evidence. And that
3 a trial was like getting a bunch of jigsaw puzzle pieces and
4 not knowing what the picture was until you had all of the
5 pieces.

6 And that you don't have a chance to fairly figure out
7 what all of those pieces mean until you have all of those
8 pieces.

9 And the reason that I asked you to do that at that
10 time was that because the Government has the burden of proof,
11 they also get to go first.

12 And the concern is always that, hey, you hear the
13 first side of the story, you make up your mind before you even
14 have a chance to hear the other side of the story. So that's
15 why I asked you to keep your minds open at the beginning of the
16 case.

17 Now that we've had this case unfold the way it has, I
18 think it's important for another reason. An investigation can
19 be done in one of two ways. And I'm going to use a couple of
20 big words. I'm sure you'll understand what I'm saying.

21 There's the inductive way of doing it. That is to
22 say, you have no preconceived notions. You just impartially
23 gather as many facts as you can. And once you've gathered all
24 of those facts, you put them together to see what they might
25 mean. That's an inductive way.

Closing Argument - By Mr. Blackman

1 Then there's the deductive way. That is to say, you
2 make a conclusion at the very beginning, and then you only look
3 at things to see how you can make them fit the conclusion you
4 have already reached.

5 Inductive, you just follow the trail. Deductive, you
6 start at the end of the trail, and then you work your way back.

7 I think the evidence in this case is overwhelming
8 that the investigation was not inductive; that it was
9 deductive. That from the moment Lance Okeson saw Dwight
10 Hammond near Bridge Creek Road on the 23rd of August, the
11 conclusion was reached that he was an arsonist. And the entire
12 investigation was designed to prove that conclusion. It wasn't
13 designed to see what the evidence was.

14 And, ladies and gentlemen, when you go about an
15 investigation deductively instead of inductively, what that can
16 result in -- and what I submit to you happened in this case --
17 is that you -- as I put it in my notes here, you see evidence
18 that isn't there, you blind yourself to evidence that is there,
19 and you never test your hypothesis.

20 So I'm going to go through, very briefly, all of the
21 things that were not considered or to which the investigators
22 blinded themselves, in this case, in order to stick to the
23 preconceived conclusion that Dwight Hammond is an arsonist.

24 Mr. Hogue made reference to a bunch of them. Other
25 witnesses reluctantly acknowledged them on cross-examination.

Closing Argument - By Mr. Blackman

1 I trust you will recall a bunch of them without me having to
2 tell you about them, but I am going to tell you about some.

3 Probably the most obvious thing that was ignored,
4 blinded to by the investigators, was the fire behavior at the
5 adjacent conflagrations that were happening simultaneously with
6 the fires that are at issue in this case. The fire that was
7 called the Grandad fire at the time by everybody is our case.
8 We know how the fire behaved at Grandad because there's lots of
9 evidence about that: Where it was burning, when, how fast it
10 started growing, all of those things.

11 What we have only very little information about but
12 reliable confirmed information, as came out during the
13 cross-examination of the Government witnesses, is that
14 simultaneously with those events in Grandad, the Craters fire,
15 a few miles to the north, was taking off, growing, growing,
16 growing. The -- I always call it Fields, but I guess it's the
17 Pueblo fire, about 20 miles south; the same thing.

18 You will recall that Mr. Vogler testified that when
19 he was driving south, after leaving the Hammond ranch on the
20 morning of the 22nd, when he gets down to Fields, that thing is
21 burning on both sides of the road. The fire behavior, at
22 locations that there's not a hint of human causation, parallel
23 the events that are occurring in Grandad.

24 Did the investigators take that into account? Did
25 you hear a single suggestion that they took into account the

Closing Argument - By Mr. Blackman

1 fire behavior all around them, in other places; in assessing
2 whether or not the main fire caused by lightning up on the 21st
3 on Krumbo and down in the Lower Bridge Creek area and the way
4 fire behaves under those enormously volatile conditions. Four
5 percent humidity. That's virtually unheard of. Temperatures
6 in the upper 80s and 90s. Winds that generate dust devils,
7 that you saw in the pictures this morning; throwing embers
8 around. That's happening everywhere, and it's causing fires to
9 grow everywhere. Did they take it into account? No.

10 The Knox Springs Road fire that is -- tees into the
11 Bridge Creek Road, which Mr. Hogue talked about this morning,
12 fire on both sides of the road, virtually identical when you
13 look at these pictures in the jury room. Virtually identical
14 to the fires along Bridge Creek Road.

15 Fire on the -- because that's a -- kind of an
16 east-west road, fire to the south, fire across the road to the
17 north. What is the conclusion of the investigators about that?
18 Spotting from the main fire. At the same -- because it tees in
19 at the same place that Ignition No. 2 is taking place on Bridge
20 Creek Road.

21 Do they take into account that spotting is the cause
22 of those fires along Knox Springs Road, in -- in analyzing
23 causation for the fires along Bridge Creek Road? No. They
24 blind themselves to that.

25 The lightning data, do they take it into account?

Closing Argument - By Mr. Blackman

1 Well, we know they didn't in Krumbo, because the origin and
2 cause report that is prepared at the time excludes lightning
3 because they say the data they looked at showed there was no
4 lightning activity on Krumbo on the 21st. That's because they
5 had the wrong coordinates. They were looking at the wrong
6 place when they pulled that Vaisala data at that time. So we
7 know they were just plain wrong about that.

8 And what we also know is that there wasn't just some
9 lightning but a lot of it. And Mr. Hogue, getting out there in
10 the field and looking around, was able to find not one but two
11 lightning struck trees right in the area that would account for
12 the fire below the area that was observed by Bates in the
13 midafternoon on the 22nd, the northernmost part of that fire.

14 And as Mr. Matasar said -- and I'm not going to
15 repeat -- do the investigators factor in the lightning-struck
16 trees that -- and the burning there, and the location of the
17 original fire from air attack, in making their origin and cause
18 determination? No, they don't. They ignore it.

19 Same thing true in Lower Bridge. Because the first
20 place, as Mr. Hogue told you this morning, that the records
21 reflect a fire was observed in Lower Bridge Creek -- and this
22 is before the call from Jody Starbuck -- was north, not south
23 of Bridge Creek. The very first fire observed by air attack
24 was north. It was, I think, 20 acres, at that point, that was
25 seen.

Closing Argument - By Mr. Blackman

1 And of course we also know that George Orr, when he's
2 driving south about 11:45 that night on the 21st and is going
3 past Frenchglen, sees a large fire burning in that area. Did
4 you hear any of the fire cause investigators testify that they
5 took into account Mr. Orr's observations that the fire was
6 large and burning at quarter to 12:00?

7 Now, if you're ever going to have humidity that might
8 be affecting the spread of a fire, that's when it's going to
9 be; at night, when it's -- it's cool as it's going to get and
10 as damp as it's going to be. And what's that fire, doing then?
11 It's burning large. It's another fact to which they blind
12 themselves.

13 We also know that there was crested wheatgrass that
14 burned 2500 acres. We know that from the observation of
15 Mr. Glascock on the morning of the 22nd.

16 And we also know from Mr. Hogue that that crested
17 wheatgrass is a tough customer when it comes to burning. And
18 for it to burn, it takes very, very dry, hot conditions. That
19 it can hold fire, especially in an inversion, which is -- you
20 know, even Mr. Martin acknowledged that, Hey, you know, I
21 looked at the weather from up at Moon Hill. I didn't look at
22 the weather down at P (phonetic) Hill.

23 He acknowledged that Moon Hill is several -- I don't
24 know if he knew exactly, but several thousand feet higher
25 elevation than P Hill, which is right where the fire's actually

Closing Argument - By Mr. Blackman

1 burning.

2 And he said, Well, there was no evidence of an
3 inversion in the morning of the 22nd up at Moon Hill. But
4 guess what? He also said there was reason to believe that
5 there would be an inversion at the lower elevation at P Hill,
6 which is where our fire's been burning. And, of course,
7 Mr. Vogler saw that inversion when he drove past there, 8:30,
8 nine o'clock in the morning on the 22nd.

9 Do any of the origin and cause experts called by the
10 Government take the inversion and the effect of an inversion
11 when it burns off into account?

12 Well, actually, we'll talk about it.

13 Did the Government present you with a single origin
14 and cause expert about the Lower Bridge Creek fire? They did
15 not. Mr. White talked about the ignitions along Bridge Creek
16 Road. Ms. Bilbao talked about 8 and 9. Mr. Bird talked about
17 Krumbo and trail fires. They didn't tell you -- or call a
18 single one of their many, many, experts to tell you anything
19 about what happened, what the cause or origin of the Lower
20 Bridge Creek fire was. And that's because it was a natural
21 occurrence, as Mr. Hogue has told you.

22 So they have blinded themselves, again, to the actual
23 circumstances on the ground on the morning of the 22nd.

24 They blinded themselves to Jeff Stampfly's
25 observations and conclusions.

Closing Argument - By Mr. Blackman

1 Mr. Papagni, in his closing, suggested that Mr. Hogue
2 was the one who attributed 2 and 3 to spotting. Do you recall
3 that? I think that's what he said. It wasn't Mr. Hogue. It
4 was Mr. Stampfly.

5 Now, I believe you will recall that when I asked
6 Mr. White, Well, isn't it true that in the section of the
7 origin and cause report for Nos. 2 and 3, that the backburn
8 activity of the night before could not be excluded because Jeff
9 Stampfly -- the fire behavior analyst -- said that given the
10 location of the backburn and the conditions and the fuels, 2
11 and 3 could be accounted for by spotting -- not from the main
12 fire -- but spotting from the backburn that was conducted
13 directly across that road the night before? And he
14 acknowledged that that was what Mr. Stampfly had found and
15 concluded.

16 They blinded themselves to their own expert analysts.
17 Because why? It didn't fit their conclusion. The conclusion
18 they had reached before they ever set foot on the scene of one
19 of those fires.

20 Now, we're not the ones walking away from our own
21 expert. It's the Government.

22 They really also blinded themselves to the
23 irresponsible conduct of Mr. Okeson and Mr. Glascock on the
24 night of the 22nd.

25 It's not fun to criticize people who -- you know, I'm

Closing Argument - By Mr. Blackman

1 not suggesting that they were acting in bad faith, but they
2 were acting recklessly.

3 When they're at Antelope Reservoir, five o'clock in
4 the afternoon, six o'clock -- whenever it is -- nobody keeps
5 track of time, even though time is so crucial. If you're
6 trying to figure out causation, origin, cause, order, you need
7 to know what's going on when.

8 So whatever time it is, the testimony is that the
9 main fire and the fancy recreations of the location of the main
10 fire and the projections by people like Mr. Martin, the fire
11 behavioral guy who did testify, all of those things show a main
12 fire that is three or four miles west of Bridge Creek Road.

13 If you believe them, that, you know, unlike Craters,
14 unlike Pueblo -- Pueblo, Grandad's really not going anywhere on
15 the afternoon of the 22nd, then why would you be lighting fire
16 three miles ahead of the main fire? Why would you do that?
17 That fire is not going to burn three miles in the middle of the
18 night, if the conditions are as they're described. And you
19 certainly wouldn't do it if you had no support, because setting
20 a fire -- I don't care how conscientious you are, or how
21 skilled you are, or how much you know about everything. If
22 you're one guy with a drip torch and all you've got is another
23 guy with a drip torch, and you don't have any water supply, and
24 you don't any backup, and you don't any other suppression tools
25 except a shovel, you don't start lighting up the countryside.

Closing Argument - By Mr. Blackman

1 Because guess what? Fire is dangerous. And fire is
2 uncontrollable. And the wind can kick up, as it did. And it
3 can blow, as it did. But what do they do?

4 They start lighting, and they light from just north
5 of what is called the Ignition 1, all the way down to what is
6 called Ignition 5. And what do we know? We know that the very
7 first fire they start gets away from them.

8 Now, when the Hammonds, in '01, had a fire get away
9 from them, it was called a trespass. When the guys on the 22nd
10 start a fire and it gets away from them, what is it? It's a
11 slopover. You know, words can have very grave significance.
12 And just because someone chooses a word like "trespass," on one
13 occasion and "slopover" on another occasion, doesn't mean
14 they're any different. It just means this is my mindset. I
15 can excuse myself for doing it. It's just a mistake. I can't
16 excuse you for doing it because you didn't have permission.

17 Well, guess what? They're the same. And we know
18 that the very first fire they set that night got away from
19 them.

20 Now, what would a prudent person do if the very first
21 fire they set got away from them? I submit to you, they would
22 stop. But did they? No. They burned for hours.

23 And what do we know? We know that across the road
24 from that burn, two, three, four, and five occur. And we know
25 that three, which are the one that burned in the Otleys', was

Closing Argument - By Mr. Blackman

1 across the road from where even Mr. Rott testified. Well, when
2 we went by in the morning, it was smoldering.

3 Now, guess what? He went by about nine o'clock. And
4 what do we know? We know that these red flag conditions that
5 have been predicted for one o'clock, and which Mr. Toney put
6 the word out for at 8:40 that morning, we know that they
7 actually set it at nine o'clock. And what do we know about
8 that?

9 We know that after Rott and Megargee have passed that
10 location and they're heading down to put out -- guess what?
11 Another test fire set by Okeson and Glascock that got away,
12 needed to be put out. After they passed the spot of 3, there's
13 the -- a fire that starts on the east side of the road.

14 To suggest that the Hammonds set that is not only
15 inconsistent with the actual experience of what that backfire
16 operation was doing, but it's inconsistent with the
17 Government's theory that, hey, they're lighting up the country
18 to improve the rangeland.

19 Because what do we know about the location of No. 3?
20 It's not adjacent to Hammond rangeland. It's not adjacent to
21 land the Hammonds used through a perfectly good agreement.
22 It's adjacent to the Otleys', to Diamond ranches.

23 Any range improvement that's going to result from a
24 fire from the location of No. 3, to the east, is going to
25 benefit the Otley range.

Closing Argument - By Mr. Blackman

1 No motive, none, for the Hammonds to do that.

2 Does the Government investigation take that into
3 account at all? No. They blind themselves to it.

4 Then there's the infrared mapping that was done by
5 the Government on the 26th of August. I'm not going to belabor
6 the point, but they locate the perimeter of all of the fires
7 that have burned up to that point.

8 What's not included? The location of the trail
9 fires. It is not there. It's outside the perimeter. Do the
10 origin and cause investigators consider this fancy-pants
11 technology? Where is the fire as of the 26th, in deciding when
12 the trail fires occurred, let alone how they occurred? No.
13 What do we know? More likely than not, those fires hadn't
14 ignited yet. And what's interesting in the photograph that
15 Mr. Hogue relied on in part for his opinion is a photograph
16 that shows that No. 5 is still burning on the 26th, during that
17 same flyover. They see it burning actively.

18 Now, what do we know that means? That that fire had
19 survived and burned not only from the 23rd but the -- and --
20 and maybe it had gone down. But it had reactivated or it
21 continued to burn through to the 26th.

22 Do we hear anything playing a role in the
23 Government's origin and cause determinations in this case about
24 that? No.

25 No. 5. Directly across the road from where Joe

Closing Argument - By Mr. Blackman

1 Glascock -- on his own, no support -- on the morning of the
2 23rd, burns around this cabin with a drip torch; on an
3 elevation that crossed the same altitude, basically, as No. 5.

4 The only fires observed by Joe Bates around 9:30 in
5 the morning of the 23rd -- the only fires on Bridge Creek Road
6 he sees are the location of that burn by Mr. Glascock around
7 the cabin -- you'll see it in the exhibits -- and the spots,
8 three in a row, across Bridge Creek Road, from where he did
9 that burning.

10 Now, do the Government investigators take that into
11 account? No, they blind themselves to it. Those are just some
12 of the examples of the evidence that was ignored by the
13 investigation, when it didn't fit their conclusion.

14 Then we have evidence that wasn't there, that they
15 created. I'm not saying they did it on purpose, but they did.
16 The most important piece of which was the location of Ignition
17 8.

18 Ignition 8 is the one that Mr. Okeson talks about as
19 being fresh when he sees Dwight Hammond about to cross Bridge
20 Creek Road on the morning of the 23rd. And in his telling on
21 the stand, and in all of the fancy exhibits that were created
22 for this trial, and in all of the videos that -- that you were
23 shown, the movie of the trial -- as Mr. Matasar would call
24 it -- they put that ignition right behind where Dwight Hammond
25 crosses the road.

Closing Argument - By Mr. Blackman

1 And Mr. Okeson is telling you: White smoke, fresh
2 ignition. And he told you at trial that it was just right
3 behind Mr. Hammond.

4 Well, what we know is that when he talked and wrote a
5 sworn statement in August of 2006 about the distance between
6 Dwight Hammond and Ignition 8, when he first saw him, he
7 described the distance as 200 to 250 yards. That's an eighth
8 of a mile. That's how distant he said Mr. Hammond was from
9 that ignition when he first saw him. He's changed his story
10 now, but that's what he said at the time.

11 More importantly, in preparing for this trial, when
12 they're putting together all of this stuff, they place the
13 location of both 8 and 9, 950 feet south of the actual
14 locations plotted by Carrie Bilbao in order to put it in line
15 with Dwight Hammond is crossing the road.

16 Well, what do we know? We know, apparently --
17 because Ms. Bilbao is conceding it -- that whoever created
18 these maps got it wrong. That her plotting points were right.

19 And what Mr. Hogue has shown you on Exhibit 65, is
20 that that means that Dwight Hammond was 950 feet south of
21 Ignition 8, and 200 to 250 yards away, according to the
22 original statement by Okeson, when what happens? A new
23 ignition starts, because it's white smoke.

24 Now, ladies and gentlemen, Mr. Hammond was younger
25 then than he is today, but he wasn't a kid. And you heard

1 testimony from others about his manners of walking. 950 feet,
2 300 yards. 200 to 250 yards, by Mr. Okeson. That's an eighth
3 of a mile.

4 I think it is fair to say that it's going to take at
5 least five minutes, especially in that country, to walk an
6 eighth of a mile; 200, 250, 300 yards. Assuming that the
7 Government is going to suggest, Well, yeah, he came south, and
8 then crossed the road. Which they've never said, of course.

9 So a fresh ignition is not going to be occurring by
10 something caused by Mr. Hammond when it's five or more minutes
11 after he's passed the general vicinity of that area. Just
12 isn't going to happen. Same is true with 9. It's just no way
13 it's going to happen. That he's going to cross the road, down
14 here, and then go up a thousand feet north. Right? He's -- in
15 fact the testimony from both Okeson and Glascock is that he
16 just went -- kept going west.

17 So where he crosses the road is a thousand -- I'm
18 sorry. 950 feet south of where Ignition 9 is. He's not there.

19 That is the kind of evidence that is now being seen
20 that wasn't there.

21 The same thing is true of all of these footprints.
22 Mr. Matasar's covered it. I'm not going to go over it again.
23 But we do know that the best, most reliable print we have, that
24 can be attributed to Dwight -- to Dwight Hammond, doesn't match
25 any of the footprints that are found at any of these locations.

Closing Argument - By Mr. Blackman

1 There's a lot more that I want to say, but I don't
2 want to keep talking. So, instead, I'm just going to talk a
3 little bit about, number one, the things that certain witnesses
4 told you that simply don't conform to the facts. And then I'm
5 going to talk a little bit about -- testing your hypothesis.

6 So let's talk about some of the things that
7 Mr. Glascock told you that I believe you will find just cannot
8 be correct.

9 The first and probably the most obvious is the timing
10 of events in the morning of the 22nd, down at Lower Bridge
11 Creek, when he's checking things out.

12 And his story and all of these elaborate exhibits say
13 he's there at 8:30 and he sees the Hammonds' truck. And the --
14 he sees the kids and the horses, and all of that stuff.

15 Well, what do we know? We know two things that are
16 truly crucial. One, he didn't get to work that day in Burns
17 until probably 7:30. Okay? And that after talking briefly, he
18 was told to go down and check this fire. So we know that he
19 wasn't there because you can't get there that fast. You just
20 can't. He wasn't there as early as he claimed to be.

21 But more important, we have the phone call he made to
22 Steve Hammond after he checked that 2500-acre crested
23 wheatgrass fire and after he saw cattle in the fire. And he
24 calls and he says, Steve, I'm down here. I've checked it out.
25 The fire's pretty calm, although it could kick up again if the

Closing Argument - By Mr. Blackman

1 wind kicks up. You've got a couple of cattle down here. I
2 don't think they're in really any trouble.

3 Now, folks, would he make that call if he knew the
4 Hammonds were down there moving their cattle? He wouldn't.
5 It's -- it's nonsensical. He wouldn't bother calling because
6 he knows the Hammonds know that the cattle are there and that
7 the fire is burning because he sees them down there moving the
8 cattle. So what do we know? He made that call after he did
9 his re-call and before he saw the Hammonds. Which means, he
10 did not see them at 8:30 or 9:00 or 9:30 or 10:00 or 10:30. It
11 was much later.

12 Now, why is he trying to dial it back? He's trying
13 to dial it back because it doesn't fit their theory that the
14 Hammonds don't get down there until late in the morning.
15 Because, according to them, these new smokes are starting. And
16 that would be consistent with the inversion burning off.

17 So they have to make it earlier and they -- he comes
18 up with a story that I could not follow, about why he would
19 have made that call and said the things he said even if the
20 Hammonds were already down there moving their cattle.

21 The same thing is true about the red flag conditions.

22 Now, Mr. Papagni correctly pointed out that un --
23 although we had the notice for the 22nd, we didn't know that at
24 6:43, I guess, in the evening, it had been rescinded. But we
25 do know that those red flag conditions were in effect all

Closing Argument - By Mr. Blackman

1 during the -- from 11 o'clock until 6:43, in the area. Hot,
2 dry, windy. And Mr. Glascock didn't know that. Mr. Okeson
3 didn't know that.

4 And then we have the second call by Mr. Glascock,
5 which -- in which he makes specific reference to the fact
6 they're going to do some backburning along that road we just
7 graded for you recently.

8 Ladies and gentlemen, that's the backburn he's
9 talking about because they did it on the night of the 22nd.

10 Now, he tried to explain it to you that, Oh, no, that
11 was the next day, when we were going to try to do some burning
12 down here on the Loop Road, where after we did the blading on
13 Bridge Creek Road, we cleaned up a little bit of the Loop Road.
14 Come on, folks. I'm sorry. Is that credible? It just isn't.

15 He is talking about the exact Bridge Creek Road that
16 he was telling Mr. Okeson about, well, that was just freshly
17 bladed. He's calling Steve Hammond to say, We're going to be
18 burning along Bridge Creek Road on the 22nd. And guess what?
19 We know from Mr. Steninger -- I was going to bring out the map,
20 but I'm talking too long. You will have it in your jury room.

21 We know that the Hammonds are moving their cattle out
22 of the Mud Creek allotment, where it was burning, moving them
23 to the Bridge Creek No. 3, which is where they were due. And
24 you'll see the grazing schedule, and I hope you look at it.
25 See that's where they were due to go. That's right there on

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1 Bridge Creek Road.

2 And then we know that on the 23rd, having learned
3 that the burning is being done right where they are moving
4 their cattle, they come back to get them out of that pasture
5 and into the north pasture, so that they'll be safe. And
6 that's what they're doing there on the 23rd.

7 And what do we know? We know that there are many
8 gates -- five according to Jacon, who's worked there many
9 years, that separate the pasture No. 3 from the north. And
10 what do we know -- because it became clear to Mr. Schroeder's
11 cross-examination of Mr. Glascock, it became clear that those
12 gates were important.

13 And then what do we know Mr. Glascock does in this
14 trial? He has accounted for every minute of his activity on
15 the 23rd. What time he got up in the morning, how long it took
16 him to do the backburn around the cabin, going back to meet Mr.
17 Okeson, going back down to do the test fire. All of that
18 stuff. I'm going to look for Mr. Hammond, and then heading
19 straight back north. That's his story on direct. He's
20 accounted for his -- all of his time.

21 Then when it becomes apparent from the
22 cross-examination from Mr. Schroeder that, hey, it's important
23 that there are gates here to get the cattle through, what does
24 he say on redirect?

25 I checked those gates. They were closed. He said, I

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1 checked two gates. They were closed.

2 Folks, you know what? He didn't have any time to do
3 that. He had already accounted for all of this time. He
4 couldn't have checked those gates.

5 What he wanted you to believe is that he had done
6 something consistent with their theory that he couldn't have
7 done. And why? Because it didn't fit the conclusion that
8 started this investigation.

9 The fact of the matter is that on top of all of this,
10 there was never any testing by the Government of their theory.

11 Their theory is that Dwight Hammond's walking along
12 here, knowing there are B.L.M. people right around them,
13 successfully starting fires with a -- apparently a lighter.
14 Where, in the same country, in the same fuel sources, Mr.
15 Okeson said they had trouble starting fires with drip torches
16 the night before. And he's somehow walking along, apparently
17 bending down, using a lighter to start grass on fire.

18 To test that theory, the least you would do is say,
19 Hey, could someone standing where one of these bootprints is,
20 could that person reach this point of ignition that we've
21 identified using our flags -- our red flags, our blue flags,
22 our yellow flags, our green flags? Could you do it? Is it
23 humanly possible?

24 Well, we know the answer is no. We know that the
25 closest footprint they found to any ignition point is 2.6 feet,

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1 31 inches. And you can't do it. Do they take that into
2 account? They don't.

3 If you look at this case inductively, the way
4 Mr. Hogue tried to do the best he could -- here's the effect.
5 Get on the ground, see what is happening with the lightning,
6 with all of the fuels. If you don't blind yourself by
7 concluding your -- or reaching your conclusion before you start
8 your investigation, if you do it inductively, you conclude
9 that -- you know what? There's an expression I won't use in
10 this courtroom. Some stuff happens. And with fire, it's not
11 predictable.

12 This was a conflagration. It was a natural
13 conflagration. It was not caused by Dwight Hammond or Steven
14 Hammond.

15 Folks, they're not guilty. They've gone through a
16 lot. They're entitled to your fair and honest judgment based
17 on the facts and evidence.

18 I urge you, please, do not start with the conclusion
19 and try to justify it. Start with the evidence, and see where
20 it leads you.

21 And when you look at the evidence and see where it
22 leads you, I'm confident that you will conclude that it doesn't
23 lead you to a conclusion of guilt.

24 Thank you.

25 THE COURT: Thank you, Mr. Papagni.

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1 MR. PAPAGNI: Members of the jury, it's been a long
2 afternoon.

3 Mr. Blackman and Mr. Matasar are very fine lawyers.
4 They did not take me up on my invitation to answer the
5 questions I gave you about an hour ago. They didn't answer the
6 questions I asked -- asked of you folks.

7 Instead, they focused on the investigators, they
8 focused on Mr. Glascock, and they focused on Mr. Okeson. And,
9 quite frankly, they made predictions. Steven Hammond told Joe
10 Glascock at the Frenchglen Hotel, we're going to blame you.

11 Mr. Blackman, in his opening statement, said, I
12 covered it up here just because it's a little embarrassing to
13 Mr. Vogler with my notation there. But what that ticket is
14 going to show you is that he was doing 90. So what we believe
15 that's going to tell you is he left the ranch after eight
16 o'clock on the morning. Probably closer to 8:30. He'll do his
17 best. You know, it wasn't a big deal at the time. But
18 Mr. Blackman said, a week and a half ago, But we believe it's
19 going to show that he was at the ranch until well after eight
20 o'clock. Dwight Hammond was there, being a good host. That's
21 what Mr. Blackman said.

22 During this trial, whether it be a weather report or
23 whether it be a writing on a report that had been changed and
24 initialed, I've brought to your attention every time the
25 defense has offered a document that they want to use to prove

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1 this investigation was wrong, that they were inaccurate.

2 The weather report yesterday was just the latest
3 example.

4 Well, let's go to the testimony of Mr. Vogler by
5 Mr. Blackman. Do you have any re -- recollection of the time
6 that you left the place that day? Answer: It would have
7 been -- it would have had to have been 7:30 or eight o'clock.

8 Mr. Vogler gets questioned again by me.

9 Only question I have, sir, is you left Hammond
10 residence, it's your testimony, on August 22nd, between 7:30
11 a.m. and 8:00 a.m. Right?

12 And Mr. Vogler, being his interesting self, says, I'd
13 figure that was about it.

14 Mr. Papagni: That's all my questions.

15 If Mr. Blackman is going to go ahead and criticize
16 Mr. Glascock about the times, he ought to, you know, hold it to
17 himself, too. He didn't mention to you in his closing argument
18 what Mr. Vogler testified to, did he?

19 But, boy, he wanted to talk about Mr. Glascock about
20 his times on the 22nd of August.

21 Now, let's be fair. Mr. Blackman's right about one
22 thing, and it's very important that you consider that. The
23 Lower Bridge Creek fire does not have a fire cause
24 investigation done. And you heard about the resources, and you
25 don't have that.

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1 On Bridge Creek, you've got -- what? Two, three --
2 three fire cause investigators. And when you attack these
3 investigators like Mr. Blackman is doing, and he should, the
4 question was, Ignition No. 1. We would anticipate that one of
5 the questions you might want to ask yourself is if these
6 investigators were doing the type of in -- inductive [sic]
7 investigation that Mr. Blackman's accusing them of, then why
8 was there a difference of opinion on No. 1?

9 Mr. White should say, No. 1, that's arson, too.
10 We've already decided Dwight's guilty. Let's just go ahead,
11 one, two, three, four. We're done. Let's go home. But what
12 did Mr. White tell you he did on Ignition No. 1? He looked at
13 what the fire cause guy did, and he said, That's not right. I
14 don't agree.

15 Now, in the jury room, you're going to have to decide
16 each ignition. You have to check the box. And you have to
17 find beyond a reasonable doubt, did Dwight Hammond, Steve
18 Hammond, together, do this ignition? Did they do this
19 ignition? And we've got all of the ignitions that are listed
20 on the verdict form. And I'm not going to go through them now.
21 It's going to take too long. You get to do it in a few
22 minutes.

23 But it wasn't just Mr. Blackman. Mr. Matasar stood
24 up here. And he said, You know, Joe Glascock calling
25 Mr. Steninger, that's reprehensible. That's really bad.

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1 The question is, Why did Mr. Steninger call the range
2 con to find it out? Why did Mr. Hogue, there, call these other
3 fire cause investigators and say, Look, we're all professional
4 here. I would like to know when -- what is your consideration?
5 Because I'm not coming up with, you know, the same opinion. I
6 would like to talk to the people on the ground.

7 And Mr. Blackman didn't talk much about the people on
8 the ground, did he?

9 Mr. Matasar, in his opening statement, goes ahead and
10 says, I expect that both Rusty and Dusty will testify. We will
11 call him Russell, because it's easier for us to get Rusty and
12 Dusty confused. So we'll be calling him Russell here for this
13 trial. And the other people who will be here, you can see, is
14 Scott Gustafson, who is an insurance agent from Canby. We
15 expect he'll testify. His son Tim, you can't see very well in
16 this photo. He was too young at the time. But he was close to
17 Dusty and Steve Hammond. And so that's the photograph.

18 And Mr. Matasar says, I suppose it goes without
19 saying, Rusty Hammond was wearing a white cowboy hat. Mr.
20 Matasar said that. He told you, I suppose it goes without
21 saying, Rusty Hammond was wearing a white cowboy hat. And
22 Steven Hammond, at least in this picture, was not. Rusty was.

23 Then he talks about the hunt. And he says, The kids,
24 I think we think -- we think it was Tim Gustafson who shot from
25 too far away the deer. They're too young. They shouldn't have

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1 taken the shot.

2 Mr. Matasar goes on to say, for example, Rusty
3 Hammond, Jacon Taylor, the Gustafsons, Scott Gustafson, they're
4 going to tell you about what really happened in 2001, in that
5 hunting party. It could not be different from the way it has
6 been portrayed by Mr. Papagni. Dusty Hammond couldn't be more
7 wrong.

8 Dustin Nelson -- Dennis Nelson testifies. And he
9 says the person he saw in the white hat, at the shooting of the
10 bucks, he was an adult. Well, he seemed a taller, thinner type
11 of guy than the one in the photograph.

12 And last thing about Dusty is that the details,
13 ladies and gentlemen of the jury, will help you come to the
14 truth. The truth will help you decide the case. That's what a
15 trial is about.

16 Dwight Hammond and Steven both went up in the Super
17 Cub again, and said they were going to fly over and see what
18 the fire did, and see if they got rid of the juniper trees and
19 something else. And that's what Dusty told you happened.

20 Now, we've had Gordon Choate attacked a little bit
21 here by Mr. Matasar. But what did Mr. Choate tell you he saw,
22 as he was in this smoky area, that he was going to sleep about
23 75 yards from his camp site? What did he say he saw fly over
24 him? He was a former pilot. What did he say he saw? An
25 airplane.

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1 Now, of course, Mr. Matasar here says, Well, the
2 Government got all of these people together. This is all
3 staged. This is a show. This is a play.

4 Mr. Choate made his statements in 2001. Dusty
5 Hammond made his statements in 2009. They were in different
6 states when those statements were made. Dusty in Washington;
7 Mr. Choate in Oregon. They were different years, different
8 states. They never met. This is all staged? All a play? We
9 all put together -- the Google Earth, it was disappointing. No
10 two words about it.

11 It was long, and it didn't get across the fact. But
12 who prepared those? The witnesses who were going to testify
13 from them. Not the Government.

14 You -- it's your testimony. You're the one under
15 oath when you take that witness stand. You're the one to get
16 hard questions from some very fine defense lawyers. You know,
17 they look over the top of their computer, and they look at you,
18 and they say, What about this? What time were you there? What
19 did you do? That's their job, and they do it well; because
20 they're supposed to test the veracity of witnesses.

21 MR. MATASAR: Your Honor, I'm going to object, and I
22 have a matter for the Court, before the jury. We don't have to
23 do it now. I just want to note that I have two objections.

24 THE COURT: The objection is sustained.

25 MR. MATASAR: This one, and there is another one

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1 which I want to be heard later.

2 MR. PAPAGNI: They're doing a good job, and that's
3 why they're doing it.

4 MR. MATASAR: Same objection, your Honor. He's
5 indicated his role -- well --

6 MR. PAPAGNI: I'm sorry. I'll rephrase it.

7 What I'm trying to get across is that when you test
8 the veracity of the witnesses, it's important that both parties
9 get you the truth. That's the purpose of cross-examination.
10 That's why we both did it. You saw me do it with Mr. Hogue.

11 It's not to hold anything aside of the party. It's
12 to make sure you folks have the right facts to decide the case
13 correctly.

14 And when we went through that and -- the part that
15 concerns the Government most is the statements that weren't
16 addressed.

17 And if you will, Ms. Root, please.

18 This is the conversation of Mr. Okeson and Mr. Steven
19 Hammond that says, I've been down at the fire of Krumbo Butte
20 this morning, talking to the firefighters down there. And they
21 said somebody was down there lighting underneath them last
22 night. Now, I asked Steven if it was you and Steve said, Yeah,
23 that was me. I was doing a backfire to protect my winter feed.

24 And then comes the communication: You can't be doing
25 that. You were going down below them and lighting underneath

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1 them, and you could have gotten somebody hurt. You can't be
2 doing that.

3 And then there's a discussion about the cell phone.
4 And the reiteration that it was dangerous. And then, finally,
5 the ending: Don't be lighting around these folks, you have to
6 communicate.

7 Stop there, Ms. Root. You can just take that off.

8 The purpose of me bringing that to your attention is
9 the communication issue that we saw in the previous letter that
10 Mr. Hammond sent to B.L.M.

11 THE COURT: Five minutes, Mr. Papagni.

12 MR. PAPAGNI: Pardon me?

13 Yes, your Honor.

14 And those -- that communication is what is the
15 essence of the Government's case here. That is what we were
16 addressing and asking the defense to deal with.

17 Why didn't they say, We're burning? Why didn't they
18 tell the people what was going on? Why wasn't the
19 communication that we would expect to have in this type of a
20 case from the defense?

21 When you go back there to decide the decision, you
22 have to go ahead and look at all of the evidence. And it is
23 fair to consider what his -- the witnesses -- questions and the
24 answers to the defense questions, just as the Government. But
25 at the very end of the day, whether it's Mr. Hogue's

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1 calculations of the ignition point or Ms. Bilbao saying that's
2 where it was, or the map, is there any reason to doubt that
3 Lance Okeson didn't catch Dwight Hammond and confront him? And
4 Dwight Hammond never, ever denied it? And that Steven Hammond
5 did not tell the B.L.M. employees on that road that day that
6 there was a fire around them? That's what we ask you to
7 consider.

8 Thank you, your Honor. Thank you, Mr. Blackman and
9 Mr. Matasar.

10 (Conclusion of excerpt.)

11

12 --oOo--

13

14 I certify, by signing below, that the foregoing is a correct
15 transcript of the oral proceedings had in the above-entitled
16 matter this 26th day of November, 2012. A transcript without
17 an original signature or conformed signature is not certified.
18 I further certify that the transcript fees and format comply
19 with those prescribed by the Court and the Judicial Conference
20 of the United States.

21

/S/ Amanda M. LeGore

22

23

AMANDA M. LeGORE, RDR, CRR, FCRR, CE

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