

Notes from Briana Waters Trial Day 2

U.S. District Court of Western Washington (Tacoma)

Judge Burgess presiding

(scribe's note: All remarks are paraphrased, not verbatim as spoken. Because of the sheer volume of information and the desire to make it public as soon as possible, punctuation and grammar protocol may be ignored outright.)

Some abbreviations will be used throughout this text. The scribe does not guarantee correct spellings or transcriptions of names and other proper nouns.

DEF: Defense

The defendant, Briana waters is represented by attorneys Neal Fox and Robert Bloom

US: Prosecution

The plaintiff in this case is the United States government, represented by federal prosecutors Andrew Friedman and Mark Barlett. Mr. Bartlett, in my observation, did not present remarks, evidence or make motions, so US in this text refers to words and actions of Mr. Friedman. Sitting with the prosecuting attorneys was also FBI agent Ted Halla.

The proceedings began before the jury was brought in.

US: Yesterday we heard for the first time that Mr. Fox anticipates going into the area that the FBI might have changed or tailored witness testimony if the agents were concerned about the OPR Office of Professional Responsibility or a civil lawsuit.

The defense needs to be aware that if this issue is raised, it is the government's strong position that this would open up the door to airing in court what agents knew - especially Agent Halla - which overwhelmingly leads to guilt, but may not be admissible. For instance, Chelsea Gerlach says that she and the defendant cooperated on writing a communiqué, and that Briana obtained a car for one of the Oregon actions. Halla would have to bring this information to light in an open statement.

DEF: the issue will not be raised.

Judge: this is premature, as the defense has not raised the issue.

Judge is ready to bring in the jury and proceed but Bloom is absent due to having to run out for papers he forgot. Both Fox and Friedman request waiting until he returns to begin opening statements.

US: this is going to be a long trial, and if it goes to appeal, we don't want Bloom's absence at opening statements to be an issue on appeal. Request 10 minutes.

The judge wants to proceed. Fox mentions the 6th amendment in defense of waiting or counsel to be present for the opposition's opening statement.

Recess.

US: has an issue with an exhibit that Bloom intends or may intend to bring up - a motion to prevent admission of notes taken by agents, reports by agents in interviews. If Bloom intends to do that, US will object and ask that he be instructed not to.

Judge: defense and client are to be present at 8:30 am to take up any issues that need to be addressed before the jury comes in – if you are not here the court will proceed without you!

Jury is brought in.

Judge: instructs the jury to hear all the evidence, that evidence may be circumstantial or direct and they are to give it the same weight. They are to make decision based only on evidence and not the proceedings that are not evidence, such as motions made by counsel and how the court rules.

PROSECUTION OPENING STATEMENT:

US: From 1997 to 2001 a group of extremists blazed a trail of destruction through WA and OR, the Earth Liberation Front and Animal Liberation Front claimed to protect environmental and animal rights. They selected facilities they thought hurt the environment and animals and burned them. They didn't worry about danger to firefighters or people who may have been inside, paid no attention to how their actions impacted people who worked in the buildings or the community, or that the fires were themselves bad for the environment.

1997 Fire at Cavel West – picture displayed on monitor for jurors and judge – Months later a wild horse corral – picture, 1998 in Olympia WA the USDA Nat'l Wildlife and Animal Damage Control bldgs (more pics), Childer's Meat Packing plant (pic), Boise Cascade (pic). In 2001 Superior lumber (pic), then in spring 2001, the biggest yet, two arsons on the same night in OR and WA, hundreds of miles apart but coordinated. This was to show that the movement was strong, gaining ground – they called it the “double whammy”.

There were two teams of five people each. The UW team was headed by William Rodgers, the leader of the group, also called Avalon. The UW group was

Rodgers, Briana Waters (defendant), her boyfriend at the time Justin Solondz, Jennifer Kolar, and Lacey Phillabaum.

They plotted for weeks and built complicated firebombs at a house the defendant rented. She had her cousin rent a car to use in the action. They drove it to Seattle, had dinner, drove to the Urban Horticulture bldg, near a residential area, parked on a hill in the residential neighborhood block away from the bldg. Waters stayed in the bushes with a radio while the others broke into an office. A police officer came through the area and Waters radioed the others, but the officer left without noticing anything. The team set firebombs, Waters picked them up, and they left.

At 3:15 am a fire broke out at the bldg – a huge fire. You will hear from two of the firefighters who responded that it was a three alarm fire, the biggest that year with flames that reached 75 feet. It took hours to put out the fire and the building was totally destroyed.

They were wrong in every way. The target, Toby Bradshaw, was attacked because they believed he was genetically engineering poplar trees. You will hear from him that he was cross-breeding trees as farmers have done for thousands of years. The fire also destroyed offices and labs of all the other researchers, such as Sarah _____, who was researching the risk of foreign plants invading and how to protect native plants. Populations of endangered native plants were destroyed as well as rare botany books. If there was one building in Seattle that helped the environment it was probably the Center for Urban Horticulture.

Friedman introduces himself, Bartlett and Howla

US: the prosecution will prove that the defendant was one of the five on the UW arson team.

We will prove it through the testimony of Lacey Phillabaum and Jennifer Kolar. They will tell you that they were one of the five and each will tell you that the defendant was with them.

We will prove through other evidence documentary and physical evidence documentary and physical that links her to people involved and to the crime.

We will show you the rental record of the car her cousins rented; you will hear testimony from her cousins that she told them something untrue, took the car until after daylight the next day –

We will begin with background on the ELF and ALF, groups that claim they are trying to protect the environment and animals. But they are not like the Sierra Club or the Audubon Society; they don't lobby or engage in the political process or in demonstrations. They claim those actions are ineffective, and that they must cause damage to those with whom they disagree to be effective.

They are not traditional organizations, no membership roll – they organize in cells of between five to two dozen people. Members of cells know each other but not members of other cells – a classic organizational structure for terrorist or guerilla organizations. They have no central hierarchy, with one exception. Because their goal is to further an ideology, each has a press officer - you will hear from a press officer Craig Rosebraugh – when they commit actions they write a communique to prove it was the ELF and explain why they did it – criticism of the target and a threat to do it again if they don't change their ways. The communique is delivered anonymously to the press officer and posted on the web, spread around.

The fires in Washington and Oregon are all the crimes of one cell – a prolific cell – headed by Avalon and with approximately twenty members including the defendant.

You will hear a lot about Avalon, who was not formally the head but set the direction – he wrote a variety of manuals and books on arson including one called “Setting Fires with Electrical Timers” that was posted on the ELF website so others could do what they did.

The way in which they did the arsons made it difficult to catch them – they went to tremendous lengths to conceal their identities and to prevent capture. Initially they conducted a search to select targets – for example facilities isolated in rural areas – that made it possible to prevent capture. They performed reconnaissance – scouted to plan the action. They built complicated firebombs and you will hear about the evolution of these devices, but they all followed a model that included a mechanical or digital timer, which runs until the time set, completes a circuit to a battery, current flows to a lightbulb filament or a model rocket igniter set next to matchbooks, which ignite the next step, a sponge soaked in gasoline or a roadflare, placed next to a gallon jug or open buckets of gasoline/diesel mix. They used multiple devices, each with as much as ten gallons, built in “clean rooms” designed to prevent leaving physical evidence.

Then, wearing dark clothes, they often held a dry run a week before to the night before the action, to go through what would happen. Each member of the team had a specific goal, for example, a lookout with a radio and police scanners - another role might be to help carry the devices, or to set the devices.

On the night of the action, they would go to the site usually early in the morning, 2-3 am. They would set firebombs and leave, the timer would go off, then the fire started, and because they were so successful, they typically destroyed the targets. The fire destroyed any forensic evidence. It took law enforcement years to solve – for years they made no progress.

In 2004, agents working on the case got a break. They developed enough evidence to convince a member of the cell to cooperate and provide information – then got other members to cooperate – it came apart like a chain of dominos.

The arson at UW was a hard one to solve. They got their first break on this one in 2005, when they learned Jennifer Kolar had participated in Cavel West. They approached her and she cooperated – gave an interview with her lawyer present. Investigators didn't promise her anything – she was threatened with a long sentence, up to 35 years mandatory minimum, but she had committed other arsons so maybe longer – but they told her her situation would be better if she cooperated.

She said she had the least clear memory of the UW fire – she named Rodgers, “Capitol Hill Girl,” “Capitol Hill Girl's boyfriend,” and “Crazy Dan” in the first sessions. She never mentioned the name Briana Waters.

Three weeks later her lawyer called and told agents that Kolar recalled the name of the lookout – and named Briana Waters.

It was the first time investigators heard her name – she wasn't even on the radar screen. Investigators began to investigate her. Who was she?

Meanwhile, other interviews concluded Lacey Phillabaum was an arsonist (not identified by Kolar). Agents contacted her family and told her father they had evidence. Again no specific promise was made but she was told it would be better for her if she cooperated. On Feb. 21 (year?) she came in with her lawyer and confirmed that she participated with Rodgers, Kolar, Briana Waters, and named Justin Solondz.

You will hear from Kolar, who will serve 5-7 years, and Phillabaum, who will serve 3-5 years – they have each entered into plea bargains – and they will tell about what happened. Also corroborating evidence will be produced.

The defendant was from Pennsylvania. She came to Washington in 1997 to go to The Evergreen State College where she became involved in enviro/animal causes. In 1998 she coordinated the animal rights group at TESC, and they even hosted Craig Rosebraugh.

She became close to Rodgers (Avalon) – how do we know? His cell phone records. He used a third name, Todd Hager, to further distance himself from his true name. He couldn't get a cell phone under that name so he turned to Briana, a poor student, but she got one in her name and paid bills from her account and gave it to Rodgers. You will see evidence that the number shows up in address books as Avalon. So she helped him conceal his identity. The phone is important also because if you look at the calls they show you regular calls to where she was living - his shows how close they were, she was one of the people he called the most.

In 2000, Avalon wanted to scale things up – he organized “book club meetings” in different locations, but with mostly the same participants. They had meetings in Eugene, Arizona, California, Olympia, and Sisters, OR. The meetings started out fairly general – what was a worthwhile thing to focus on? They selected genetic engineering. Over time they went from philosophical to tactical discussions. Then they had a demo on building firebombs and practiced soldering. The meetings were a base from which to recruit people.

Briana Waters didn't attend the meetings. She didn't have to because Avalon recruited her directly – he already knew her.

They focused on genetically engineered poplar trees, therefore on three professors/entities – Steve Strauss at OR State U, Jefferson Poplar Farm in Oregon, and Toby Bradshaw at UW became targets.

In March, 2001, members attacked several plots of poplar trees – they girdled the bark – grown by Strauss. In May they planned the attack on Jefferson Poplar Farm and UW.

Kolar and Phillabaum approached them in early May, 2001 – came to Olympia and had meetings. There were two sets of meetings, one for people planning the UW arson, and one for people planning the Jefferson Poplar arson.

The first meeting was in introduction, at a Denny's – the first place Phillabaum meets Briana Waters. Then they met in a field at TESC and had a discussion about whether or not the actions would be under the ELF. Phillabaum was surprised Waters didn't back up her position on this.

They talked about how much fuel to use, how to get in the building – Kolar was working with stained glass, she know how to cut glass and had glass-cutting tools. Everyone was assigned roles.

Solondz made the firebombs. Waters came up with the rental car. Phillabaum recalls Waters said she would have an aunt rent the car. She didn't know if it was a true biological aunt or just a woman she was close to.

The following weekend, they went back to Olympia, to a building out back of the house where Briana Waters lived. Justin Solondz took them to the clean room and showed them firebombs. Phillabaum thought it was so everyone was responsible, would have to own responsibility for them.

Sunday evening, they drove up to Green Lake Bar and Grill and met with Kolar. Then to UW, to the neighborhood on the hill. They walked to the end of the street. There is a bush with a view. Waters stayed there with a radio, the others walked down in dark clothes but no hoods, trying to look like students but in dark clothes. They carried backpacks and rubbermaid tubs. They came to the building after 2 AM. At one point an officer went in to patrol, she radioed, but he left.

You will hear how Jen Kolar cut the glass but a pane crashed to the ground – they hunkered down and waited – then Avalon went in the window and the others handed in the firebombs. They set the time for after 3 AM, then came out and radioed and Briana Waters picked them up. They drove back towards Green Lake, dropped off Jen Kolar, then waited at Green Lake park – they were concerned about traffic cameras - for morning rush hour traffic.

While they were waiting they listened on a scanner to police and fire responding – Avalon was excited like a little boy about the fire, at the destruction and the fear.

That you will hear from Jennifer Kolar and Lacey Phillabaum is significant.

Arson is an unusual crime – it destroys the scene of the crime and leaves no forensic evidence.

But there is other evidence – agents continued the investigation – asked Kolar and Phillabaum if they had anything left from those days. Kolar had a blue tub with stuff in it, red lights, papers, walkie-talkies. She found a manila folder with articles in it and a note that said “hey woman, take a look – we’ll talk later [heart] B” . Kolar thought she got it from Briana. It contained articles about the ELF and ALF and even the fires that night.

Agent Howla took the folder and sent it to the FBI lab – they found Briana Waters' fingerprint.

Also, there is evidence Solondz after returning to TESC moved to a cabin in Brinnon on the Olympic peninsula. He took papers and left them there. Agents found there a bag of black hats and shower caps (that would be used in a “clean room”) and a map of Seattle, 24 panels, and folded open to the panel with the UW Center for Urban Horticulture.

Also a piece of information about the rental car. Agent Howla tried to figure out who the “aunt” was – went to every rental car company and checked the lists – found a record of Carol Larson who rented a car on Saturday morning, May 19 from Budget. It was checked in at 6:33 Tuesday morning, so probably dropped off after hours Monday night (the arson was Monday morning), and had 200 miles on it, enough to drive to Seattle and back.

Agents interviewed Carol Larson and her husband Robert Carina, who is Briana Waters' first cousin. Did they rent a car? They had not recalled when first asked – but when he provided records they did recall. Carina will testify Briana lived with him for number of months in 2000 and left boxes in his basement. The week before the car rental, she called and suggested he rent a car – she could use it to move the boxes out of the basement. He had no drivers' license so he went to his wife to do it.

On Sunday, Briana showed up – said she felt sick, had serious stomach pain, and needed to go the emergency room. Justin didn't have his car (because as you will hear, Suzanne Savoie had it in Oregon for the other action). Carina thought it was odd because she didn't look sick and they were in no great hurry to get to the ER. After they were gone he could not call anyone to ask after her because he couldn't find the handset from his phone! Briana never came back until daylight the next day – said she couldn't get into Olympia ER and they had

to drive to Seattle. Agents checked Olympia ERs and there was no record she tried to get in, or that she was turned away. And they usually don't turn people away.

There was no record because she went to commit the arson. Also, when she showed up, she reached in her sweatshirt and pulled out the handset and said she took it by mistake! So he couldn't call to see where she was or was not.

Briana Waters is charged with 5 charges (this part was confusing, not sure I got it right –scribe)

Two counts of aiding and abetting arson –two because its jurisdictional, the building received federal funding and so it is a federal crime (?)

One count of making destructive devices

One count of aiding and abetting the possession of a destructive device

One count of aiding and abetting the use of a destructive device

Jennifer Kolar's folder of articles included an article by Craig Rosebraugh – it cited the success of the ELF/ALF and said they need to do more...

(reads a passage) Targets are limited in nature and 34 million dollars in damages- is this enough? People should pick the best target, the best tactics – think big – Wall Street, the Stock Market, the Statue of Liberty, Disneyland (etc).

The evidence shows that Briana Waters did what Craig Rosebraugh advocated and what Avalon wanted by escalating from rural isolated targets to a big city – she was thinking big.

END OF PROSECUTION OPENING STATEMENT.

Morning recess

DEFENSE OPENING STATEMENT

DEF Robert Bloom: First, I want to thank the jury for taking the time – this is an experience you will cherish for the rest of your life, a powerful experience, and one of the most important things a citizen can do. Please reserve judgment until you've heard it all.

Not only has Briana Waters pleaded not guilty, she is not guilty. (Defense introduces defense team and client)

She is completely innocent, not involved in this or any other arson. The government's proof is what is on trial. The government must prove beyond a reasonable doubt, the burden of proof is on the government.

Every couple of weeks we read about some innocent person getting out of jail who was falsely accused. This is the case here. She is falsely accused.

It is the jury who is the final judge. Don't leave at the door your common sense, life experience. That's why the jury is not machines. Those last few words – Disneyland? The Statue of Liberty? Don't be influenced by those words; that's not what this is about. Its about a group of fools who thought it would be a good idea to burn buildings, including Jennifer Kolar and Lacey Phillabaum, and Stan Meyerhoff. They did all that he said, but not including Briana Waters.

She was not at meetings; she wasn't part of it. He used the word "they" at least 150 times, but this is about what, if anything, Briana Waters did or didn't do.

There's no dispute about what "they" did and that it was wrong.

Jennifer Kolar and Lacey Phillabaum were facing at least 35 years if they didn't cooperate. You will see them, be able to judge what kind of people they are.

Waters is innocent not on a technicality, but because she simply wasn't involved. You will hear about her and what she was and is doing with her life. The burden

of proof is on the government – which was not always the case. In Salem, an accused witch had to prove she was not a witch. The constitution made it always the prosecution with the burden of proof. The prosecutor talked about what did these groups do, but the question is what did she do or not do? She was involved in the TESC animal rights group, and Earth First! She was a communications major working on a documentary project about the Watch Mountain campaign – the film talks about the events at Randle, a small community, where the timber company wanted to clear-cut above the town. We know that means floods, and the end of Randle. People, from the ELF, Earth First, you know, hippies, treehuggers, people who want to save the environment got together with the people in Randle. They were different, but the people of Randle appreciated the support and within weeks the people of Randle were up in the trees with them. Ms Waters chose as her project to document these events – she wrote, produced, directed, and scripted Watch. The jury will hopefully see the film. This is how she spent her time from 1999 to April 2001, ending about a month before Phillabaum, Kolar, and their associates burned the UW building. She was working day and night to put together the film, and then to distribute it. She was busy with her life. She is a musician, has played violin since childhood. She plays in the occasional band, Irish fiddle, bluegrass, and Balkan music – that is her love. She was spending her time with friends and family, boyfriend, (as she does today with her husband and daughter), while “they” were planning and burning. During this time she was involved with events and and production of Watch – also working with the Longshore Workers’ Union to overcome class differences and create bonds. She is working class, and worked in solidarity with unions. This was not warfare between loggers and treehuggers.

She is not an arsonist; she has pleaded NOT guilty, unlike literally every other person involved in these events. Most of the accused were named in the Dec 7 2005 Eugene indictment. Everyone else except a few who are fugitives has pleaded guilty. She pleads NOT guilty and wants a trial or the case dismissed as should have been done a year ago.

If you were to search my house today you would find books about capitalism, about free enterprise, and about communism – does my possession of these make me a communist? If I share reading material does it mean I advocate the subject?

Don't let them treat you like you don't understand. Don't let them scare you (Disneyland!) Use your own judgment.

From 1996 to 2001, there were about seventeen arsons for which the ELF took credit. They were dangerous to people surrounding and occupying the buildings, to the firefighters who responded. They were wrong for every reason; there is no dispute about that. We know Jennifer Kolar went to meetings, planned, taught how to encrypt messages, was involved in building incendiary devices – so did Lacey Phillabaum – that's who they are. They were involved in reconnaissance, selecting targets – also Stan Meyerhoff, the fiancé of Lacey Phillabaum – also in the Oregon cases he became a cooperating witness within two hours and spouted many names including naming his own fiancée with days (hours?) of his arrest.

The mandatory minimum of 35 years – that's for one arson and he and Kolar have multiple charges and face life. Phillabaum admitted to only one arson, so faces 35 years, which is essentially her whole life. But they made deals – Phillabaum now only faces 3-5 years and Kolar 5-7 so it is very much in their interest to please the prosecution. So they will say what the prosecution wants to hear – they have a high incentive to please them.

Meyerhoff, in the OR cases, got the highest sentence because he was involved in everything. Planner, theoretician, etc. Evidence will show Meyerhoff was involved in the “double whammy”, planning, recon, constructing every aspect. Meyerhoff was arrested in Virginia on Dec. 7, 2005, and started naming names,

to his benefit. It was not to his benefit (though not necessarily against it) if shown a picture and he said that person was not involved. He was not reluctant to name names On March 17, 2006...

US: OBJECTION: Meyerhoff is not on the witness list.

DEF: we may have to get him on the witness list.

(Judge allows DEF to continue... not sure exactly what he said.)

On March 17, 2006, Stan Meyerhoff was questioned by FBI agents and shown pictures, one was of Briana. (The picture is put up on the monitors for the jury). It's obviously a picture of Briana, looks like her. He was asked if she looked familiar. He said she looked familiar but was not involved in any arson. The case should have ended then because they knew from a person who did all he could to cooperate including name his own fiancée that Briana was not involved. But the prosecution couldn't give up their centerpiece – the domestic terrorism case.

How did they get Briana's name and picture? – That came up with Jennifer Kolar, we will get to that later.

Meyerhoff said other things, described a blonde woman from Olympia, but not in connection to UW, but a later fire at Susanville, a rural place in California – a blonde woman from Olympia, but originally from California. A person in connection with Joe Dibee (a fugitive) – a different person, clearly.

At Susanville people (8 to 10) camped out for several days but Briana wasn't there, so no one knew her to implicate her in that action.

The Oregon conspiracy indictment lists 25 overt acts committed by members. Briana Waters is named only in the UW action, not in Susanville.

About Avalon – the prosecutor told how they took pains not to leave a trail. She gets the phone, pays the bill – she’s not trying to hide her name. He said it was because he had credit problems – his relationship with her related to her above ground public life as an environmental activist. Why would she get a phone for him if she knew what it entailed to her security, if she was worried about that? He wouldn’t ask her to get the phone if she was connected to the crimes.

About the devices – the accusation regarding use of a destructive device – one that Phillabaum and Kolar were facing – so we will have to talk about it but its not our focus – the focus is she didn’t do it, she wasn’t there.

The case was frustrating for law enforcement until Jake Ferguson became an informant. He was promised a sentence of probation, no prison time. He wore a wire – made a recording of who said what, the best evidence of what was said. When the FBI spoke to Phillabaum and Kolar, they had the option of using a tape recorder. The prosecution chose not to use it. If we had a recording, you would hear what they said and not have to rely upon their memories or the memories of agent Halla and prosecutors. But they didn’t record it. Kolar first named herself, Avalon, Capitol Hill Girl, Capitol Hill Girl’s Punk Boyfriend, and Crazy Dan.

NOT Briana Waters. As Stan Meyerhoff has said, she was NOT involved.

What is happening here is wrong, an outrage. She should not be here.

About who she is: In high school in PA she began to play violin. She teaches violin; that’s how she makes a modest living. Also playing in small bands, in small venues. Her husband John works as a carpenter. You will learn from evidence what kind of people they are. She went to college in a small school in Ohio – then came out here and fell in love with TESC, transferred – got involved in environmental activities. This is the kind of person she is, not an arsonist.

She got involved in the documentary project; that's how she spent her time. You may hear from a Randle resident about those events.

We will try to offer the documentary in evidence – it will be up to the judge. It will show how she spent her time and what kind of person she is.

Meanwhile, the ELF (they) did what they do, but what, if anything, did she do? One thing is that people in the ELF move around, have aliases. Jen Kolar was known as “Diver”, Phillabaum as “Reba”, and Meyerhoff as “Countryboy”. Briana Waters was known as “Briana” – or “Bri” – she had no code name, no alibi. She rented a house, and had a boyfriend.

When they got her name they investigated her phone records, her bank records, her mother's records, her grandparents' records, her credit card, her TESC records, Justin Solondz's info, stuff from his house, stuff from Avalon's house. In all the stuff from Avalon's house, there is one mention of Briana Waters, in a list of enviro resources – her film.

Nothing incriminating was found, They got all her TESC records, reports she wrote, what her professors said about her, all the banks where she had a credit card, her spending records, shopping records, her father, her brother, her own website. All they have is innuendo –

About the car-

After they got her name they spoke to Kolar and Phillabaum – Feb. 4 '06.

Agent Halla went to Briana's house in Berkeley and politely asked her to get a lawyer and cooperate. She got a lawyer but had nothing to cooperate on. When they asked her to cooperate something happened re. Conversations between the prosecution and Briana Waters, we will get back to it.

Soon after retaining a lawyer she contacted her friends and family and said I am accused but innocent- if the FBI comes around, don't worry about it, tell the TRUTH.

When they first came to Robert Corrina he said he didn't know her! He lied, put himself in a pinch by making a false statement to a federal law enforcement officer. He got himself a lawyer, who probably said – you are already in trouble, so if you want to save yourself...

So what he said – you did not get a complete picture of Corrina and Larson and what happened with them from the prosecution's opening remarks.

The arson occurred 2-3 am Monday morning. It appears he is saying she came to get the car on Sunday, which wouldn't have been much time. Some of the writing of Rodgers says you need to have the car at least 36 hours prior. You will understand what Corrina says is not true.

Ms. Waters comes from a working class background. Lacey Phillabaum and Jennifer Kolar do not. They are spoiled kids accustomed to an upscale lifestyle, and they didn't want to give it up. Phillabaum's parents are lawyers. You will see she is a very smart and attractive person, skillful and skilled in debate. Kolar is also very smart. She has a degree from the University of Colorado in astrophysics or something of that nature and a master's, and was a Ph.D. candidate. And she says that when she spoke to law enforcement the first time on December 16, 2005 she forgot who was involved? People, with whom she planned, had meetings? Five people and only 2-3 weeks after she remembered?

Jennifer Kolar is not stupid. She's smart and a schemer. Also about Kolar, to this day she has never named Lacey Phillabaum as one of the people who did the arson. Both from Spokane, went to the same high school – she forgot Lacey was there? She has never said one of the four other people was Phillabaum.

This is a woman whose testimony they are relying on. She said she didn't remember a role for Lacey, but Lacey has pleaded guilty and only to the UW arson.

Jennifer Kolar has done well for herself. She owned personal property – wants to protect her lifestyle, her yacht, and yacht club membership – she races yachts. She has so much stake. She is lying – we know that the state will claim she was lying when she named the other four people on the first day.

Jennifer Kolar was involved in the Cavel West arson, in the planning and execution. After that she participated in an attempted arson action called "Raygun". Then the UW arson. She will come in to say sorry, I was wrong. What kind of person are they relying on to convict Briana Waters? Why not put Stan Meyerhoff on the witness stand?

Back to Jake Ferguson: He was wearing a wire to put other people in a situation where they had no choice but to cooperate or go to prison. They had taped evidence of people admitting to crimes. They don't have this evidence in this case, because they chose not to tape-record their interviews with Jennifer Kolar or Lacey Phillabaum.

The interview with Jennifer Kolar on December 16 – it is important that it was four and a half years after the incident. When the prosecutor heard from her lawyers how excited they must have been. She was the first person who would come in and tell about the UW arson. They didn't tap record but they took notes.

You will hear that last August 15 Kolar was interviewed. She affirmed that at the first interview she did in fact name the people that she named, not including Briana Waters' name.

(Defense indicates statement will be cut short by approaching noon break).

You will hear from Mr. Martin that on January 5, 2006, about three weeks after her initial statement, Kolar's lawyer Mr. Martin informed Mr. Friedman that Briana Waters was involved. The very next day, Kolar was interviewed by Halla and others – of course they would ask her about Briana being involved – but they didn't. A week later, and a couple of weeks later, they interviewed her again, and they never asked her.

Briana's name came up in an innocent context – Jen never said, "that's the same Briana Waters I told you about!" Nor was she asked. She didn't mention it in any interview. Not until weeks later in March, after Lacey Phillabaum was interviewed, was she asked about it. Not in the seven or eight interviews preceding.

Lacey Phillabaum was also facing 35 years. How did they get a second witness after Kolar named Briana Waters? On

On February 24, 2006, Agent Halla went and spoke to Briana in California. He wanted her to cooperate. Eventually some weeks later, they did a reverse proffer to Phillabaum. That's when the prosecutor tells you what they think happened. "We want you to tell us this is what happened. This is what we want to hear." So she knew what they wanted her to say. She has told friends she "didn't betray anyone", meaning – she told the government what she thought they already knew. Listen to all the facts about Lacey Phillabaum.

Jennifer Kolar initially said the vehicle was either a car or a van. On February 4, 2006, Kolar told Halla she didn't remember Briana and Lacey being together. So if Lacey was there, Briana was not.

We have tried to speak to Jennifer Kolar and Lacey Phillabaum. Their lawyers say no and they say no. We have tried to speak to Corrina and Larsen, Agents

Halla and Torres – no one will speak to the defense. We have met a “Wall of Silence”. The prosecution has the power of threat of prison to make people talk to them. The defense has no such power.

When you hear the case, if you have a reasonable doubt, and you say “not guilty”, everyone wins, because that’s what this country is about.

I pray you don’t let an innocent person go to prison, a wonderful person who is here because of pressure placed on other people who want to save themselves and their lifestyles.

If Briana looks tired and scared she is. It’s been two years of this nightmare. She has a child to raise, and she is physically and emotionally exhausted. If its not proven beyond a reasonable doubt, I pray you end this nightmare.

END OF PROSECUTION OPENING STATEMENT

Jury leaves the room

US: The defense had asked not to bring up that Justin Solondz is a fugitive and that William Rodgers killed himself in jail, but the prosecution will have to bring it up now, because Mr. Bloom said that everyone else involved pleaded guilty.