

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF COLORADO
 3 Criminal Action No. 96-CR-68
 4 UNITED STATES OF AMERICA,
 5 Plaintiff,
 6 vs.
 7 TERRY LYNN NICHOLS,
 8 Defendant.

ff

9
 10 REPORTER'S TRANSCRIPT
 (Sentencing Hearing)

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 ff

12 Proceedings before the HONORABLE RICHARD P.
 MATSCH,
 13 Judge, United States District Court for the District of
 14 Colorado, commencing at 1:00 p.m., on the 4th day of
 June,
 15 1998, in Courtroom C-204, United States Courthouse,
 Denver,
 16 Colorado.

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Transcription
Street,
629-9285

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1 APPEARANCES
2 PATRICK RYAN, United States Attorney for the
Western
3 District of Oklahoma, 210 West Park Avenue, Suite 400,
Oklahoma
4 City, Oklahoma, 73102, appearing for the plaintiff.
5 LARRY MACKEY, SEAN CONNELLY, BETH WILKINSON,
GEOFFREY
6 MEARNS, JAMIE ORENSTEIN, and AITAN GOELMAN, Special
Attorneys
7 to the U.S. Attorney General, 1961 Stout Street, Suite
1200,
8 Denver, Colorado, 80294, appearing for the plaintiff.
9 MICHAEL TIGAR, RONALD WOODS, ADAM THURSCHELL,
REID
10 NEUREITER, JANE TIGAR, and SUSAN FOREMAN, Attorneys at
Law,
11 1120 Lincoln Street, Suite 1308, Denver, Colorado,
80203,

12 appearing for Defendant Nichols.

13 * * * * *

14 PROCEEDINGS

15 (In open court at 1:00 p.m.)

16 THE COURT: Be seated, please.

17 We're convened in criminal action 96-CR-68,
United

18 States vs. Terry Lynn Nichols, scheduled for sentencing
19 hearing.

20 Appearances, Mr. Mackey?

21 MR. MACKEY: Good afternoon, your Honor. For
the

22 Government, Mr. Larry Mackey, of course. With me is
Sean

23 Connelly, Beth Wilkinson, Pat Ryan, Geoff Mearns, Aitan
24 Goelman, and James Orenstein.

25 THE COURT: Thank you. Mr. Tigar?

3

1 MR. TIGAR: Good afternoon, your Honor.
Michael Tigar

2 representing Terry Nichols, who is here in court. With
us

3 today, Ron Woods, Reid Neureiter, Adam Thurschwell,
Jane Tigar,

4 and Susan Foreman.

5 THE COURT: Thank you.

then 6 About an hour ago, I received a newly filed or
7 filed the motion for new trial filed by counsel on
behalf of 8 Mr. Nichols and requesting an evidentiary hearing. Has
9 the Government got its copy of this?

10 MR. MACKEY: We received it, your Honor, when
we 11 walked in court.

12 THE COURT: All right. The motion seeks a new
trial 13 under Rule 33 and Fifth and Sixth Amendments to the
14 Constitution on the ground that jury deliberations were
15 tainted; that the jurors worked in small groups outside
the 16 formal deliberative process, and the motion is based on
17 newspaper articles that are attached as Exhibit A to
the 18 motion, articles which seem to be based on interviews
with 19 members of the jury in this case. And there is a
request that 20 there be an evidentiary hearing, also recognizing the
21 limitations on questioning of jurors with respect to
the Rule 22 606.

23 This procedurally, as I interpret it, is a
motion for 24 new trial based on newly discovered evidence in the
sense that

25 it is not a motion made within the seven days from the
verdict

4

1 because this information was not available to counsel
within

2 that time. Therefore, I think that procedurally, we
will go

3 forward with this hearing, set a time for the
Government to

4 respond to the motion for new trial. It's my
understanding

5 that that will not affect the time for appeal. The
time for

6 appeal would be the 10 days from judgment here, and
then it's

7 my understanding of the law that the Court has
jurisdiction to

8 hear such a motion but would not have jurisdiction to
grant a

9 new trial except on remand from the Court of Appeals
for that

10 purpose on the request of the court to be made for that

11 purpose. So that's how I propose to proceed on this
and give

12 it time for the Government to respond.

13 MR. TIGAR: May I speak from here, your Honor?

14 THE COURT: Of course, yes.

15 MR. TIGAR: It had not been our thought that

this

16 would be any impediment to what your Honor had planned
to do
17 today. Mr. Manspeaker had called me and said, you
know, you
18 should look at the Sunday papers in Denver, which I
promptly
19 did.

20 THE COURT: Yeah.

21 MR. TIGAR: We thought we ought to file it as
soon
22 after getting the Sunday papers as possible so that no
one

23 could accuse us of delay. But your Honor's
understanding of

24 Rule 33 is also our understanding of Rule 33, and
should your

25 Honor eventually deny the Rule 33 motion, then we
understand we

5

1 would have -- that would itself be an appealable order
which
2 would be separate from a judgment to be entered today.

3 THE COURT: Yes. The Government concur on
that
4 procedurally?

5 MR. MACKEY: We do, your Honor. We'd need
roughly

6 seven days to respond to the motion.

7 THE COURT: Roughly seven days, you say? How
roughly?

8 MR. MACKEY: How about seven, Judge?

9 THE COURT: All right. We'll call for the
response,

10 then, June 11, or you can have the 12th, June 12, to
file a

11 written response to that. We'll deal with that in due
course.

12 We -- the agenda that I propose to follow for
this

13 hearing will be that we will first review the
presentence

14 investigation report and the objections that are made
to it.

15 And then the Court has already, of course, had a
hearing on the

16 guidelines March 25 and at that time set out findings
to

17 establish the guideline levels resulting in the
conclusion that

18 under the guidelines, the adjusted total offense level
is 46

19 and the criminal history category is I.

20 There has also been the restitution hearing on
May 13

21 resulting in the ruling of restitution in the amount of
\$14 1/2

22 million. There has been no ruling with respect to a
fine.

23 And as I outlined at the guidelines hearing,
the

24 issues of upward and downward departure are to be
considered
25 here and were reserved for ruling at this hearing. But
I don't

6

1 intend to reopen the matter of the guideline
determination or
2 the restitution determination so that we would be
considering
3 upward and downward departures after dealing with some
other
4 matters; and I've also ruled after a hearing that under
Rule
5 32(c)(3)(E) balanced against the statute, the Victims
Act, it
6 is, with a crime of violence, statements from victims
are a
7 part of the sentencing hearing. I received from the
Government
8 the names of 12 persons who wished to make statements
here. In
9 that regard, I've already heard the objections from the
defense
10 to that and the defense position that both the statute
and the
11 rule are inapplicable. It's not necessary to review
those.
12 Those objections are saved, preserved for the record.
13 And then of course, we have, as usual, the

opportunity

14 for allocution and statements by counsel for the
defendant, by
15 the defendant, Mr. Nichols, and by the Government.

16 So what I propose, then, is that we will first
deal

17 with the presentence investigation report and the
objections

18 made, and then I will hear the statements from the
victims; and

19 then we'll proceed to the oral motions for upward and
downward

20 departure and the statements with respect to
sentencing.

21 So given that, first, we have the presentence
report

22 prepared here dated March 6.

23 And Mr. Tigar, you have reviewed -- or you and
other

24 counsel have reviewed this report and reviewed it with

25 Mr. Nichols. Is that true?

7

1 MR. TIGAR: Yes, your Honor. We have reviewed
the

2 presentence report and reviewed it with Mr. Nichols.
All

3 counsel on our team have. We have filed a disagreement
with

4 respect to the Government's position; but other than
that, I
5 think there are no issues remaining with respect to the
PSI.

6 THE COURT: Well, there were the objections
raised and
7 are recited in the addendum.

8 MR. TIGAR: Yes, your Honor.

9 THE COURT: That dealt with -- well, they're
contained
10 in the letter of March 23.

11 MR. TIGAR: That's right, your Honor.

12 THE COURT: And that's a part of the report.
And I
13 have reviewed that. The Government has also made a
statement;

14 but first of all, with respect to the issue of
irrelevant and
15 prejudicial political statement, there were objections
16 specifically to paragraphs 16, 19 through 21, and 25.

17 MR. TIGAR: Yes, your Honor.

18 THE COURT: And under the rule, you already
19 anticipated this, of course, because you cited
appropriate

20 excerpts from the transcripts of the trial -- both
trials,
21 wherein I excluded that material from trial as not
relevant.

22 And I'm also excluding it from consideration here by me
on the
23 ground that Mr. Nichols' views and positions with

respect to

24 the tax and credit systems are not relevant to the
25 determination of the appropriate sentence for the crime
of

8

1 conviction.

2 Then the other was the characterization of the
marital
3 relationship; and that's in paragraph 36. And I'm not
-- I'm
4 not going to consider that.

5 There were, then, the factual clarifications
section
6 of that letter --

7 MR. TIGAR: Yes, your Honor.

8 THE COURT: -- to which the Government did
make a
9 response, principally with respect to participation in
gun
10 shows. And I'm not going to make findings on that,
either,
11 because I don't believe that to be relevant to my
determination
12 here.

13 The final thing was a factual correction, and
I
14 discussed this with Chief Miklic, and he agrees that he
does

Real 15 not have any information to contradict that Osentoski
16 Estate was not owned by Lana Padilla now but by Mr.
Osentoski;
17 so that correction is made.

18 Now, I believe that takes care of the
presentence
19 report.

20 MR. TIGAR: I think so, your Honor. Excuse
me, your
21 Honor. I'm sorry.

22 THE COURT: I was just going to check with the
23 Government. I did not find objections filed by the
Government
24 but simply the contradicting statements to the extent
that they
25 may be considered contradictory with respect to the
factual

9

1 clarifications section.

2 MR. MACKEY: That is correct, your Honor. We
have,
3 for the record, received two documents from Mr. Miklic:
The
4 original report dated March 6 and his supplemental of
May 14.
5 We have no objection to his original report and agree
with the

6 submission of the supplemental making part of the
record our

7 factual contentions to some of the defense objections.

8 We agree with the Court that those issues, if
an

9 issue, need not be resolved for purposes of today's
10 proceedings.

11 As to the criminal fine, your Honor, since you
raised

12 it earlier, I did want to announce that in light of the
13 restitution order, the United States would waive
imposition of

14 any criminal fine.

15 THE COURT: Well, I do not intend to impose a
fine in

16 addition to the amount of the restitutionary order
because I

17 think to put anybody in the position of attempting to
collect

18 on the fine and on the restitution order is just not
19 practicable. So there isn't going to be any fine.

20 Now, I think I cut you off, Mr. Tigar. I
don't know

21 whether you were about to add something or --

22 MR. TIGAR: Your Honor, it's sufficiently
unusual that

23 I will say it: I agree with the Court's
characterization, and

24 I think these matters have been resolved at the last
hearing,

positions 25 so we agree with the Court's recitation of what the

10

1 are.

2 THE COURT: All right. Thank you.

3 Now, as I announced in sort of announcing the
4 procedure that would be followed here, I will call on
the

5 persons who wish to speak.

6 As I understand it, Mr. Mackey, this paper
that I have

7 about the sequence is the sequence in which these
persons are

8 prepared.

9 MR. MACKEY: Yes, your Honor. We should begin
with

10 Ms. Marsha Kight and end with Mr. Cash.

11 THE COURT: All right. Marsha Kight, if you
wish to

12 come up to the lectern here and make your statement.

13 MS. KIGHT: May it please the Court . . .

14 THE COURT: Ms. Kight.

15 MS. KIGHT: On April 19, 1995, at 9:02, a bomb
16 exploded in Oklahoma City. And the echoes of that day
still

17 reverberate in the countless souls that were shattered
by its

18 impact. In a split second, the Alfred P. Murrah
Building was
19 reduced to rubble and thousands of lives just as surely
20 shattered and crushed. 168 lives were violently
destroyed.
21 Those that survived the war zone carry their scars for
life.
22 We all carry the emotional scars. The veil of
innocence was
23 ripped from our eyes and our lives forever changed.
24 The blood of the innocent was the price of
hatred, and
25 its toll of grief and anguish will be exacted for a
lifetime.

11

1 Families are still struggling to cope with the
tremendous void
2 left in their hearts, images of their loved ones' death
3 haunting their minds and tormenting them in the night,
daily
4 living with the strife of trying to make sense of the
5 senselessness. Families that were once close are now
in
6 shreds, torn apart by the emotional wake of the bomb.
Those
7 who survived the blast suffer with their physical and
emotional
8 wounds. All of them carry deep scars; some that can be

seen

9 and some that cannot.

still

10 They saw unspeakable horrors that day and

burnt into

11 struggle with the sights, smells, and sounds forever

12 their very soul.

Survivors

13 Each one of the 168 that were lost were also a
14 co-worker and a friend to many of the survivors.

attend

15 lost more friends in one moment than most people could
16 experience in several lifetimes. They often had to

carry in

17 three and four funerals a day. Grief that enormous is
18 difficult to comprehend, and even more difficult to

the heros

19 one's heart.

their

20 Survivors and the rescue workers were truly
21 of April 19, 1995. They were the ones who disregarded

workers

22 own injuries and their own safety to rescue fellow co-

building

23 from the rubble, many of them going back into the

many of

24 instead of away from it in order to help the injured,

thought

25 them lovingly tending to the wounds of others with no

1 to their own.

and
2 The bomb not only ripped through the concrete
3 steel that were a building, but it tore through many
hearts and
4 minds of many lives, as well. There are no scales with
which
5 to measure pain or grief. Though the circumstances may
vary,
6 the threat of anguish squeezes itself through any loss.

7 It's one of life's ironies that I appear
before the
8 Court for the reason that I do, but I do so to
represent my
9 daughter, Frankie Ann Merrell. She worked on the 3d
floor of
10 the Alfred P. Murrah Building in the credit union. She
was
11 blown from her teller's window and found by the shaft
of the
12 elevator on the first floor. The body was located the
very
13 first day but was not removed from the rubble and we
weren't
14 notified until the 5th.

15 I do so to represent my granddaughter Morgan
who was
16 two years and six months when she lost her mother. I
do so to
17 represent a little girl that still grieves for her

mother and

18 asks unbearable questions.

19 I do so to represent my son, who lost his
father 14

20 months prior to losing his sister.

21 I do so to represent my daughter's family, her
22 husband, and my family.

23 Words seem trite in describing what follows
when your

24 daughter is murdered in the worst act of terrorism on
U.S.

25 soil, when your daughter is stripped from your life;
but I will

13

1 try. April 19, 1995:

2 It's the sheer horror of turning on the
television and

3 hearing that tremendous explosion and seeing the
building where

4 your daughter worked reduced to a pile of rubble. It's
a

5 terrifying realization that your child might be
seriously

6 injured or worse yet, dead.

7 It's having to have someone come watch your

8 granddaughter while you go search for your child. It's
getting

9 into your car to go search for your daughter, not
knowing what
10 to expect to find. It's the sounds of sirens and the
cars
11 racing on the side of road with the hazard lights
flashing as
12 you make your way down to look for your child -- the
sheer
13 terror of it all.
14 It's walking upon shards of glass and debris
floating
15 around you as you get to the site and you're only sent
away.
16 It's going to St. Anthony's Hospital, seeing
people
17 bloody and lifeless as you frantically search for your
child.
18 It's searching pages that are posted on the basement of
the
19 hospital, looking for your daughter's name and calling
all
20 hospitals, trying to find her.
21 It's having to call your son who had just lost
his
22 father 14 months prior to cancer and tell him that his
sister
23 was missing and he needed to come home.
24 It's going to the First Christian Church and
being
25 asked by funeral directors for a personal description
of your

look at 1 daughter so they can identify her. It's being asked to
who is so 2 a Jane Doe who fits the description of your daughter,
is not 3 severely injured she's almost beyond recognition. She
4 your child, but she's someone's.

and taken 5 It's being told that Frankie had been found
a false 6 to St. Anthony's Hospital, then finding out that it was
7 report.

face 8 It's having unwanted cameras shoved into your
shooting a 9 wanting pictures of a grieving mother, much like
10 dying animal.

wind pick 11 It's watching the rain begin to fall and the
and you 12 up and you're told that the search is being called off
for you 13 wonder if she's lying there in the building calling out
or dying 14 to help her. It's not knowing if she's alive or dead
and wait. 15 and feeling so powerless, knowing all I can do is sit

waiting 16 It's waiting Thursday and no word. It's

It's 17 Friday and no word. It's waiting Saturday and no word.
what to 18 dealing with a grieving two-year-old and not knowing
19 say or how to comfort her.
hurting 20 It's being unable to comfort your son who is
21 because you're dealing with your own grief.
for the 22 It's hoping for the best and trying to prepare
23 unthinkable, burying a child.
visions of 24 It's an endless stream of phone calls and
in your 25 the building being played over and over and over again

15

1 mind.
visions of 2 It's sitting in your living room and having
3 your daughter playing with her baby or looking at the
fireplace 4 where she stood on the day she got married and feeling
so empty 5 inside.
pull out 6 It's wanting to reach inside your chest and
7 your heart because you hurt so bad.
8 It's remembering the day your daughter was

born and

9 for the first time, I touched her and held her in my
arms,

10 wishing I could hold her again. It's the last kiss and
the

11 last "I love you."

12 It's Sunday, the 23d of April. The phone
rings. No

13 words need to be spoken, for you know the worst in life
has

14 happened. Then you're asked to go to First Christian
Church

15 for notification and that you hear the feared
confirmation: My

16 daughter was dead.

17 It's the memorial service that was in progress
during

18 the notification at the state fairgrounds and the
message that

19 was delivered that day, "let the healing begin," by our

20 president. I had only begun to grieve.

21 It's the hardest thing a mother will ever have
to do,

22 is bury a child.

23 It's walking into a viewing room at a funeral
home and

24 looking at your child's swollen, lifeless body and
feeling like

25 dying yourself. It's planning a memorial service to
honor your

should 1 precious child and what she stood for, which no parent
2 have to do.

by item, 3 It's packing up her things from her home item
4 memory by memory. It's reading the letters and the
5 the things she has written, secreted away in her most
6 private
7 places, realizing that the one she invariably saved are
8 the
9 ones that just said "thank you" or "I love you," and
10 really
11 understanding for the first time that's all she ever
12 needed to
13 hear or to receive in return.

things, 14 It's carefully folding each of your daughter's
15 as I have always done, to either save them for Morgan
16 or so
17 they would be neat when they were given away.

I walk 18 It's the memories of her childhood every time
19 because
20 through her door and sometimes even dread going home
21 It's
22 the pain is so great and the memories are so fresh.
23 watching the footage of your daughter's murder time and
24 time

time you 17 and time again on television, day and night and every
and knees 18 pick up a newspaper. It's getting down on your hands
and 19 and packing the fresh dirt around your child's grave
across 20 pulling the weeds so it will be perfect. It's sitting
that 21 from each other at Thanksgiving dinner and each knowing
pretending 22 there is but one thing on each other's mind, yet
23 otherwise for their sake.
that 24 It's wishing for the first time in your life
to 25 Christmas would never come. It's not being able to go

17

and 1 shopping malls anymore because all you see is mothers
2 daughters. It's trying to pick out gifts for your
for her. 3 granddaughter that your daughter would have picked out
her mother 4 It's hearing your two-year-old granddaughter ask for
5 and having to tell her she is gone now.
fact that 6 It's living the rest of your life with the
7 your daughter suffered one of the most horrifying

deaths

8 possible.

9 It's knowing you never had or will never have
that one

10 last kiss and "I love you" and thanking her for the joy
that

11 she brought into my life.

12 It's knowing that a little girl who had a
mother who

13 loved her more than life itself was taken away from
her, a love

14 that no one can replace.

15 We live by laws in this country so that
ideally, no

16 one will ever have to know what it's like to be a
victim of a

17 violent crime. If I had one wish in the world, it
would be

18 that no one would ever again have to go through what I
and my

19 family have endured since April 19 of 1995 and what our
family

20 must carry with us for the rest of our lives. Crimes
such as

21 what was committed against my family are intolerable in
any

22 society that calls itself not only free but civilized.
The law

23 recognizes as much and provides for punishment that
will ensure

24 at least that others will not suffer again at the same
hands,

25 even if it does not prevent recurrence at the hands of
others.

18

1 I do not know what your Honor's sentence will
be. I
2 do know for the families, survivors and the rescue
workers,
3 there is no time off for good behavior. For all the
sorrow and
4 the tears that we have shed, there is no parole. And
our
5 sentence from this tragedy is life of only memories of
those we
6 loved.

7 Thank you, your Honor.

8 THE COURT: Thank you, Ms. Kight.

9 We have Mr. Stan Mayer. Please come forward.

10 MR. MAYER: May it please the Court.

11 THE COURT: Mr. Mayer.

12 MR. MAYER: I am the grants manager for a
division of

13 the Oklahoma Historical Society. On April 19, 1995, I
was at

14 work in the Journal Record building. Our offices were
directly

15 across the street from the Murrah Building and I had
been

16 looking out our windows to the entrance where the Ryder

truck

17 was parked. I turned around. With my back facing the
window,
18 the bomb exploded. At that moment, I was standing less
than
19 200 feet from the truck; and I believe I submitted two
20 pictures, one shows where our offices were and --

21 THE COURT: Yes. I have them.

22 MR. MAYER: Okay. The force of the blast tore
the
23 clothes off the back half of my body and propelled me
several
24 feet down the hall. Approximately 300 pieces of
shrapnel
25 entered the back half of my body. Several pieces went
around

19

Objects 1 my skull and came out the side of my face and ears.
2 hitting my head caused a severe skull fracture and cut
my
3 jugular vein on the left side of my neck. My left ear
was only
4 attached at the top by a piece of cartilage, and both
ears were
5 shredded. From the top of my head down to my feet,
there was
6 not an inch of skin on the back half of my body that
was not

7 shredded by shrapnel, and there is another picture that
shows

8 my body.

9 THE COURT: I have it.

10 MR. MAYER: My left side of my body received a
11 crushing blow that broke several ribs. Shrapnel
punctured my

12 left lung, causing it to collapse. A larger piece of
shrapnel

13 cut both of my legs to the bone just below the knees.
A 2-inch

14 square piece of glass entered my left arm at the elbow
and

15 ripped down the inside of the bone, resting above the
wrist.

16 Hundreds of pieces of glass and metal shredded both my
biceps,

17 shoulder, neck, back, hips, and thighs.

18 Not knowing what was happening or the extent
of the

19 damage at the time, I was disoriented but fully
conscious.

20 Before the shock waves of the blast finished destroying
our

21 office, I was trying to help an injured co-worker get
up and

22 get out of what had been our area. I could not use my
left

23 arm, and I could see and feel large pieces of shrapnel
sticking

24 out of me. I assumed that no one could help me or stop
my

25 bleeding and that I would be dead in a few minutes.
With that

20

1 thought in mind, I tried to help the other people out
of the
2 building. The explosion and thick smoke made us think
that our
3 building was on fire and we only had a few minutes to
get out
4 before being burned to death. As we stood up, we
realized our
5 office no longer existed. The first exit we tried to
go down
6 had completely collapsed. We had to come back up to
the 3d
7 floor and find a clear exit. At this point, while
still on the
8 3d floor, I leaned against a wall and started going
into shock.
9 I believed that I would die in the building but I knew
that my
10 co-workers had gotten out.

11 Mike Oelke, a state worker, came back into the
12 building and found me on the 3d floor. When he found
me, he
13 did not think I had a chance of making it due to the
amount of
14 blood that I had lost. He carried me out of the
building,

or I 15 found an ambulance, and told them to leave immediately
16 would be dead.

was 17 When the ambulance arrived at St. Anthony's, I
nurses 18 taken directly to surgery. For over five hours, two
to 19 held me up while four doctors and hospital staff worked
20 remove 100 pieces of shrapnel, stop major bleeding,
stabilize
21 my breathing, and close gaping holes in my body.

During this 22 time, a plastic surgeon sewed my ears together and
worked on my 23 face. They gave me 4 units of blood and 3 units later
that
24 evening. As I started to regain consciousness, my
first
25 thought was that I was going to stop breathing again.

They

21

1 assured me that if that happened, they would breathe
for me.

2 It was several hours before I started believing that I
was not
3 going to die that day.

4 Later, I found out that due to the limited
number of

5 life support units at the hospital, they waited to see
if my
6 lung would reinflate before deciding not to put me on a
unit.
7 This meant they were unable to give me anything for
pain during
8 this entire period. In fact, I was not given any pain
9 medication till much later that evening. As a result,
I
10 remember them pulling every piece of shrapnel out of my
body
11 and giving me over 400 stitches and staples.

12 Until -- since April 19, I've had over 40
surgical
13 procedures to remove another 98 pieces of shrapnel,
relocate
14 major nerves, close open wounds, remove scar tissue,
and
15 plastic surgery on my face, ears, neck, and arms. I
have
16 suffered long periods of depression with extreme fear,
anxiety,
17 and hallucinations. Altogether, I've spent more than
30 days
18 in the hospital, missed more than a year of work, and
spent
19 three years in physical therapy rebuilding my body.

20 A workers' compensation doctor examined me and
gave me
21 a permanent disability rating of 96.3 percent. X-rays
still
22 show more than 100 pieces of shrapnel in my body, and

he listed

23 the back half of my body as permanently disfigured.

24 As a result of the injuries and the resulting

25 permanent disabilities, I have lost one of my jobs and

22

retain 1 one-third of my annual income. I have had to fight to

to work 2 my remaining job with no guarantee that I will be able

3 enough hours to keep it. I will have to have surgery

4 periodically to remove more shrapnel as it becomes
problematic.

a week 5 I will have to do physical therapy at least three times

6 for the rest of my life. This greatly limits the type

7 that I can perform, and it limits many other areas of
my life

8 as well.

9 Every day, every time I move my body, take a
step,

10 lift an arm or turn my head, I feel the effects of the
bombing.

11 I work and fight every day, but my life has been
permanently

12 altered and I've had control of my life taken from me.

fight 13 In addition to the physical pain, I've had to

all the 14 through the deep and severe depression and guilt and
a 15 psychological trauma that comes from being a victim of
physical 16 violent crime. I will never be totally free of the
happen. 17 pain and/or the memories and knowledge of what can

violent and 18 Michael J. Fortier (sic) supported this
his life. 19 cowardly act, and for this he should be punished with
chose to 20 He had a choice to stop it or allow it to happen. He
21 support it and has shown that he is not a responsible
Honor, I 22 individual that should live free in our society. Your
Nichols. 23 respectfully request the maximum sentence for Mr.

24 THE COURT: Thank you, sir.

25 Sandy Battreall.

23

1 I hope I didn't mispronounce your name, if I
did.

2 MS. BATTREALL: It's Battreall. Battreall.

3 THE COURT: Thank you.

4 MS. BATTREALL: May it please your Honor . . .

23 Harley was a person who would help anyone,
enjoyed
24 working with people. Harley did things in a small way.
People
25 will remember him for that. Harley was proud to be an

24

1 American, who was also a big fan of the Nebraska
Cornhuskers.
2 He was buried with the national championship banner.
3 Born and raised on a Nebraska farm, he went to
a one-
4 room country school and graduating from a small town
high
5 school where everyone knew everyone. He served in the
U.S.
6 Navy. After the Navy, Harley would work part-time jobs
and
7 attend the University of Nebraska in Omaha, graduating
with a
8 degree in criminal law.
9 His first job after graduating from UNO was
with the
10 Veterans Administration, counseling veterans. After
cutbacks
11 in the VA, he pursued another line of work. Harley was
offered
12 a job as an investigator for the Defense Investigative
Service.

13 Harley enjoyed this line of work very much.

Omaha,
City,
14 Through this department he would travel from
15 Nebraska, to Colorado Springs, Colorado, to Oklahoma
16 Oklahoma, meeting many people and touching many lives.

agent
17 One of Harley's good friends, who was also an
18 for the DIS, had this to say: "Harley was a friend and
19 confidant. When Harley left, I lost someone I could
bounce
20 ideas off, get advice from and give advice to."

common man
21 Harley was not larger than life. He was a
22 whose generous spirit touched many people in small
ways. His
23 friends remember him for his love of trees and nature.
He was
24 unpretentious. It was easy to remember that Harley was
human
25 because he made the same petty mistakes the rest of us
made

25

could look
1 every day. He was distinctive, however, because he
avoid or
2 back on his errors with humor. He was more apt to
was
3 forgive anyone who upset him than to hold a grudge. He

power or
speeches.
joke, or

4 concerned for those in life who do not have access to
5 authority. He did not, however, crusade or make
6 He was more likely to comfort with quiet words, a small
7 ready shoulder.

plane and
that his
parking
family
received

8 After Harley's body was unloaded from the
9 into the hearse, his best friend, Jim, was so angry
10 friend was dead that he threw his car keys across the
11 lot at the airport. This bombing not only has affected
12 but hundreds of thousands of people. Our family alone
13 600 sympathy cards.

year,
Christmas
Nebraska.
trees.
spraying them
him, but

14 Harley had a passion for growing trees. Every
15 he would plant 500 seedlings and watch them grow into
16 trees. He owned a choose-and-cut tree farm in
17 People would come from miles around to buy one of his
18 He took care of these trees, pruning, shaping and
19 so they would grow just right. It was hard work for
20 he enjoyed it and it gave him peace of mind.

21 When it was time for him to sell his trees, he

would

of 22 travel to Nebraska every weekend, starting the weekend

trips, he 23 Thanksgiving through Christmas. On a couple of his

trees to 24 would bring his trailer with him and take back his

very 25 Oklahoma City for his friends and co-workers. He was

26

1 proud of them.

dreams 2 Harley enjoyed playing golf, also. One of his

In March 3 was to play at Saint Andrews golf course in Scotland.

play at 4 of 1995, he was able to fulfill that dream. He got to

township 5 Saint Andrews golf course. He also got to visit the

came 6 of Cottingham, England, where the home of our ancestors

7 from.

life, 8 Harley had many plans for the future, enjoying

tree farm, 9 planning his retirement, improving and expanding his

maybe 10 where he had planned on building a home on this farm,

11 even raise a few animals; but all these plans were

blown up on

12 April 19, 1995, by selfish individuals who had a
disliking for

13 the Government.

14 Harley was a true patriot. He loved his
country and

15 the people who live on this great earth. I know he is
in God's

16 country and is safe from all evil. He is missed very
much.

17 No words can describe the pain our family has
had and

18 is still going through. Just hearing the names of
Timothy

19 McVeigh, Terry Nichols, or Michael Fortier tears your
heart

20 out. Seeing a Ryder truck traveling down the road or
even

21 parked makes you take a second look and another
reminder of

22 that terrible day. Even hearing "Oklahoma City" sends
cold

23 chills down my spine.

24 Our family has never had to go through such a
tragedy

25 as this; the waiting, traveling to Oklahoma City to
wait again,

27

1 and after the 12 days, the news that finally came:

Your

2 brother/son/uncle/friend has been found crushed to
death under

3 nine floors of concrete.

4 Our father hardly ever talks about his
namesake, his

5 eldest son, a son who helped him on the farm, never to
have the

6 enjoyment of playing a round of golf together, the
family

7 dinners and discussions.

8 Mom has taken his death very hard. She would
always

9 worry about him. If he didn't show up on time, she
would call,

10 to phone to find out where he was or if he was all
right. To

11 lose a child is such a vicious -- to such a vicious
crime or

12 act is more than any person can bear.

13 As for myself, words cannot describe the
feelings I

14 get knowing that the individuals who are responsible
for this

15 vicious crime are still alive and walking around,
speaking

16 their feelings and saying they are sorry and waiting
and

17 wanting a lesser sentence.

18 Harley has no say in this matter. He can't.
His life

19 is over, killed by the people who were a part of the

bombing.

20 Things will never be the same. You try to go
on with
21 life, but once in a while, you get a flashback of that
awful
22 day. And after the pain goes away, you start over
again.

23 Thank you.

24 THE COURT: Thank you.

25 Sharilee Lyons.

28

1 MS. LYONS: Your Honor.

2 THE COURT: Ms. Lyons.

3 MS. LYONS: I would like to share with you
just a
4 little bit about what happened to me in the bombing. I
worked
5 for the Department of HUD on the 7th floor of the
Murrah
6 Building, over by the northeast windows where the most
damage
7 was done. And the blast cut a path right through my
work area.
8 My desk fell seven stories. By God's grace, I wasn't
there
9 that day, and that's what saved my life.

10 However, 38 people I knew and loved very much
were

11 there that day and were killed. One of those 38 people
was my
12 co-worker and my best friend, Diane. She was taken
from me and
13 I never got to say good-bye to her.

14 Another one of those people was my beloved
minister
15 from church, Pastor Martinez, who just happened to be
in the
16 Social Security building that morning, helping a church
member
17 fill out some forms. I never got to say goodbye to my
pastor,
18 either.

19 I live with a tremendous amount of guilt for
having
20 survived that day, and I may never get over it. I
don't know.

21 For me, the trauma was so severe that I
transferred to
22 another HUD office in Cleveland, Ohio, thinking that it
would
23 help me heal. I'm finding practically no healing,
being in
24 another office, city and state.

25 The grief, the pain, the loss, and the
memories follow

1 me wherever I go.

2 On top of all this, I lost my two sons because
I had

3 to leave them behind in Oklahoma City due to a
financial

4 hardship created by the bombing.

5 I couldn't take them to Ohio with me, and
their lives

6 have been torn apart by the stress and the strain of my
have who

7 leaving. You see, I'm the only parent that my sons
8 they can turn to for any kind of support.

9 So the past three years have been one
continuous

10 nightmare for me. I'm so grateful, though, that God
spared my

11 life that day. Nevertheless, deep down inside me, I
feel just

12 as dead as those 168 people who were murdered.

13 Whenever I think of my best friend Diane, and
whenever

14 I think of Fran and Charlotte and Sandy, three more co-
workers

15 and special friends of mine who died that day, and the
unique

16 bond we had as friends -- almost like sisters, we were
-- I

17 still cry. It's kind of like a type of death or a type
of

18 imprisonment. It's kind of like a type of life
sentence placed

19 upon me, to lose so much, so many, so precious to me.

20 I think that anyone who takes away a person's
life and
21 freedom, as taken away from me on April 19, 1995, ought
to
22 experience that same kind of loss themselves. I know
that
23 won't bring back the ones I love; but I'm hoping that
just
24 maybe, it will help bring some sort of relief to me,
because
25 that's what I really need most of all.

30

1 Thank you, your Honor.

2 THE COURT: Thank you, Ms. Lyons.

3 Doris Jones.

4 MS. JONES: Good afternoon, your Honor.

5 THE COURT: Good afternoon, Ms. Jones.

6 MS. JONES: I'm the mother of Carrie Ann Lenz,
and she
7 was killed on April 19, 1995, in the bombing of the
Alfred P.
8 Murrah Building in Oklahoma City. Along with her was
my unborn
9 grandson, Michael James Lenz, III.

10 From that day on, my life will be forever
changed. I

11 would like to tell you a little bit about Carrie and

who she

12 was while she was here with us.

13 Carrie grew up in South Oklahoma City and she
was a

14 member of Draper Park Christian Church since she was
five years

15 old. She was baptized in that church, married, and we
had

16 planned the funeral for there; but we found out that
there were

17 too many attending and we had to move it to another
church.

18 Carrie attended Moore High School. While she
was in

19 grade school, she was a Campfire Girl. I was the
leader. We

20 were -- we did a lot of outdoor activities.

21 While she was in high school, she took
floriculture at

22 the Moore-Norman vo-tech; and in her senior year, she
decided

23 that she would attend college rather than going into
the floral

24 business.

25 Also, in her senior year, she met the love of
her

31

1 Mike -- life, Mike Lenz, whom she would later marry.

2 Carrie and I were truly best friends. We
would talk
3 to each other at least once a day and saw each other at
least
4 once a week and usually more often than that. Carrie
and I
5 talked about her career, her work. Carrie started
working just
6 after she started to college. She started to work for
the ATF,
7 and she worked there for just a brief time, a few
months; but
8 she decided that she wanted to stay in school, and they
found a
9 place for her with the Secret Service, with the Stay-
in-School
10 program. And she stayed with them until she graduated
from
11 college. And at that time, she found a position with
the Drug
12 Enforcement. And that's where she was the day of the
bombing.

13 We used to go shopping together. Grocery
shopping was
14 our ritual. We both lived in the country; and once a
month, we
15 would take a trip to the grocery store and buy all of
our
16 groceries. And I have a real hard time shopping. I
can't -- I
17 can't stay in the grocery store for very long.

18 And when the bomb took Carrie, it also took my
19 son-in-law. I will never have another one. Carrie was

my only

20 daughter; and one day, Mike will marry and he'll be
someone
21 else's son-in-law and I will not have one any longer.

22 We used to -- my husband and I used to do
things

23 together and go places with Carrie and Mike because
they were

24 outdoors people and we were outdoor people, and we just
did a

25 lot of activities together.

32

1 Carrie and I had so many plans. I was -- I
had

2 already decided that I would quit work and take care of
the

3 baby. When he got old enough to go to school, I'd be
there so

4 I could take him to school and Carrie wouldn't have to
worry

5 with him about being at a day-care center. As I
stated, we

6 live in the country and she was just 11 miles from me;
and

7 that's real close when you're out a long ways from
everything

8 else.

9 I have a hard time still taking those roads
that led

10 to their house. I find myself going around and
avoiding those
11 roads because I can't -- I can't handle the sinking
feeling
12 that I get.

13 My husband misses her also. She was always
the fix-it
14 person at her and Mike's house. She would work on the
lawn
15 mower or anything -- anything that needed to be fixed,
Carrie
16 would work on it. And if she didn't know for sure how
to do
17 something, she'd call my husband and say, "Mom, can I
talk to
18 Bob? I have to ask him how to fix" whatever it was she
was
19 working on.

20 Her life was important to so many people. My
son,
21 Chris, told me just after the bombing that he didn't
want to be
22 an only child. My only answer to him was he would
always have
23 his sister and never to forget that she had been a very
big
24 part of his life for 23 years.

25 His daughter Kelsey, my one and only
grandchild, will

1 never know her Aunt Carrie. She was about to be one
year old
2 at the time of the bombing. Carrie had already bought
her a
3 birthday present and we were able to get it from the
car
4 after -- after the car was released from the garage.
5 Carrie's funeral was two days after my -- I
mean, my
6 granddaughter's birthday was two days after my
daughter's
7 funeral. I tell Kelsey about Carrie all the time,
every chance
8 I can. Carrie -- sorry. I do that all the time.
Kelsey is
9 four now and she talks about her Aunt Carrie as if she
knows
10 her. One day, she told me that she wished Carrie would
stop
11 being an angel so she could see her.
12 I told her I wished that same thing every day.
I know
13 that if you believe in God -- and I certainly do --
that one
14 day I will see her and be with her again, but it
doesn't help
15 the wanting to go shopping, the having the honesty like
when
16 your daughter can tell you, Mom, you need to cut your
hair, you
17 don't need to cut your hair, you need to color it, or

let it

18 go.

19 I find myself struggling with these little
things that

20 she could be so honest to me and I can't find that
honesty with

21 anyone else.

22 It's hard to explain to people about having a
child,

23 no matter how old, being killed. It's the most
hopeless

24 feeling. All my parenting life, if the kids had a
problem, I

25 was supposed to have an answer or solution, but there
is no

34

1 answer or solution to this. There is nothing I can do
to

2 change things or bring her back. She's gone.

3 Sometimes when I meet people and as we talk
and get to

4 know each other, the conversation always comes around
to, Do

5 you have children, how old are they, and do they have
children?

6 I always have to pause for a moment, because
how do I

7 tell about Carrie? I just say I have two children, a
daughter

8 and a son. Then comes the question, How old are they?
How do
9 I tell them Carrie will forever be 26? And they ask me
then if
10 she had children, and I have to tell them that she was
six
11 months pregnant with my grandson.

12 And I know that makes them feel bad and want
to back
13 off, but I have to tell them it's okay because I have
-- I have
14 to speak of Carrie because this -- then she becomes
real to
15 them. Sometimes I wear her clothes, her shoes, and
some of her
16 jewelry. I wear her bracelet every day just to keep
her close
17 to me, and I wear a pin so that people will ask about
it and I
18 can tell them about Carrie because if I can't be with
her and
19 talk to her, the next best thing is to talk about her
to anyone
20 who will listen. She was very special to me.

21 When I'm talking about her, I try to explain
Carrie's
22 life. She would get so excited and squeal and make
this funny
23 expression. It's hard to explain. You'd have had to
seen it.

24 Sometimes I sit and look at pictures or
videos, just

25 so I can see her pretty face and hear her voice.

35

1 You know, I never even got to see the
ultrasound
2 pictures of my grandson because she had just got them
taken the
3 day before the bombing and she had taken them with her
that day
4 and was showing them to the girls in the office.

5 Sometimes when I need to talk to Carrie, I
find myself
6 at the cemetery or at the bomb site at the fence. I
talk with
7 her and tell her things, but, you know, she doesn't
talk back.
8 There is only silence and it makes me feel that I'm
about to go
9 crazy.

10 A little over a year ago, I was not dealing
with
11 things very good and my job was becoming less important
to me.

12 And I just quit caring and my job reflected this. I
felt I was
13 about to get fired, so I talked with my supervisor and
he let
14 me change jobs within the company.

15 I ask myself all the time: How can I go
through the

three 16 rest of my life, missing her so much? It's now been
I know 17 years, and I think I miss her more as the years go on.
back, 18 that nothing that will happen here today will bring her
this have 19 but at least I know that the people responsible for
what a 20 to think about my daughter and my unborn grandson and
21 good life they could have and should have had.

life when 22 I hope that you will consider my daughter's
23 you -- before the day ends today.

24 Thank you.

25 THE COURT: Thank you, Ms. Jones.

36

1 Dr. Paul Heath.

Court. 2 DR. HEATH: Your Honor, may it please the

3 THE COURT: Dr. Heath.

located 4 DR. HEATH: On April 19, 1995, my office was

Building, and I 5 in the west end of the 5th floor of the Murrah

about 6 was there at the time the bomb was exploded. Probably

7 65 feet from the truck itself. And when the smoke
cleared
8 around me, covered up, I was able to see over my right
shoulder
9 the bomb pit burning and the explosive small pieces of
10 explosive material popping in the air.

11 I have submitted to this court my family's
financial
12 losses due to the bombing through the pardon and parole
office,
13 and I will not repeat those in my statement today
except to say
14 that my own personal financial losses are of no
consequence to
15 my family when compared to the loss of human life and
its
16 aftermath as exhibited in the lives of those affected
by the
17 bombing of our community.

18 I will give this statement today in an
intellectual
19 fashion with as little emotion as possible, but let
this court
20 know that the emotions are there.

21 And on behalf of my family, some bombing
survivors
22 that I assisted, and my VA co-workers, I do thank you,
Judge
23 Matsch, for allowing myself and others to speak
concerning the
24 impact these criminal acts have had upon myself and
others.

I have 25 Like some other bombing survivors, your Honor,

37

1 experienced the strongest emotional reactions possible,
2 including a video that ran in my head 24 hours a day
for at
3 least six months, and reruns can come at any time that
I allow
4 them.

5 These criminal acts of the party found guilty
by this
6 court did result in unforgettable human suffering and
trauma
7 similar to what people witness during wartime. Two of
the
8 several people who lost sight in one or more eyes were
my
9 closest VA co-workers that I assisted out of the bombed
10 building and one has since died of stress-related
physical
11 problems, certainly aggravated by the bombing.

12 He was a wonderful man who always had a joke
to tell
13 anybody. He had grown up with Walter Matthau and had
gone to
14 school with him. And I miss Stan a great deal.

15 His wife recently talked with me and she, too,
from

16 the stress, has suffered some physical activity that
includes a
17 heart attack. And her mother that she was taking care
of and
18 her retarded sister had to be relocated now because of
the loss
19 of her husband and her own problems, all associated
with this
20 bombing.

21 I work every day with an outstanding VA co-
worker who
22 works every day with a permanent major arm bombing
injury; and
23 like most of us who were at the bombing, she, too, has
24 bombing-related emotional scarring.

25 One of my clients that I had worked with that
was so

38

1 proud to be studying elementary education as a disabled
veteran
2 died in the Water Resources Board across the street
from my
3 office at the time of the bombing.

4 Like so many, I am troubled by the reality
that one of
5 three citizens found guilty of criminal acts associated
with
6 the bombing could have prevented all of the injuries
and all of

7 the deaths.

8 Some have said: "But Dr. Heath, you -- you
survived,"

9 as if that was some curse. And my answer is, yes, I
survived,

10 but as a new and different person who served,
deliberately

11 served, disabled United States veterans since 1966. I
survived

12 like others, asking how could one of our own who served
our

13 country while in the military return to couple up with
persons

14 of ill will to self and others. In unison we ask: Why
didn't

15 they return committed to serving instead of stealing
and

16 destroying?

17 I survived to assist injured and bleeding
friends out

18 of the A.P. Murrah Building, one an architect who can
no longer

19 hear well enough the musical sounds so that he can
participate

20 in his lifelong hobby of singing with barbershop
quartets.

21 Yes, I survived to hold and to hug tightly a
mother

22 wracked with shock and grief, struggling to get into
the bombed

23 building's day-care center while screaming, "Where is
my baby;

24 I want my baby." I survived to hold and attempt to
console a
25 senior citizen first response rescue worker with tears

39

1 streaming down his cheeks, upset because he was
required to
2 leave a trapped person in the building when a desk
ornament
3 that resembled a bomb was found in the rubble, survived
to
4 start a new office the next day and to reenter the
bombed
5 building daily to rescue Veterans Affairs equipment,
vital
6 records to keep military families from being denied
their next
7 months' subsistence allowances and to rescue plans of
special
8 adapted homes of 13 paraplegic and quadriplegic homes
that were
9 under construction.

10 Yes, I survived to attend 50 or more of my co-
workers'

11 memorial funeral services. I survived to try to rescue
-- I

12 have survived to try to reassure a baby boy named
Tevin's older
13 sister that life in the future will be okay without her
14 brother, but with a grieving mother; survived to make

multiple

15 hospital visits where injured co-workers suffered
needlessly.

16 Yes, I survived to tell the survivor -- to feel the
survivor

17 guilt of one -- of being one of only a few who did not
have to

18 be provided immediate medical treatment nor be
hospitalized on

19 April 19.

20 As a citizen and as a civil servant, I
survived and

21 was driven by the gravity of these criminal acts to
participate

22 as fully as possible in these trials, encouraged by

23 representatives of the majority of federal agencies who

24 occupied the Murrah Building. I was asked and
volunteered to

25 establish the OK City Building Murrah Building
Survivors

40

1 Association, survived in spite of three stress-induced
heart

2 attacks, shortness of breath, and persistent deep leg
muscle

3 pains, numbing of both feet and a hearing loss since
the

4 bombing that almost cost me my own life the other day,
when I

5 almost entered an intersection where an emergency
vehicle was
6 coming through that I didn't hear because of the high
frequency
7 hearing loss from the bombing.

8 Fortunately, I survived to explain to my 83-
year-old
9 mother, who daily bucked rivets on C-47s during World
War II so
10 that her five children would hopefully not be affected
by or be
11 the target of those who preached hate and committed
unthinkable
12 crimes against humanity and why I have been so
preoccupied and
13 unavailable for her these past three years.

14 I survived to have my family, neighbors,
friends and
15 clients ask me and others whether the past 1,141 days
since the
16 bombing were invested wisely. We each may continue to
struggle
17 with our changing answer and questions, and we each
will live
18 with our own choices of whether or not these last 1,141
days of
19 investment were wisely invested.

20 Your Honor, I have developed strong views that
it
21 would have a most regrettable effect on me and my
family if
22 this court had not provided a fair and just trial,

because in

23 doing so, for us it would have dishonored all,
including those

24 who died, those injured but who survived, and those
like

25 myself, whose life have been changed forever.

41

1 I believe I'm leaving this courtroom together
with a
2 deepening respect of the law and the United States
system of
3 justice, including the professionals who are appointed
or
4 employed to administer it. I am leaving this court
applauding
5 whatever this court's judgments are regarding this
historical
6 but oh-so-very-serious matter concerning the just
sentencing of
7 this United States citizen who was found guilty of
criminal
8 behavior.

9 Your Honor, as I close this dark chapter of a
book I
10 should not have been required to experience but did so
with the
11 relentless questions of why and what, I believe I know
who.
12 This court has answered that question for me.

13 Why one or more of our fellow citizens would
ever
14 promote their cause or profit from criminal acts by
15 participating through conspiring in unthinkable acts
that were
16 directed at children who were resting in cribs and
playing in
17 our federal building where I served as the medical
safety
18 officer for the building; what motivated citizens to be
19 influenced by friends who have a dark and ill-will
agenda that
20 included lying, stealing, storing, and selling stolen
guns and
21 explosives, whose proceeds could be used to finance
living
22 expenses, transportation, phone card payments, and
plans and
23 ingredients to build, then have delivered and exploded
an
24 instrument of mass destruction?
25 What will we do -- what will we and others do
to

42

1 kindle respect for our country's constitutional intent
embodied
2 in her law? What will we do to show our personal
respect

and
whose
3 toward all of our fellow citizens, including elected
4 appointed civil servants at all levels of government,
5 dedicated sacrifice and work product so often goes
6 under-evaluated -- undervalued?

7 Thank you, your Honor.

8 THE COURT: Thank you, Dr. Heath.

9 Constance Favorite.

10 MS. FAVORITE: Good afternoon.

11 THE COURT: Good afternoon.

12 MS. FAVORITE: I'm Constance Favorite, the
mother of
13 Lakesha Levy.

14 Lakesha was born and raised in New Orleans,
Louisiana.

15 And at the age of 13, Lakesha wrote such a profound
letter to

16 me about her ten goals in life. I can't remember
exactly those

17 ten goals of life she had written down for me, but I do
18 remember she intended to complete high school and
attend
19 college and to become successful.

20 And at the end of that letter, Lakesha wrote
to me

21 that said, "I'm going to be -- I'm not going to be
something,

22 I'm going to be somebody."

23 Lakesha completed high school. She went to

college.

24 And she married, had a baby; and to better her
lifestyle and to

25 make a good life for she and her family, she turned to
the

43

1 military. She went to boot camp in San Antone, Texas;
and

2 after a few weeks of being there, I can remember
Lakesha

3 calling me, regretting that she joined the military
because of

4 the strict discipline.

5 And then a few weeks passed, and she got over
that

6 part of it. Lakesha called back to tell me she was in
charge

7 of the latrine; and to me, I didn't think it was an
honor, you

8 know, but to her, she was proud to be in charge of the
latrine.

9 And I laughed; and she said, "Ma," over the phone, "I'm
10 crawling now, but watch me walk."

11 And so she was still in San Antone, and I got
a phone

12 call from work one day. And she called, disturbed
about not

13 graduating from boot camp. She just didn't know that
she

14 would. She didn't feel like she could.
15 And I asked her -- I said, "Lakesha, why are
you not
16 graduating from boot camp?"
17 And she said to me, "Mom, I can't do the
laps."
18 And I said, "But have you tried?"
19 And she said, "I did."
20 I said, "But you hadn't given it 110 percent."
21 And she tried to convince me that she did all
that and
22 she still couldn't do it.
23 And I told her -- I said, "You know, you have
little
24 Cory at home waiting on you to complete boot camp so
you guys
25 could be together." I said, "When you try again, just
imagine

44

1 that you're running to rescue your child."
2 And she told me I didn't understand.
3 I said, "I do understand. You're my child,
and I know
4 what you are capable of doing. And I will tell you I
expect
5 that of you."

6 So she cried and sobbed over the phone; and I
listened
7 to that for a minute and I told her -- I said, "Lakesha
--"
8 She said, "Okay, Mom. I'm going."
9 And I said, "No, Lakesha. Forget about the
minutes
10 and just do the seconds."
11 And she said, "Yeah, right."
12 And I said, "Call me back and let me know if
you
13 did -- how you do."
14 And she said, "I will."
15 And I told her that I love her and I believe
in her
16 and I know she could do it. And she hung up.
17 And she called back and she said, "I did it."
18 And I told her, "I know that you could do it."
19 So graduation came, and she wasn't expecting
me to be
20 there because I told her the finance, I couldn't make
it and
21 Cory and the baby were going -- and I showed up and her
eyes
22 lit up to see me there.
23 And then she was stationed in Oklahoma City.
It
24 wasn't where she wanted to be. She wanted to be closer
to New
25 Orleans, but she didn't feel like that was so far away
that she

1 can drive that distance to be home.

that
to go
knew what
were
for

2 On Sunday, Easter Sunday, she called early
3 morning to wish me a happy Easter. And I was preparing
4 to church, so I didn't talk to her too long. And she
5 time we would get back from church to find out what we
6 doing. And I was preparing myself to go to my family's
7 dinner. And she and I briefly talked.

problem;
tried
confidence
her

8 On Monday, she called at 7 with a personal
9 and she and I talked for about 2 hours about it. And I
10 to console her as much as I could and give her the
11 she needed that it would all work out; didn't talk to
12 Tuesday.

getting
have worn
fatigues. That

13 And April 19 came. I can imagine my child
14 dressed for work. She had three uniforms she could
15 that day: Her blues, her lab uniform, and her

her 16 day, she chose to put her fatigues on. And I can see
and her 17 marching her way to the federal building with her cap
right 18 shirt buttoned up to her leg and the crease to be just
the way 19 and the boots with a spit shine on it, because that's
20 she was.

21 She walked like a stallion, proud and
confident. I 22 can imagine her going to the federal building to take
care of 23 business, looking like a proud soldier.

24 Well, nine days later, I was told that Lakesha
was 25 killed in the bombing. I didn't see her, but the only
image I

46

1 have is that -- that suit was bloody and muddy. That
boot 2 didn't have a shine to it anymore.

3 And upon request, I've asked for Lakesha's
boot; and 4 today, I'm supposed to receive that boot. I can't
imagine what 5 it would look like, but I'm anxious to have that boot,
because 6 she had aspirations. One was to be a good wife; and if

you

find

an

his mommy

in that.

today,

she was

foot

away.

here.

3d

I was

7 talk to her husband, he claimed he would never, ever

8 another person like Lakesha for a wife. One was to be

9 excellent mother. And her five-year-old can remember

10 saying, "I love you" to him; so I think she succeeded

11 Another was to be a proud daughter of mine; and I am.

12 And then she wanted to be a great soldier; and

13 when I receive that boot, it would indicate to me that

14 just that, a great soldier; that she had this ladder to

15 succeed, most likely to succeed, and she had her right

16 about a foot up that ladder and her left foot was blown

17 Thank you.

18 THE COURT: Thank you, Ms. Favorite.

19 Patti Hall.

20 MS. HALL: Good afternoon, your Honor.

21 THE COURT: Ms. Hall.

22 MS. HALL: Very much a privilege for me to be

23 It's taken me three years to get here. I worked on the

24 floor in the credit union; and when the bomb exploded,

25 sent to the hospital. At that time, I really didn't

know what

47

1 had happened. I was terribly concerned about a green
linen
2 skirt I had on, and no matter how badly damaged I was,
being
3 the vain person I was, I didn't want that skirt cut off
of me.

4 But it ended up that I had 40 broken bones, I
have a
5 punctured lung, I was put on a respirator, one of those
funny
6 moving beds, and a tracheotomy; and I was in a coma for
five
7 weeks. The doctors helped to put me in this coma
because they
8 had nine surgeries to do on me and they were not sure I
would
9 even come through it.

10 It took me two months to even understand what
had
11 happened.

12 Excuse me.

13 But when I did, I had so many things in me and
14 everything; and I asked this Doctor -- I said, "Will I
ever
15 walk again?"

16 And he said, "You will if you want to."

17 Unbeknownst to me, they were contemplating
taking my
18 legs off because they really did not think I would ever
walk.
19 At the time, I really couldn't understand what
was
20 going on. I was able to go home on June 17; and right
away, I
21 started extreme therapy. It was about nine months
later that I
22 was able to take my first step. That was a joy to me.
It was
23 a joy to be able to go to the rest room. It was a joy
to pour
24 my own glass of water and to brush my teeth, because
when I
25 first came out of this coma, I couldn't talk, I didn't
know how

48

1 to eat, I -- I had no use of any of my limbs
whatsoever.
2 But I had a strong spirit that I didn't
realize I had;
3 and I vowed that I would walk again, and I vowed that I
would
4 do everything I could to make it out of this.
5 Now, I've had a rough time along the way,
because I
6 have a mother that's 82 that's had two emotional

breakdowns

I do not 7 over this. I have a sister. I do not have a husband,
building. 8 have children; but I had a tremendous family in that
reached 9 We were not just people working. We were people that
and 10 out and helped people. We were people that reached out
cookie 11 wanted to do for others. We had bake sales, we had
12 sales; and the money all went to charity.

costume 13 The credit union would dress up in Halloween
14 every year, and we would go all over the building with
15 trick-or-treats and we would entertain those children.

And I 16 was very greedy. I wore a bumblebee costume to win
\$15. I had 17 several ideas. But when I look back on that now, those
were 18 the most wonderful times of my life.

several 19 I've gone through 13 surgeries. I still have
asthma. I 20 more to go. I have a breathing machine. I have
why this 21 have arthritis, and I have a tremendous disbelief of
22 ever happened.

23 I'm sorry to be so emotional.

24 But I thought to myself, you know, things
happen that

hurt by 25 we can't explain; but deep in my heart, I am very, very

49

this 1 this, very hurt. To lose all these people, to see what
that did 2 has done to our nation, to put such a test to so many
3 nothing to deserve this.

week, in 4 I -- I am -- I'm in therapy three times a
in my 5 swimming for my legs, and I still have pins and plates
still have 6 left leg and knee and in my right shoulder blade. I
knees 7 a bad elbow, and they are contemplating replacing my
8 whenever I think it's time.

9 Then I'm under tremendous therapy for horrible
have 10 depression, because I lost all of these things. And I
trying 11 also lost my job due to total disability, and I -- I'm
12 to learn how to deal with that. That just happened
last month.

13 But I'll tell you what: I will never lose my
dignity,
14 I will never lose my spirit, and I will never lose the
love and

that 15 the admiration I have for Oklahoma City and everyone in
will 16 building. A lot has been taken away from me, but that
have -- 17 never, ever be gone. I may have lost a lot -- and I
18 but that's going to stay.

19 In all the times that I've done so many
interviews,
20 some people asked me once -- they were from a foreign
and I 21 country -- they said -- asked me all these questions;
you so 22 said, "Why are you so interested in this and why are
country all 23 interested in me?" I said, "This happens in your
24 the time."

25 They said, "Yes, it does; but never of this
magnitude,

50

1 and it wasn't one of our own that did it."
2 I've never forgotten that, and it breaks my
heart.
3 This country deserves more. All of us deserve more.
4 I'm here to pray that the Court will not show
5 leniency, please, and assess the greatest sentence that
can be
6 given by law.

7 Most of all, your Honor, I just thank you for
the
8 privilege that I could come here today and talk to you
and
9 thank you.

10 THE COURT: Thank you.

11 Betty Hawthorne.

12 MS. HAWTHORNE: On June 12, I will be 77 years
old.
13 Being a mother to my daughter, Donetta, my son Tom, has
been
14 the very best part of those years. Losing my son, Tom,
has
15 been the worst.

16 The Oklahoma City bombing took the life of our
son,
17 Tom. It has changed our lives forever and ever. He
was in the
18 Social Security office, trying to help straighten out
some
19 papers for a fellow worker.

20 Tom was a person that enjoyed life, people.
He loved
21 to talk; but most of all, he loved his family. He was
a good
22 son, a good brother, a good husband, a good father, and
he
23 would have been a good grandfather; but now, there is
four
24 little children in Oklahoma City that will never know
that.

25
together, and

One day, Tom -- Tom and I were shopping

51

1 I saw a penny on the sidewalk. I bent over to pick it
up. Tom
2 put his hand on my arm and he said, Don't pick it up,
Mom. He
3 said, Sometimes when Donna and I can, we throw pennies
down or
4 dimes or nickels so some child might find them. So now
when I
5 see a penny or whatever on the sidewalk, I don't pick
it up. I
6 think maybe Tom was here.

7 My granddaughter, Mary, and I were talking
about what
8 I was going to say here today and how it has affected
me. She
9 said: What I hate most about this is what it has taken
away
10 from -- a part of you that I will never get back.

11 Now, this next part, I'm speaking for my
daughter,
12 Donetta, and these are her words: "My brother and I
have for
13 several years been working together on our family
genealogy.
14 He took great delight in finding his mailbox full of my
letters

collected 15 and many other -- much other information that I had
wrote to 16 to send him. I loved reading his long letters that he
17 me, always in his own handwriting.

and 18 "From April 19, 1995, to this day, the letters
filing 19 information Tom sent me have remained untouched in a
handwriting. 20 cabinet because I cannot bear looking at that

birds 21 "Tom loved watching and feeding the numerous
time 22 that came to his yard. He devoted a great deal of his
the 23 trying to come up with a foolproof method of keeping
day that 24 squirrels from eating the bird food. He told me one
25 despite their small brain size, squirrels had to be the

52

1 smartest animals he had ever seen.
affirming 2 "My brother had a gift for offering --
just how 3 people and life itself. After he was gone, I realized
as a 4 much he made me feel valued, not only as a sister, but
5 human being."

6 Thank you very much.

7 THE COURT: Thank you, Ms. Hawthorne.

8 Virginia Moser.

9 MS. MOSER: Your Honor . . .

10 THE COURT: Good afternoon.

11 MS. MOSER: My husband works for the
Department of

12 Housing and Urban Development, and he is a survivor of
the

13 April 19 bombing in Oklahoma City. I would like to
share my

14 story with you and the impact it has had on our lives.

15 My grief is different than those whose loved
ones

16 died. It is not greater or less, for no one can
compare grief.

17 HUD is very near and dear to my heart. It was
my

18 first real job. I worked at HUD from February, 1972,
until

19 spring, 1976. HUD is not just federal employees who
work for a

20 federal agency located in a federal building. It is
full of

21 wonderful, caring people trying to help others obtain
decent,

22 fair housing. I know this because I worked with these
people

23 for four years and my husband Calvin has worked with
them for

24 over 21 years. They became a part of my family.

where 25 HUD is what brought Cal and I together. It is

53

1 our love and life began.

it was 2 And on April 19, 1995, at 9:02 a.m., I thought
3 where our love and life had ended.

housing 4 In 1973, I was working in the multifamily
designing 5 section of HUD; and Cal was an architect/engineer,

E 6 multifamily housing units for HUD. A friend in the A &
over to 7 section introduced us. I remember the day Cal walked
saying, 8 my desk and asked me out on a date. I can hear him now
9 "Would you like to go out next weekend?"

doing 10 I smiled at him and said, "Well, what are you
11 this weekend?"

barbershop 12 He said he had to go to Dallas to sing
13 music.

14 I thought to myself, "Sure, you do."

than 25 15 Well, he was telling the truth. That was more

almost 16 years ago, and barbershop music has been his hobby for
a 17 30 years -- that is, until April 19, 1995. Cal has had
enough to 18 50 percent hearing loss and could no longer hear well
to him. 19 sing lead in barbershop anymore. This is a great loss

Barbershop 20 He used to practice with the OK Chorale
with a 21 Chorus every Monday night and sometimes on Thursdays
wherever 22 quartet. Every summer, our family vacation would be
aggravated 23 the OK Chorale would sing. Sometimes, I would get
hear and 24 he had to practice so much, but now I wish he could
brought him 25 sing and share his hobby with others once more. It

54

1 great joy, and it is a great loss to him.
the 2 Every day at 9:30 a.m., Cal would call me at
check with 3 office. We would talk only a couple of minutes to
4 each other, say, "I love you," and "talk to you later."
asked him 5 Well, on April 19, Cal called me at 9:00. I

and David 6 why he was calling me so early, and he told me how he
and 7 Walker had gone to coffee early because Dave was hungry
him 8 wanted to get something to eat. He also wanted to tell
for him. 9 about a boat light that Dave's wife Janet had bought

Dave's desk 10 On the way back from coffee break, Cal stopped at
they 11 to look at the boat light. They laughed and joked, as
friends, they 12 often did; for Cal and Dave were more than just
13 were more like brothers.

would go to 14 Dave was already talking about where they
time he 15 lunch when Cal left him to call me. That's the last
16 saw David Walker alive.

loss to 17 Dave brought Cal great joy, and it is a great
18 him.

Cal, 19 As soon as I hung up the phone from talking to
work in 20 there was a loud boom and the dental office where I
perhaps a 21 Edmond shook. We all thought it was a sonic boom or
City. 22 plane had crashed at Tinker Air Force Base in Midwest

the 23 Not long after that, we heard that a bomb had blown up

24 federal building, but I told everyone that was
impossible
25 because I had just hung the phone from talking to Cal.

55

1 We turned on the TV monitors in the
operatories, and
2 there was the front of the federal building, only a
shell
3 remaining. My heart dropped because Cal's office was
on the
4 8th floor, north side of the building, only inches away
from
5 the glass wall.

6 Our oldest son, Eric, was working at a horse
ranch in
7 Edmond at the time and rushed to my office to tell me
about the
8 bombing. We immediately went downtown to search for
his dad.
9 After a frantic search, we found Calvin hurt but alive.

10 I left Eric with his dad and went to help with
search
11 and rescue. I had CPR training and they were needing
help
12 desperately, and I knew I had to do something.

13 Someone handed me a pair of gloves and sheets
and
14 blankets and sent me up to the plaza on the south side

of the

15 building. It was only then that it hit me. You see,
the

16 sheets and blankets were needed to cover the bodies.

17 Four tiny broken bodies covered with sheets
and

18 blankets, gently placed on two park benches. I touched
them

19 and whispered: "It's okay, sweet baby. It's okay." I
have

20 been a mom for almost 28 years. It's really what I do
best.

21 You know how Mom can usually make everything better?
Well,

22 that day, I tried to be a mom to those four tiny
babies, but I

23 couldn't make it any better.

24 Now whenever I see those mothers with empty
arms, I

25 wonder, Was that your baby I held that day? Was that
your baby

56

1 I kissed on his way to heaven paved with streets of
gold and

2 into his arms, now, God would hold?

3 On April 19, those babies did not cry, but I
hear them

4 crying in my nightmares, and Mom still wants to make it
all

5 better.

6 Though it has been three years since the
bombing, in

7 my nightmares, it is now. I search the building for
Calvin;

8 and all the while, I am stepping on bodies and the
babies

9 continue to cry and cry.

10 The sights, sounds, and smells of that day
never leave

11 me. I wake up two to three times every night. I have
not

12 slept through the night since the bombing. I still
feel guilty

13 and helpless because I couldn't do anything to save
anyone.

14 There are many nights when Cal doesn't sleep,
either.

15 We often pass each other in the hall. He gets up and
draws and

16 sketches, and I get up and try to run away from my
nightmares;

17 but you see, there is no escape. We grieve together,
yet

18 separately. We grieve for friends and co-workers lost.
HUD is

19 what brought us together. It is where our love and
life began.

20 Though it has been three years since the bombing, our
grief is

21 ever present. It is our life sentence.

22 This crime committed deserves a life sentence.

I, it 23 Nothing less. For, you see, Judge Matsch, for Cal and
so. 24 will always be April in Oklahoma and our heart aches
25 Thank you.

57

1 THE COURT: Thank you, Ms. Moser.
2 Rudy Guzman.
3 MR. GUZMAN: May it please the Court, your
Honor.
4 THE COURT: Mr. Guzman.
5 MR. GUZMAN: Basically, my life after April
19, 1995,
6 has been a living hell. Terry Nichols planned on doing
some
7 harm and changing thousands of lives, and he succeeded,
knowing
8 the fact that in constructing a bomb with all intent
and
9 magnitude to hurt, maim, and kill anybody and anything
in its
10 path. Mr. Nichols made sure this will happen.
11 One of the folks he decided to kill was my
brother,
12 Captain Randolph Guzman. Your Honor, you should have a
picture
13 of Randy in front of you.

14 THE COURT: I do.

15 MR. GUZMAN: Okay. A great person me, my
family, and

16 our country lost in this horrific act.

17 My brother Randy, as most people know him by,
was a

18 kind and caring person. He was the type of person when
in time

19 of need, he will try his best to be in support. He
will laugh

20 with you, he will cry with you, and he will always
offer that

21 shoulder to lean on.

22 Earlier, I referred to my brother as Captain
Randolph

23 Guzman because he was killed in line of duty, serving
our

24 country as a United States Marine, which he was proud
to be.

25 Prior before being stationed in Oklahoma City,
he had

58

1 several tours of duty, in which one of his tours was
as most
2 representing our country during the Persian Gulf War,

3 people know it by as Operation Desert Shield and Desert
Storm.

4 He dedicated himself and risked his life for liberation
of

5 Kuwait.

6 After a few years of doing several physical
jobs for
7 the Marines, he earned his way to a desk job, being
assigned to

8 the recruiting station in Oklahoma City on the 6th
floor of the

9 Alfred P. Murrah Building. He started as the operation
10 officer, then he became the executive officer.

11 Again, he was serving our country, encouraging
young
12 men and women to devote themselves to serving our
country, the
13 way Randy chose, as a United States Marine.

14 I can't say how proud Randy was on being a
Marine, but

15 on a scale of 1 to 10, it seems to be a 20. He was
really

16 proud, wearing the uniform of the Marines, especially
when he's

17 in his dress blues. He made sure everything was in
perfect

18 place, from no lint on his uniform, to using a ruler to
19 perfectly place his ribbons on his chest.

20 I only had two occasions seeing him in his
dress

21 blues. The first time when he was back home in the San
22 Francisco Bay Area in the summer of 1994. He wore this

uniform

23 to his 10-year class reunion. The second and final
time was

his 24 after the bombing. He was laying in his casket, again
25 uniform in tiptop shape, again his ribbons on his chest

59

swollen and 1 positioned perfectly. But seeing Randy's face all
like 2 battered was a sight I was not ready for. It seemed
hundred 3 someone used a hammer on his face and hit him several
4 times.

I said 5 I tried to hold back my tears, but I couldn't.
Then I 6 all the goodbyes on behalf of our family and friends.
close 7 turned around to the funeral director and said, Please,
just went 8 the casket. I don't want anyone to go through what I
picture in 9 through. At this date, I still have that horrific
10 my mind on the condition of Randy.

his life 11 Randy served his country well, even risking
uniform. 12 in time of war. Also, Randy was a great person out of
13 He was definitely an officer and a gentleman.

14 My family and I were deeply affected by losing

Randy

15 in this violent manner. My mom and dad had to go
through the
16 trauma of burying their child. There is times while,
even
17 watching TV, especially last Memorial Day, my mom gets
upset
18 seeing a color guard, especially if it's a Marine Corps
color
19 guard. She doesn't cry out loud, but I can tell she's
thinking
20 about Randy because her eyes start to get glossy.

21 For myself, going through this trauma has been
eating
22 me away slowly but surely. I'm taking medication for
23 hypertension so my blood pressure can be controlled. I
24 suffered two anxiety attacks in which I thought I was
having a
25 heart attack. My lack of happiness and increasing
anger

60

1 affected a special relationship that I had. Sometimes
the
2 pressure and frustrations makes me think if it's worth
going
3 through life. Sometimes I have a sense of guilt of why
it was
4 Randy. It should have been me.

5 A lot of my friends and family and my new
friends I
6 met due to this crime that always see me smiling and
laughing
7 and occasionally joking around -- that's my outside.
Deep down
8 inside, I'm really crying out loud.
9 Now I'm seeing a therapist so I can deal with
my life
10 with this tragedy hovering over my head.
11 Randy and I, while growing up, did most things
12 together, since we were only a year and a half apart
and two
13 siblings in the family, just me and Randy. We had the
same
14 friends, shared the same activities. We were
practically a
15 team. We were both altar boys at our neighborhood
Catholic
16 church, working together as a team. We both competed
on our
17 high school track and field team. Randy was a distance
runner
18 while I was the shot -- I did the shot put and discus.
We
19 cheered each other on and supported each during -- our
20 respective events. Again, we were both a team.
21 We were both involved in student government,
both
22 working on projects and activities during our high
school life.
23 In student government elections one year, Randy ran for

student

24 body president and I ran for student body vice
president during

25 the same election. We were both a team, both
campaigning

61

1 together. We both lost, but we were still a team.

2 And on April, 1995, Mr. Nichols chose to break
up our
3 team.

4 Your Honor, please give Terry Nichols the
stiffest
5 punishment you can impose. Let him stay in prison for
the rest
6 of his life, thinking about what he did. In court, Mr.
Nichols
7 didn't shed a tear for any of our 168 lost loved ones.
8 Hopefully, sitting in prison, besides crying for
himself, he
9 will think hard enough to even shed one tear for us.

10 Please keep him locked up so he can never hurt
anybody
11 again.

12 Thank you, your Honor.

13 THE COURT: Thank you, Mr. Guzman.

14 Martin Cash.

15 MR. CASH: Your Honor.

16 THE COURT: Mr. Cash.

17 MR. CASH: May it please the Court. I never
really
18 understood what that meant. I guess if you didn't
please the
19 Court, you would let me know.

20 THE COURT: I've been known to.

21 MR. CASH: I think so. I've been here often
enough.

22 Your Honor, I asked to come before this court
to make
23 a statement for myself and hopefully, for some of the
hundreds
24 of other survivors of the crime committed on April 19,
1995, in
25 Oklahoma City, an instant in time when America lost its
sense

62

1 of security and all our lives were shattered and
forever
2 changed.

3 Having my left eye literally ripped from its
socket,
4 standing in what was left of my VA office, and pulling
a two-
5 or three-inch jagged piece of glass out of it, looked
at it,
6 and threw it down -- I didn't know what else to do; all

my

7 teeth later lost from trauma to my jaws, quarter-sized
hole in
8 my skull, now covered with a metal plate, and all the
upper
9 ligaments in my left hand severed at the wrist, I could
say
10 that the biblical judgment of an eye for an eye would
mean
11 justice for me and perhaps for the 12 others who lost
an eye or
12 the complete loss of sight of an eye that day. Others
suffered
13 far more injuries, more serious injuries to their
bodies and to
14 their minds.

15 We need not be reminded how blessed we were by
having
16 survived, and we've been further blessed by having so
many
17 families of those who died make us feel that we, too,
are part
18 of them.

19 No matter how great our injuries, we lost so
much more
20 that day. I lost friends and colleagues; many close,
and many
21 I just knew worked somewhere in the building. Other
survivors
22 lost members of their own family, along with very close
23 friends. And I lost two brothers, Mike Loudenslager
and Bob

Tigar's 24 Walker, whose fate that day was in the hands of Mr.
25 brother.

63

1 Yes, our petition did ask for financial
restitution,
2 and I want it to be known it wasn't for vengeance or
benefit
3 but rather to assure that those who died and those who
survived
4 would not have their tragedy turned into profit by the
cowards
5 who conspired to commit the crime.

6 And yes, there are numerous questions that
must in
7 time be answered; and they should be answered soon by
those
8 responsible. Naturally, we ask why, although we know
there can
9 be no answer which remotely justifies what they did.
Was it
10 truly because of Waco? Because a man who called
himself Jesus
11 incarnate became a martyr in their warped minds?
Because he
12 chose to emulate Joan of Arc, putting himself to the
torch
13 along with all those others? Certainly, Waco was a
tragedy,

14 and I do not wish these remarks to be taken as a
political
15 statement; but even if it could be proven that the
government
16 was totally at fault after losing the lives of their
agents and
17 negotiating for 51 days, would it, could it, possibly
justify
18 Oklahoma City? No.

19 Was it because they hated our government so
much even
20 after having served honorably in its armed forces and
swearing
21 to support and defend it and whose citizenship Mr.
Nichols
22 sought later to renounce? Certainly not. How could he
then
23 accept payment for his defense by that very same
government?

24 Who controlled who? I believe -- and I'm not
alone --
25 that Terry Nichols controlled the conspiracy. His
attorneys

64

1 convinced me that he really was that smart, smart
enough to
2 have gathered the funds and materials necessary to
build the
3 bomb, smart enough to supervise its construction. And
Terry

4 Nichols wasn't there because he was smart enough to
stay safely

5 at home and send his personal grunt, the still
subservient foot

6 soldier, to Oklahoma City to slaughter -- and it was
slaughter;

7 call it manslaughter if we must -- to slaughter babies
and

8 dozens and dozens of other good, decent human beings.

9 They were not, nor was I, the enemy. My only
purpose

10 with VA was to help veterans and their families,
veterans like

11 Mr. Nichols and McVeigh. I enjoyed doing it for 22
years; but

12 I couldn't do it anymore, so I retired, looking forward
to a

13 few peaceful moments a day I might not think about
April 19,

14 1995, not think about the look on my grandson Andrew's
face the

15 first time he saw me in the hospital, knowing I no
longer had

16 friends on each floor to see or talk to or even harass
Raymond

17 Washburn about the prices in his snack bar.

18 I've yet to find that peace, but those who
returned to

19 work tell me that they feel the same void or even more
so.

20 Your Honor, we ask that Terry Lynn Nichols
never again

of a 21 be permitted to see the light of day outside the walls
seconds 22 prison. For me, each minute of a life sentence is 59
men, 23 longer than the sentence he and McVeigh imposed on 168
24 women, and children and three unborn babies.

25 As for the others unknown named in the
indictment, if

65

not 1 there was one more or two or two dozen, it still would
along 2 diminish the degree of conspiracy in which Mr. Nichols
3 with Mr. McVeigh has been found guilty.

showing us 4 I thank you for letting us speak and for
work. 5 all how the American system of justice is supposed to

ashes 6 You know, your Honor, somewhere in the pile of
building 7 west of Oklahoma City, I think, in the rubble from our
On 8 are pieces of the cup that was on my desk that morning.

succeed, 9 that cup were these words: "If at first you don't
10 change the rules."

11 Some of us had a hand in changing the rules

for you

12 during this process. You accepted those changes
because they
13 were made constitutionally and properly by the other
two
14 branches of our government. There is no other method
in our
15 democratic republic to effect change. May those who
believe
16 that terrorism and violence can do so some day somehow
realize
17 that they are so very, very wrong.

18 Thank you, sir.

19 THE COURT: Thank you, Mr. Cash.

20 We're going to take a recess at this time.

Before

21 doing so, though, I wish to thank those who have
appeared and
22 given these very eloquent and dignified statements, and
I know
23 that you are here as representatives of many and accept
your
24 statements on behalf of all.

25 We'll take a 20-minute recess.

66

1 (Recess at 3:00 p.m.)

2 (Reconvened at 3:20 p.m.)

3 THE COURT: Please be seated.

4 I have received and read the submission of
letters in
5 connection with sentencing of Terry Lynn Nichols
submitted by
6 the defense, which includes the letter from Mr. Nichols
of
7 March 10.

8 I also received on June 2 a letter from Dr.
James S.
9 Gordon concerning the sentencing of Terry Lynn Nichols,
and a
10 letter from Dr. Reed Meloy, responding to that letter,
filed
11 June 3.

12 Mr. Tigar, I'll hear from the defense.

13 MR. TIGAR: May it please the Court, counsel,
members
14 of the jury, Mr. Nichols, this is a time when a lawyer
can
15 speak as and for a client. And the legal description
of the
16 proceedings we're now having, having to do with the
legal cause
17 for now imposing sentence, is a kind of historical
artifact.

18 There are issues pending, of course, including the new
trial
19 motion filed today and the one that we will file on our
review
20 of the lead sheets yet to be produced.

21 In addition to that, we don't need to go back

over our

22 motions addressed to the subject matter jurisdiction of
the

23 Court; that is to say, we have filed motions beginning
in 1995

24 contending that the Court lacked subject matter
jurisdiction in

25 the classical sense that the indictment fails to state
an

67

1 offense and that the statutes involved are deficient
under the

2 Federal Constitution.

3 THE COURT: Yes.

4 MR. TIGAR: I'm going to talk a little bit
about Terry

5 Nichols, the Terry Nichols that I have come to know and
that

6 all of us on the defense have come to know in the three
years

7 that we have been involved in the case. I do that with
this

8 preface: When we last were here, I said something
about the

9 jury's verdict with which your Honor disagreed. And
everybody

10 knows that in this room today, your Honor has the last
word.

11 I'm not saying things that I know your Honor will

disagree with

12 to make your Honor angry. I'm saying them because I
hope that

13 I might persuade your Honor; and if I don't, there is a
14 building across the street. As Justice White himself
reminded

15 me the last time I saw him two weeks ago, it has his
name on

16 it.

17 I am aware that the jury did not find that Mr.
Nichols

18 had any intent to kill anyone. Indeed, the jury found
--

19 acquitted on all counts in which an intent to kill was
an

20 element of the offense. And so any suggestion by
anyone here

21 either in what we've heard so far or what we may hear
in the

22 future that he possessed any such intent, I put aside.

23 In addition to that, there is the ongoing
dispute as

24 to whether or not it was right to have stricken from
Count One

25 the allegation concerning intent to kill.

68

1 I'm also aware of what the 12 people who
preceded me

2 to this lectern said and what the 54 people who sat in
that
3 witness chair during the penalty phase said. We
ourselves had
4 acknowledged in opening statement the devastation and
5 destruction wrought by the bombing in Oklahoma City.
6 This is not the first case in which I have
been called
7 upon to represent someone accused of so great a crime.
I was
8 reminded of that just 10 days ago in the memorial
service for
9 Justice Brennan in the United States Supreme Court;
that I had
10 been appointed to represent John Demjanjuk, who had
been
11 charged with killing 100,000 people during the horror
of the
12 Holocaust. Drew Days, who was Solicitor General of the
United
13 States, sat down next to me in the chamber of the
Supreme Court
14 and told me a story about how a lawyer in the Solicitor
15 General's office had come to him to tell him that one
of the
16 prosecutors in the Demjanjuk case had admitted back in
1980
17 that he, that prosecutor, had evidence that someone
else other
18 than John Demjanjuk had been responsible for these
deaths,
19 someone else had been Ivan the Terrible, but that the

20 prosecutor had said at that time that he had no
intention of
21 telling the court or the other side about that.
22 Solicitor General Days confronted that
situation
23 admirably; but I think it is a reminder to all of us
how
24 fallible we are, and it is a reminder to us that maybe
some of
25 the things that I will say today, people will disagree
with,

69

1 but in the fullness of time, we could have some hope
that
2 reason will prevail and another view will come to the
fore.
3 Of course, the absence of any intent to kill,
the
4 presence of a possible proceeding in Oklahoma, are all
reasons
5 for downward departures. But let me begin first by
addressing
6 some of the legal issues your Honor will confront
today.
7 First, your Honor has indicated the intention
to enter
8 a restitution judgment. I am not sure from the Court's
9 description of that judgment whether it is to be in
favor of

General 10 the General Services Administration qua victim or the
America. 11 Services Administration qua the United States of
Of 12 course, if the latter, there are different consequences
in 13 terms of an execution on that judgment, and I'll have
something 14 to say about that.

15 I'm not going to repeat our legal analysis of
not going 16 conspiracy as a nonpredicate for felony murder. I'm
going to go 17 to attempt to reparse the jury's verdict. I'm not
things that 18 through the public statements by jurors. Those are
19 are going to be litigated.

20 When we were here at the sentencing law
hearing, your 21 Honor offered Mr. Nichols some choices; and one of the
things 22 you said is that there are unanswered questions and he
might 23 come forward and answer them.

24 I filed a memorandum about the burden that
that places 25 on Mr. Nichols, and he wrote a letter in response.
I've

1 communicated with the Government, and I'll say some
things
2 about that. But I agree with the Court that there are
3 unanswered questions here. And I think that if the
Court is
4 going to enter a judgment that vindicates the rule of
law in
5 the Court's function as an Article III judge, I hope
the Court
6 will consider that some of those unanswered questions
can be
7 laid directly at the feet of these prosecutors,
directly at the
8 feet of the Federal Bureau of Investigation; that the
9 responsibility for failing and refusing to answer those
10 questions does not lie with us and never has: the
unanswered
11 question of who was in the Elliott's Body Shop, the
unanswered
12 question of who took the food order at the Dreamland,
the
13 as-yet unanswered question of the 1,034 fingerprints,
the
14 unanswered question as to why Michael Fortier received
a
15 sentence of 12 years, although the Government had
recommended
16 slightly more, when a life sentence is being thought of
here.
17 Michael Fortier, if your Honor, please -- Michael
Fortier,
18 everything that has been said here about Terry Nichols,

could

19 be said of him. Oh, yes, he wasn't charged with
conspiracy,
20 and sentences do tend to be indictment-driven; but
that, after
21 all, lies somewhere within your Honor's discretion.

22 Your Honor heard witnesses come forward and
talk about

23 Terry Nichols, Terry Nichols who saved somebody's farm,

Terry

24 Nichols who helped a wounded brother, Terry Nichols who
went

25 back and raised his children and Lana Padilla's
children under

71

1 the circumstances that your Honor heard about.

2 I wonder how many people in this courtroom
could

3 summon up folks who would talk about acts of human
compassion

4 such as those. Michael Fortier in the sentencing
proceedings

5 of which we read never attempted to do any such thing.
Michael

6 Fortier's conduct up until the 17th of May, 1995, and
in the

7 wake of this bombing was entirely different from that
of

8 Mr. Nichols. His 12-year sentence, I respectfully

submit,

9 stands as some kind of a benchmark.

10 Then there is the unanswered question why is
there no

11 move to prosecute Karen Anderson for perjury when it
turned out

12 that a list that she presented as an authentic list
clearly had

13 to have been faked and faked with the aid of evidence
provided

14 to her by the Government, not that they were
necessarily

15 witting accomplices but presented here in court as an
authentic

16 list of things. Why is there no move, despite the fact
we've

17 communicated with the prosecutors?

18 Your Honor, it is clear to us based on our
19 investigation that Roger Moore was not robbed. It is
clear to

20 us that he gave those guns to Timothy James McVeigh
through an

21 intermediary per an agreement with Mr. McVeigh and not
an

22 agreement with Mr. Nichols; and yet the Government, in
the wake

23 of all the evidence we presented at trial and we have
offered,

24 has done nothing.

25 Why is it, your Honor, in these unanswered
questions

1 that the 40,000 lead sheets -- we'll get some of them
to review
2 in a redacted form -- but why is it that we had to have
the
3 proceeding here, the charade here, where Agent Budke
was on the
4 stand and we find out that he makes handwritten notes
and we go
5 to the bench and the prosecutor has the lead sheet in
his
6 locked briefcase and brings it out and that's the first
time
7 that we hear about it?

8 Why is it, your Honor, we read in the
newspapers over
9 the weekend that some jurors were impressed by drill
bit
10 evidence? And yet I think as we look back on this case
that
11 early on, there was a dispute -- and I respectfully
submit that
12 the Court decided that Dr. Frederic Whitehurst was not
to be
13 believed or that he had an axe to grind or that he was
not a
14 person that was -- that was reputable, in whose
judgments we
15 could place any confidence; and as the Court knows,
when we

on the 16 found out things that we thought justified putting him
17 stand, his testimony was excluded.

when 18 Well, if Dr. Whitehurst is not to be believed,
19 Dr. Whitehurst offers to come in court and say that the
use to 20 metallurgical and other evidence that the FBI tried to
fraud, 21 tie Terry Nichols' drill to this event is a fake and a
let him 22 why is it that the Government doesn't say, Well, let's
why did 23 on? Do they think that he's a kook, a flake? Well,
it that 24 they pay him seven figures in his settlement? Why is
left 25 their own respected agent, Agent William Tobin, has now

73

redress 1 the FBI and gone to Dr. Whitehurst in an attempt to
2 injustices based on forensics?

going 3 With respect to the restitution order, I'm not
still a 4 to argue at length about this, your Honor; but there is
a 5 chance to turn back. The GSA? It is proposed to enter
6 judgment in favor of the General Services

Administration, your

7 Honor, and to enter a judgment which if it runs in
favor of the

8 United States means that Mr. Nichols would not have
exemptions

9 from execution such as homestead, in effect a judgment
that

10 would take food from the mouths of Mr. Nichols'
children to

11 give what little is there, what little substance, to
the

12 General Services Administration.

13 Now, your Honor, I remember when the building
across

14 the street was being remodelled, and I remember talking
to a

15 judge of the Tenth Circuit about it. And I remember
that the

16 judges of the Tenth Circuit were, if memory serves,
thankful

17 that the GSA was not in charge of that project; that
the

18 restoration money came elsewhere and the Judicial
Center had

19 saw to it. It's ironic that the Court proposes to
enter a

20 judgment in favor of the GSA for \$14 million when on
February

21 9, 1998, we read in the national media that that's
exactly

22 amount -- the amount that the GSA wasted by renting a
building

23 that stood empty for a year in Washington, D.C.,

because they

24 couldn't get it together to get the FCC into it in a
timely

25 fashion.

74

1 We're talking, your Honor, not about your
power. You

2 clearly have power to do it. We're talking about the
question

3 of whether in a rational world, these kinds of choices
ought to

4 be made.

5 One of the things your Honor asked me was how
can the

6 Court enter a judgment that attempts to secure respect
for law,

7 not just specific deterrence or special deterrence, as
it's

8 sometimes called, and general deterrence, but how can
we secure

9 respect for law?

10 Everything that I have said up to now, I
respectfully

11 submit, is geared toward trying to answer that
question; that

12 is to say, is there something the Court can do in the
exercise

13 of its Article III power to recognize that the things
that have

14 been laid at Mr. Nichols' door don't entirely belong to
him and
15 that the responsibility here belongs to the Government,
which,
16 unless some judge somewhere does something, is going to
17 continue to say that they get to do whatever they want;
that no
18 message would ever be sent, then, that these
prosecutors and
19 these FBI agents have any duty to care a moment about
the
20 truth, let alone about seeing that the truth gets out
in court
21 when we ask for the materials to try to prevent --
present,
22 rather, to a jury?

23 Mr. Nichols, as the Court charged the jury,
can be a
24 conspirator without knowing all the rest of it. Mr.
Nichols,
25 your Honor, told the FBI and through his lawyers here
told the

75

1 Court what he knows about this. And we spent three
years, and
2 I thank the Court for every dollar that the Court put
out there
3 so that we had the investigative resources. We
presented

Murrah 4 everything we know about the conspiracy to bomb the
5 Federal Building. We presented it.
6 We also presented the evidence that there is a
great
7 deal more that could be known but not on our side of
the aisle.
8 If the Court please, we didn't go much into
the FBI
9 Laboratory. We didn't go much into the FBI Laboratory
report.
10 We cross-examined those witnesses one at a time. And
yet, if
11 the Court please, why is it that prosecutors felt free
to put
12 FBI agents together in rooms and have them compare
their
13 testimony to talk about how evidence was found? Why is
it that
14 prosecutors felt free to put on witnesses whose science
was not
15 worthy of the careful consideration of responsible
people? Why
16 is it that the FBI felt that they had to hold Mrs.
Nichols in
17 custody for five-and-a-half weeks without the
opportunity to
18 contact anybody?
19 I know that the Court in other contexts has
had a
20 great deal of respect for citizens who serve on federal
grand

21 juries and for citizens who may look at what
prosecutors and
22 investigators do and say, We're the grand jury, we have
a
23 function under the Constitution, we think that what's
going on
24 here is something that shouldn't happen, we want to
assert
25 ourselves.

76

1 And yet I think that in the fullness of time,
we'll
2 all come to see that Hoppy Heidelberg turns out to be
wiser
3 than any of us knew, because of all these gaps in the
case, all
4 of these gaps in the evidence, all of these things that
the
5 Government simply refused to have anything to do with
are the
6 very kinds of questions that he was attempting to raise
at a
7 time when something effective could be done about it.
8 Now, your Honor, we saw today a letter from
this
9 Dr. Reed Meloy. We did file a letter from Dr. Gordon
not based
10 on any doctor-patient privileged communications --
we're not

11 waiving that -- but just because he's a concerned
citizen. He
12 saw the trial. But what a commentary Dr. Meloy's
letter is,
13 your Honor. I've never had a chance to address it, and
I'll do
14 it now. What a commentary.
15 You know that in the Soviet Union, if the
Court
16 please, they had psychiatrists who would analyze people
and say
17 they were antigovernment, so they had to lock them up.
Some of
18 them became great novelists, but others, of course,
simply
19 wasted away. But at the very least, in the former
Soviet
20 Union, the psychiatrists met with the people before
they went
21 into court and gave their opinion that they were
antigovernment
22 and should be locked up.
23 Here is Dr. Reed Meloy, your Honor, who claims
to be a
24 scientist. He reads the contents of Mr. Nichols'
library,
25 reads a bunch of material that your Honor has held to
be

1 inadmissible and completely irrelevant even for
sentencing

2 purposes, sits across the room with his ponytail neatly
coiffed

3 in one of his scoochies or rubber bands or whatever,
sees

4 Mr. Nichols from no closer than 40 feet distance, and
then

5 writes a letter, professing to give an opinion that he
calls

6 science, your Honor. If that is the executive branch's
7 version; that they've got a bunch of shrinks that are
going to

8 read the contents of our library, observe us from 50
feet away,

9 and give our expert opinion, we should all be locked
up. Well,

10 I'm going to get my toothbrush, your Honor, because I'm
sure I

11 exhibit behavior -- maybe I'm doing it right now --
that's

12 every bit as dangerous as everything that Dr. Meloy
found.

13 Now, throughout this trial, your Honor, the
Court

14 knows that we did not try our case in the press. I
don't know

15 if that's the basis for a downward departure or not.

16 Mr. Nichols and his defense team decided, your Honor,
that we

17 were going to be here and show up every day. We were
going to

18 have confidence in the system; and yes, things I've

said have

19 disagreed with your Honor's ruling; and yes, things
I've said

20 have disagreed with parts of the jury's verdict, and we
know

21 there is a Court of Appeals across the street to
redress them.

22 But we tried our best, in the face of leak
after leak

23 after leak and in the face of the most incredible
journalistic

24 irresponsibility it has ever been my misfortune to
witness.

25 One reporter for a news magazine, when I called him to
complain

78

1 about a story that was outrageously biased and
inaccurate,

2 said, Well, I wrote it biased -- or excuse me -- I
wrote it

3 unbiased and fair and accurate, but the editors cut it
down and

4 that's why it appeared as it did.

5 I imagine, therefore, the Newsweek magazine
editorial

6 room is a kind of giant abattoir of the truth, where
the

7 editors dine on the good steaks and chops of truth
while the

8 public, including members of the prospective jury, are
fed the 9 organ meats and offal of speculation and leaks from the
10 government.

11 I don't have a copy of your Honor's speech in
Tulsa,
12 but I read about it. And I'm glad that your Honor made
that
13 speech. I'm glad that your Honor went back to Oklahoma
and
14 talked to the people of Oklahoma about the Constitution
that
15 we've all taken an oath to support and that your Honor
and I
16 may see differently at times; but, you know, I trust we
means
17 understand we're part of an adversary process that
which the
18 something. And your Honor talked about the way in
stated in
19 Constitution ought to trump certain things that are
Honor was
20 the Declaration of Independence. I don't think your
or
21 talking about anybody in particular's political views
Nichols. I
22 disagreeing with political views attributed to Mr.
that your
23 didn't take it that way, but I was struck by the fact
24 Honor saw fit to remind folks of that.

25 Your Honor faces a horrific responsibility in

1 sentencing in this case. The 12 people who spoke so
eloquently
2 to you spoke eloquently, but many of them said things
about
3 Mr. Nichols that under our constitutional system can't
be
4 attributed to him. Many of them spoke about things
that are
5 simply irrelevant. Many of them put forward a theory
-- one of
6 the last speakers, Mr. Cash, put forward a theory that
the
7 jurors had to have rejected in coming to their verdict
and that
8 the Government didn't even embrace except fitfully and
only
9 then through a witness -- and you remember one witness;
that
10 was Mr. Dilly; and we saw what happened to him.

11 But I think there is a message deep here about
what
12 the Constitution means. The people who wrote it were
not
13 strangers to disorder. They were not strangers to
violence.

14 They indeed had been responsible for some of it
themselves, but
15 they wrote the Bill of Rights. And once again, to
refer to

States 16 that event of a couple of weeks ago in the United
of coming 17 Supreme Court, all the justices took the unusual step
Justice 18 onto the bench to honor their late brethren (sic),
stepped down 19 Brennan; and Chief Judge Richard Arnold, recently
and 20 as Chief Judge of the Eighth Circuit, took the podium
Law 21 reminded us all of what Justice Brennan had said at NYU
Justice 22 School during the Madison lecture which inaugurated
23 Brennan's lifelong concern with criminal procedure in a
24 constitutional sense. And what Judge Arnold pointed
out was 25 that because of the legacy of Justice Brennan and those
who

80

was the 1 worked with him, as Justice Scalia said afterwards, he
Justice 2 most influential justice of this century and he --
except the 3 Scalia -- didn't agree with a single thing he wrote
and the 4 flag decision, but so be it. But what Justice Brennan
that we 5 other justices taught us all is, as Judge Arnold said,

observe 6 are safer -- yes, safer -- as well as freer if we will
conduct of 7 the limitations placed by the Constitution upon the
others. 8 all who seek to exercise governmental power over

that 9 And I hope that in your Honor's sentence today

sentence that 10 your Honor will reflect upon and reflect in that

well as 11 a message needs to be sent to the executive branch as

events. 12 to Mr. Nichols, if your Honor wants to, about these

a 13 And if for some reason, we walk out of here and we have

insulting 14 sentence with which we disagree, I'm not going to be

Appeals there 15 to your Honor. We know that there is a Court of

the 16 and we'll go -- we'll go argue about it, because that's

17 process.

stepped up 18 In that sense, your Honor, everybody who

put 19 here today who asked you to do anything asked you to

everybody who 20 Mr. Nichols away for the rest of his life. Now,

knew that 21 stood in the witness chair during the penalty phase

ask that 22 when they were all done speaking, the Government would

of us 23 Mr. Nichols' life be taken. All of us understood, all
these 24 heard, all of us wept, if not openly, then inwardly, at
the issue 25 stories of devastation and harm. That has never been

81

never 1 in this case. That has never been the issue. We have
2 denied that that happened.

it that 3 But the question before the Court is what is

judgment? 4 one seeks to accomplish with a sentence, with a
Is 5

again in 6 it that Mr. Nichols has no contribution to make ever

that we 7 the world and that this is simply punishment? Is it

vengeance in 8 are to respond to what is, after all, a cry for

an 9 this courtroom and on the street? Or rather, is there

that 10 opportunity to go forward, to think about a sentence

not 11 contributes to rebuilding, a sentence that is didactic,

power to 12 just for Mr. Nichols? Your Honor has got plenty of

13 teach Mr. Nichols a lesson. That's what these folks

are

13 talking about.

14 respectfully

But in our constitutional system, I

15 to teach

suggest that your Honor has the right, the obligation,

16 vengeance,

a lesson elsewhere as well, to stem the cry for

17 since the

which is a cry for vengeance that has gone unabated

18 cry to

very first moment that I was in this case. It was a

19 in

have the case tried in Oklahoma City, and if not there,

20 Lawton. It was a cry to have it tried by a judge from

21 have it

Oklahoma; and when that was denied, it was a cry to

22 have it

tried in Oklahoma by your Honor. And it was a cry to

23 it was a

tried with Mr. Nichols and Mr. McVeigh together. And

24 degree

cry, even after the jury acquitted of first and second

25 murder, to take this life.

82

and

1 When that sort of a cry gets started, aided

I

2 abetted by prosecutors at every single step of the way,

3 respectfully submit that the Court has an opportunity
to say

4 something, to say something about the man Terry
Nichols, to say

5 something about the process, and to say that there is
more to a

6 system of justice than vengeance.

7 Thank you, your Honor.

8 THE COURT: Thank you, Mr. Tigar.

9 Mr. Nichols has the right, of course, to speak
in

10 allocution for himself. I have Mr. Nichols' letter of
March 10

11 of this year, as I've already announced, and have read
it.

12 Mr. Nichols, do you desire to speak?

13 THE DEFENDANT: Your Honor, I adopt Mr.
Tigar's

14 statements.

15 THE COURT: Very well.

16 THE DEFENDANT: Thank you.

17 THE COURT: Thank you.

18 Mr. Mackey, you speak for the Government?

19 MR. MACKEY: I do, your Honor; and I will do
so

20 briefly.

21 This is not Washington, D.C. It's not the
Supreme

22 Court. It's not the Soviet Union. It's not Nicaragua.
It is

over 23 a trial courtroom in the city of Denver, a place where,
a fair 24 the watchful eye of this court, Terry Nichols received
peers; 25 trial. Terry Nichols stands convicted by a jury of his

83

1 and regardless of the number of light fixtures in this
2 courtroom, that verdict stands.

3 It represents the unanimous vote of 12
citizens who 4 believed beyond a reasonable doubt that he knowingly
and 5 intentionally conspired to blow up the Murrah Building
and the 6 persons inside of it. The instructions of law that you
gave 7 the jury, your Honor, make that clear. There can be no
doubt 8 as to what Count One's verdict finds.

9 There are some unanswered questions, but the
only 10 question that has to be dealt with today is not
unanswered. 11 Has Terry Nichols been convicted under the rules of law
of a 12 crime of conspiracy, use of a weapon of mass
destruction?

because 13 I won't talk further about the verdict, Judge,
over. 14 this is a different place and time. The jury's job is
now for 15 Their work has been done, and now the final question is
is a 16 you and you alone to answer; and that question is what
intentionally 17 fair and just sentence for a man convicted of
and 18 knowingly conspiring to blow up a federal office
building and 19 the innocent men and women inside.
is the 20 It's our view, of course, that a life sentence
it. 21 only appropriate sentence, no matter how you look at
will 22 There is the question of departures, and I
position is 23 address that only briefly, your Honor. Our legal
They 24 staked out by two rules of law. One, of course, is any
25 downward departure carries the burden with the defense.

84

been 1 must convince this court that a downward departure has
secondly, 2 proven beyond a preponderance of the evidence. And

3 your Honor, any downward departure, of course, is
subject to
4 your discretion. It is not mandatory. And if there is
a case,
5 this is the case, where all of the circumstances
dictate
6 against any downward departure.

7 As to the grounds for upward departure, we've
set
8 those forth in our brief and will rely upon those in
support.

9 Your Honor, no one can disagree with the
purpose of
10 the sentencing guidelines, the idea that like offenders
should
11 receive like sentences regardless of what place that
crime is
12 committed or what judge is assigned to hear that case.

13 But you know, your Honor, that the guidelines
have
14 changed the very nature of sentencing in federal court.

We
15 seem to have lost fundamental purposes behind
individualized
16 punishment. We seem, as lawyers and judges, to spend
our time

17 sounding more like accountants calculating a tax bill.
And so

18 I was struck by your observation during our hearing in
March

19 that this is a case, because it has facts never, ever
possibly

20 contemplated by the commission, that we can return to

some of

21 those fundamental purposes, some of the traditional
questions
22 that surround sentencings in Federal Court. And so the
more
23 precise question becomes what sentence will reflect the
24 seriousness of the crime, promote respect for the law,
provide
25 a just punishment, and ensure adequate deterrence.

85

1 Again, the only conceivable sentence in this
case on
2 these facts for this defendant is life imprisonment.

3 There is no way to overstate the seriousness
of the
4 crime in Oklahoma City. It is an event that remains
the single
5 most horrific act of terrorism on American soil. And
there is
6 no quarrel about the terrible facts, as Mr. Tigar has
7 mentioned. We need only to look at the venue pleadings
of the
8 defense, where they outlined those horrible
consequences,
9 including, for example, in the defendants' pleadings
that the
10 economic loss as the result of the bombing tallied as
much as

11 \$650 million, and what other crime has led to such
economic
12 disaster? But that's only the beginning. What about
the
13 untold emotional and psychological harm caused to the
people of
14 Oklahoma City and beyond? What about the hundreds of
people
15 who suffered physical injuries, including people like
Martin
16 Cash and Patti Hall and Stan Mayer, people who will
wear those
17 marks of disfigurement for the rest of their lives?
18 But the effects of the defendant's crime did
not end
19 even there. The effects extended, as well, to the
foreseeable
20 deaths, foreseeable loss of human life. 168 entirely
innocent
21 men, women, and children, aged between four months and
73 years
22 of age, are now dead.
23 As your Honor remarked to us in our last
gathering and
24 told the story about the argument you heard in the
Colorado
25 Supreme Court, were reminded that human life is
priceless, so

1 then how are we to begin to measure the value of the
168 people
2 who died in Oklahoma City on April 19, died as a result
of a
3 conspiracy in which this defendant was a member?

4 That loss cannot be measured in dollars and
cents. We
5 know that and if it can be measured at all, it is best
done in
6 words of survivors and loved ones. And they've done
that in
7 their testimony during the trial, and they've done that
this
8 afternoon before your Honor.

9 Those words best describe the seriousness of
the crime
10 that Terry Nichols stands convicted of.

11 When we consider the seriousness of the crime,
Judge,
12 however, we should not overlook the target of the
defendant's
13 conspiracy, our federal government. The same
institution that

14 has guarded this defendant's constitutional rights
throughout
15 the past three years, for the conspirators, for Terry
Nichols
16 and Tim McVeigh, that government was a faceless evil.
And

17 ironically, Tim McVeigh and Terry Nichols' conspiracy
of
18 violence has done more than any other event to
reacquaint

caring 19 America with the faces, the hardworking, dedicated, and
a 20 people who work for that same federal government. It's
with no 21 government made up of people who go to work every day
serve in our 22 other goal in life than to recruit people who will
who have 23 military and protect our country, to assist veterans
that 24 already served in the military, to build the highways
manager 25 carry our country's commerce, to arrive as a building

87

citizens 1 at 5:00 in the morning to warm the building so those
obtain 2 can do their jobs, to help those who can't afford to
our 3 housing, to enforce our criminal laws, and to protect
those 4 highest officials and to care for the children of all
5 employees.

6 Terry Nichols' conspiracy brought to a virtual
7 standstill those government services and others.

8 Judge, the seriousness of the crime alone
demands a

9 life imprisonment sentence. The statute also talks
about other
10 factors, the need to promote respect for the law, just
11 punishment for the offense, and adequate deterrence.
All those
12 factors again, Judge, dictate the very same result.
13 Some of the victims today, your Honor, spoke
14 eloquently about their faith in our system of justice.
The
15 statute makes clear that your sentence is speaking not
only to
16 the people in this courtroom today, the parties, the
defendant,
17 the victims as well, but to this nation, beyond the
doors of
18 this courtroom. And your sentence has to speak to
anyone,
19 anyone else, who would think there is value to
participating in
20 a crime of violence and terrorism. It should speak to
anyone
21 who thinks a political point can be made through
violence and
22 terror. It should speak to anyone who would conspire
to use a
23 weapon of mass destruction against innocent Americans.
24 These people -- and they are out there, your
Honor --
25 must know that while they are afforded their rights
during the

1 course of trial proceedings, once convicted, our courts
will
2 not shirk from the duty of dealing with them severely.
3 Americans, your Honor, I think can be proud of
the way
4 that this system of justice has worked in this case.
Both the
5 defendants were provided with top-notch legal counsel.
The
6 trials were fair fights. The adversary process worked.
This
7 court, which has done so much to restore the faith in
the
8 American judicial system, should end this process by
designing
9 and imposing a sentence that will do all those things
that
10 we've discussed: Deterrence, respect for the law, the
need to
11 provide a just punishment.

12 Your Honor, last summer, when the Court
convened for
13 the Tim McVeigh sentencing, the Terry Nichols case was
sometime
14 on the docket. And obviously, because of the possible
impact
15 on the jury pool that would be assembled some day for
the Terry
16 Nichols case, your Honor was constrained from speaking.
Those

17 limitations don't exist today.

18 Having presided over the only two trials to
date about

19 the Oklahoma City bombing, your Honor is in a very
uniquely

20 informed position to speak to this country about the
bombing,

21 its effects, and the rationale for the sentence to be
imposed

22 in this case.

23 After all that time, Judge, it is now time for
the

24 voices on this side of the bench to fall silent and for
this

25 court to speak.

89

1 On behalf of the United States, your Honor, we
ask

2 that this Court impose a sentence of life imprisonment
on the

3 defendant, Terry Nichols.

4 Thank you, your Honor.

5 THE COURT: Mr. Tigar?

6 MR. TIGAR: Yes. Your Honor, Mr. Nichols
reminded me

7 that I forgot to say one short thing. I know I'm out
of order.

8 THE COURT: All right.

9 MR. TIGAR: May I say it? I'm sorry.

10 THE COURT: You may.

11 MR. TIGAR: Thank you.

12 I thought the Court should be aware that I've
received

13 from Mr. Timothy McVeigh a copy of a paperback book
entitled

14 Into The Wild, which arrived in my office about two
months ago

15 addressed to "Mike Tigar, domesticated man who
nonetheless has

16 some redeeming qualities, TJM." And in the book, the
only mark

17 in it, your Honor, is that someone -- and since I'm the
-- you

18 know, I'm the one who got it -- put in it a post-it, a
sticker,

19 your Honor, at pages 54 and 55. And I'm passing this
on for

20 whatever it's worth, your Honor. That tells the story
of the

21 hero of the book, Mr. McCandless, who walked into the
Alaska

22 wilderness, and then was never heard from, gave up
everything.

23 And while he was on his way to commit this solo act, he
stopped

24 at a friend's house and got food and got help and
contacted

25 this friend, and it tells a story of how he did not
tell his

1 friend of what he was up to.

2 I relate that to your Honor. I don't know the
3 significance of it. I could make an argument about it,
but

4 I've taxed your Honor's patience enough.

5 THE COURT: Before actually imposing the
sentence and

6 asking the defendant therefore to stand and with
counsel at the

7 lectern and hear the sentence, I think it is
appropriate for

8 the Court now to speak.

9 I have -- Mr. Tigar has referred to some
public

10 remarks that I made on the occasion of a Law Day
celebration in

11 Tulsa, Oklahoma, on May 1, where I did speak about the
12 Constitution of the United States and made some
reference to

13 the differences between the rhetoric of rebellion in
the

14 Declaration of Independence and the civil language of
the

15 United States Constitution. I was not addressing this
case. I

16 have never publicly outside of this courtroom spoken
about the

17 charges or the results in the Timothy McVeigh trial or

the

18 Terry Nichols trial. And I never will. The
appropriate place

19 for me to speak here as a judge is in this room and in
the
20 context of this process.

21 What I may believe personally about all of the
events

22 that I've heard about in the months of trials and
pretrial

23 motions is of no consequence. What is important is
what I do

24 in my duty as a United States judge.

25 This case is different -- Mr. Nichols' case is

91

1 different from Mr. McVeigh's case. I granted separate
trials

2 because that difference was pointed out to me early on.

3 Mr. Tigar has spoken eloquently here about
resisting

4 the cry for vengeance. I perceive that -- and I'm not
saying

5 this disrespectfully of anyone -- but it was in the air
in

6 Oklahoma City and it was the reason for bringing the
case here

7 to Colorado.

8 This case, as I said, is different. The

evidence was

9 different. The juries' verdicts were different.

10 I have, in thinking about what the appropriate
11 sentence is for Terry Nichols, considered the separate
12 evidence. I do not think it is appropriate to
determine a

13 sentence of Terry Nichols and match it with Timothy
McVeigh;
14 and, of course, a death sentence is not within my
power.

15 What is important, I think, for everybody to
know is

16 that this is not a murder case. There were charges of
17 murder -- eight counts of first-degree murder -- but it
was

18 under a federal murder statute dealing with the killing
of law

19 enforcement agents of the federal government because of
their

20 status. And here, the convictions, of course, are
involuntary

21 manslaughter. The crime of conviction that requires
sentencing

22 is the conspiracy, the violation of 18 United States
Code

23 Section 2332(a), a conspiracy to use a weapon of mass
24 destruction against property and people of the United
States.

25 Now, that, of course, is appropriately prosecuted in
Federal

eloquently 1 Court. It is a crime, and the victims have spoken
much as it 2 here, as I said; but it is not a crime as to them so
States. 3 is a crime against the Constitution of the United
States, 4 That's the victim; and the Constitution of the United
of the 5 of course, creates this form of government by consent
6 governed that includes us all.

Nichols 7 The evidence in this case shows that Terry
He joined 8 participated in a plot to undermine that government.
some 9 with those who think of the United States government as
oppressive 10 kind of occupying foreign power or some kind of
this 11 force that is taking away the freedom of the people of
12 nation.

think, a 13 There is, in some of the evidence here, I
fathers. The 14 gross distortion of the language of the founding
that 15 government that we live under and with and serve is
of, by, 16 government established by the Constitution and exists

17 and for the people, as a great president told us.
18 The evidence in this case demonstrates, I
think, so
19 vividly what that government is and who the government
is. I
20 refer to the Preamble of the Constitution of the United
States,
21 familiar words: "We, the people of the United States,
in order
22 to form a more perfect union, establish justice, ensure
23 domestic tranquility, provide for the common defense,
promote
24 the general welfare, and secure the blessings of
liberty to
25 ourselves and our posterity, do ordain and establish
this

93

1 Constitution for the United States of America."
2 What was going on in the Alfred Murrah
Building in
3 Oklahoma City on April 19 of 1995? Well, it's been
told to us
4 in the evidence and spoken to us here today. The
Preamble
5 talks about establishing justice and ensuring domestic
6 tranquility. In that building, agencies of the Bureau
-- such
7 as the Bureau of Alcohol, Tobacco and Firearms, the

Drug

8 Enforcement Administration, the United States Customs
Service,
9 United States Secret Service, the Department of Labor,
Federal
10 Highway Administration, Motor Carrier Safety: Those
people --
11 people like all of us -- and those agencies, were
performing
12 the function of establishing justice and ensuring
domestic
13 tranquility.

14 The Preamble says, "a government to provide
for the
15 common defense." In that building, the Defense
Investigative
16 Services office, United States Marine Corps, United
States
17 Army, were present. Those people were providing for
the common
18 defense.

19 "To promote the general welfare." Within that
20 building, we had offices and people performing the
services of
21 Health and Human Services, Housing and Urban
Development, the
22 Social Security Administration, and the Veterans
23 Administration.

24 These people were serving as a part of our
government.

25 And the emphasis on the fact that these were our fellow

fact 1 citizens, of course, is poignantly demonstrated by the
union for 2 that also within this building, there was a credit
America's Kids 3 the benefit of the employees and there was the
place their 4 Child Development Center, where these workers could
there, both 5 children. Many of the people whose children were
6 parents had jobs for agencies of the government.

The 7 And what was the purpose of this conspiracy?
to 8 evidence shows to my satisfaction that the purpose was
of those 9 disrupt, to disorganize, to intimidate the operations
10 agencies and of the United States government.
Apparently, the 11 intention was that the response would be fear and the
response 12 would be terror and intimidation, and these people
would not be 13 able to perform their work and that the response
throughout the 14 nation would be hysterical.

of The 15 Now, I'm not suggesting that all of the events

16 Turner Diaries were planned; but, certainly, the only
inference
17 that can be drawn from all of this evidence as a
reasonable
18 inference was that there was an intention here to
change the
19 course of government, change the policies of government
through
20 fear and intimidation.

21 But you know, it didn't work out that way.
Quite to
22 the contrary. Some of the most impressive evidence
that I
23 heard in this trial was the testimony of those
survivors who
24 went to work not only in the heroic rescue efforts but
also
25 getting the work of the agencies back on line. I heard

95

1 testimony of people who were themselves injured, who
showed up
2 for work the next day, and who put the agencies back to
work in
3 temporary quarters, called in people from other places
so that
4 these functions of government would continue.

5 And what occurred was that a community became
even
6 more united, and I think perhaps the country as well.

There

7 was no anarchy. There was no reign of terror. We
proceeded

8 with the orderly processes of recovery and restoration.

9 Now we have also had orderly processes here in
these

10 trials. The Constitution has been at work here. There
has

11 been disagreement, as Mr. Tigar has pointed out, with
some of

12 the rulings of this court and orders of this court.
There has

13 been disagreement with the conduct of the prosecution.

14 Accusations are again made here, in response to my
suggestion

15 that there are unanswered questions, that the fault
lies all

16 with the FBI and the Department of Justice and the
others who

17 were responsible for the preparation and presentation
of these

18 cases.

19 But I'm not here to determine the quality of
their

20 work, nor am I here to determine or suggest what
answers there

21 might be. I pointed out the possibility that there
could be

22 some information provided by Mr. Nichols only by way of

23 demonstrating my view that a downward departure from
the

24 guidelines sentence would require something of that

nature to

25 justify it under guidelines law.

96

1 I am satisfied that Terry Nichols has had the
best
2 defense available, not only with respect to the skill
and
3 zealous work of his team, the defense lawyers, and
those allied
4 with them, but also, as Mr. Tigar has observed, the
Court made
5 all of the resources that could possibly be made
available to
6 investigation and preparation of the defense.

7 But what has occurred here is that the
Constitution,
8 in my judgment, has given Terry Nichols a fair trial
and that
9 we have a result by this verdict which calls upon me to
issue a
10 sentence that reflects principally the severity of the
offense
11 and which stands as a strong statement that crimes of
this
12 nature must not be tolerated in this nation.

13 I do not impose judgment on Terry Nichols so
much as
14 respecting the man he is but what he's done. And what
he did

15 was participate with others in a conspiracy that would
seek to
16 destroy all of the things that the Constitution
protects.

17 My obligation as a judge is to preserve,
protect, and
18 defend the Constitution of the United States against
all
19 enemies, foreign and domestic. Terry Nichols has been
proven
20 to be an enemy of the Constitution. And accordingly,
the

21 sentence that I am going to impose will be for the
duration of

22 his life and is based upon my view that anyone, no
matter who

23 that person might be, or what his background might be,
who

24 participates in a crime of this magnitude, has
forfeited the

25 freedoms that this government is designed to protect
and

97

1 defend. That is the rationale for this sentence. I do
not do

2 this in the thought that I have no choice because the

3 guidelines say life is the appropriate sentence. I
would

4 impose this sentence regardless of the guideline.

Indeed, it's

5 my view that the guidelines and the Sentencing
Commission never

6 contemplated a crime like this or a day like this.

7 So I'll ask Mr. Nichols to come forward with
counsel.

8 The Court, having considered the jury's
verdict in

9 this case and the evidence in this case, finds that the
10 defendant has been found guilty on Count One of a
conspiracy to

11 use a weapon of mass destruction in violation of Title
18

12 United States Code Section 2332(a) and has been found
guilty of

13 involuntary manslaughter on Counts One -- excuse me --
Four,

14 Five, Six, Seven, Eight, Nine, Ten, and Eleven and is
therefore

15 found guilty of those offenses. The defendant was
found not

16 guilty on Counts Two and Three and is discharged on
those

17 counts.

18 The defendant, as to Count One, is hereby
committed to

19 the custody of the United States Bureau of Prisons to
be

20 imprisoned for the duration of the defendant's life and
for the

21 concurrent terms of six years each on Counts Four
through

22 Eleven.
23 The defendant is ordered to make restitution
to the
24 General Services Administration in the amount of
\$14,500,000,
25 restitution payable immediately and the Court requiring
the

98

1 defendant to notify the Court and the Attorney General
of any
2 change in his economic circumstances that might affect
the
3 ability to pay restitution.

4 The defendant will also pay the special
assessment of
5 \$450 for Counts One and Four through Eleven, also
payable
6 immediately.

7 No costs of confinement and no fine will be
ordered
8 because of the amount of the restitution that has now
been
9 ordered.

10 Mr. Nichols, the Court is required, of course,
to
11 notify you now of your right of appeal. You understand
that
12 you have a right of appeal from your conviction and
from this

file a 13 sentence. To exercise the right of appeal, you must
days 14 notice of appeal with the clerk of this court within 10
within 10 15 from today. Your failure to file a notice of appeal
16 days constitutes a waiver of your right to appeal.

and 17 You have appointed counsel to represent you,
is your 18 appointed counsel will file a notice of appeal if that
19 choice.

20 Do you understand your right of appeal?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: All right. You may be seated.

new 23 As I indicated, we'll deal with the motion for
hearing 24 trial in due course, and I believe there is another
interest that 25 that should be held with respect to the property

99

1 is an unresolved matter.

further at 2 All right. Do either counsel have anything
3 this point?

4 MR. MACKEY: Nothing on behalf of the United

States.

5 Thank you.

6 MR. TIGAR: No, your Honor.

7 THE COURT: Very well. The Court stands in
recess.

8 (Recess at 4:22 p.m.)

9 * * * * *

10 REPORTER'S CERTIFICATE

11 I certify that the foregoing is a correct
transcript from

12 the record of proceedings in the above-entitled matter.
Dated

13 at Denver, Colorado, this 4th day of June, 1998.

14

15

Zuckerman

Paul A.

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