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P.O. Box 3563, Denver, Colorado, 80294, (303)

15881

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

Lincoln

13 Street, Suite 1308, Denver, Colorado, 80203, appearing
for
14 Defendant Nichols.

15 * * * * *

16 PROCEEDINGS

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

18 THE COURT: Be seated, please.

19 Good morning.

20 MR. MACKEY: May we approach?

21 THE COURT: Yes.

22 (At the bench:)

23 (Bench Conference 154B1 is not herein transcribed
by court
24 order. It is transcribed as a separate sealed
transcript.)

25

15888

1 (In open court:)

2 (Jury in at 8:50 a.m.)

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

4 JURORS: Good morning.

5 THE COURT: As we indicated what our schedule
would be
6 when we recessed on Friday, we are now going forward

with the

7 closing arguments of counsel, after which I will
instruct you
8 with respect to the law. And again, the burden of
proof here,
9 generally speaking -- although I'll talk about the
burden of
10 proof in the instructions -- being on the Government,
we first
11 hear from Government's counsel, then defense counsel,
and then
12 Government counsel in rebuttal, just as we did at the
other
13 stage of the trial.

14 So at this time I will call on Miss Wilkinson.

15 CLOSING ARGUMENT

16 MS. WILKINSON: Thank you, your Honor.

17 Good morning, ladies and gentlemen.

18 JURORS: Good morning.

19 MS. WILKINSON: May it please the Court,
counsel.

20 Well, it's almost over. You've been here for
a very
21 long time. Some of you, in fact one of you, since
22 September 30, when we first began jury selection.
You've
23 listened to a lot of evidence, and you've made some
very
24 difficult decisions, and you found Mr. Terry Nichols
guilty of
25 Count One of the conspiracy. You found him guilty of

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1 participating in that conspiracy, and now you spent the
last
2 week listening to some very difficult evidence in what
we call
3 the penalty phase of this proceeding. I want to spend
this
4 morning -- and I'm going to talk to you for about an
hour this
5 morning -- talking about choices, choices that Terry
Nichols
6 made and choices that you will have to make this week.
7 Terry Nichols made choices starting back in
September
8 of 1994 when he was with Timothy McVeigh and Timothy
McVeigh
9 asked him to join the conspiracy to bomb the Murrah
Building
10 and the people inside of it. Everyone else said no to
Timothy
11 McVeigh. Terry Nichols said yes. He made a choice
that day.
12 He made a knowing and willing choice, and you found
that he
13 made that choice to participate in the conspiracy.
14 He made that choice not only to make that
agreement to
15 bomb that building and the people inside of it, but he
made a

a 16 choice to assist Timothy McVeigh and to make their goal

17 reality.

18 If Terry Nichols had said no to Timothy
McVeigh, we

19 might never be here, we might have never been here. No
one

20 else had said yes to Timothy McVeigh but Terry Nichols;
and

21 because of that, because of the choices that Terry
Nichols

22 made, there are 168 consequences to his choices. 168
dead

23 people in Oklahoma City within seconds of 9:02 a.m. It
is

24 because of Terry Nichols' choices that those 168 people
were

25 killed.

15890

1 Your final decision that you will make when
the

2 lawyers are finished talking and the Judge instructs
you on the

3 law will be one that you make as the conscience of this

4 community. You must decide what the appropriate
punishment is

5 for someone who knowingly and intentionally agreed to
use a

6 weapon of mass destruction against the Murrah Building
and the
7 people inside of it. You must decide what the
appropriate
8 punishment is for someone who knew that the deaths were
9 foreseeable and for someone who participated in a crime
where
10 168 deaths resulted. You must decide what should
happen to
11 Terry Nichols.

12 Each and every one of you told us during jury
13 selection that you believe that the death penalty was
an
14 appropriate punishment in certain circumstances. Now
it is
15 time for you to set aside your emotions, be they
sympathy,
16 compassion, or fear, and make a decision about Terry
Nichols
17 based only on the facts.

18 When you do that, when you find that Terry
Nichols had
19 the intent necessary, when you find that he knowingly
created a
20 grave risk of harm, and when you find that the crime of
21 conspiracy resulted in the deaths of 168 innocent men,
women,
22 and children, and you balance that against Terry
Nichols' life,
23 you will see that a sentence of death is just and is a
reasoned
24 response of the moral conscience of our community.

25
one and a

This decision is obviously a very important

15891

1 very difficult one, but you are not alone when you make
it. A
2 sentencing decision such as this unfortunately does not
come
3 with a formula that you can follow to determine a just
result.
4 But there is a framework. There is a framework that
the Judge
5 will describe to you when he gives you the law and a
framework
6 that you will see in the special verdict form that you
will be
7 given for your deliberations. There are specific steps
that
8 you must follow before you ever get to the final
decision of
9 determining whether Terry Nichols' sentence should be
life or
10 death.

11 But you will get there. And when you get
there, you
12 will have to make a final decision as the Judge has
instructed
13 you previously. You must make a moral judgment about
the worth
14 of a specific life balanced against the societal value

of a

15 deserved punishment. That is your duty and your
obligation as
16 jurors representing the conscience of our community.

17 But this decision that you make is not one
that you
18 will make in a vacuum. The citizens of this country
have

19 already spoken. The citizens that you represent as the
20 conscience of the community have already said that the
death

21 penalty is appropriate in certain admitted
circumstances, and

22 our community has already spoken about the potential
penalties

23 for this specific crime. They have provided for the
24 possibility of a death sentence when someone knowingly
and

25 intentionally conspires to use a weapon of mass
destruction

15892

1 where deaths resulted. That is what you found already
in this
2 case.

3 Anyone who participates in a conspiracy to use
a
4 weapon of mass destruction and against the people
inside of it

5 faces the possibility of the death penalty. Therefore,
it's
6 your obligation to consider all of the possible
penalties with
7 an open mind. You took an oath at the beginning of
this case
8 to have an open mind throughout the entire guilt phase
and the
9 penalty phase, and that is still your obligation today.
10 You must carry out your duty in making the
findings on
11 the special verdict form and weighing the sentence of
life or
12 death consistent with that oath. It would be wrong for
you to
13 eliminate any of the possible penalties based only on
your
14 verdict.
15 The Court has repeatedly told you that you
have
16 received the penalty-phase information because you
found Terry
17 Nichols guilty of knowingly and voluntarily agreeing to
use an
18 explosive bomb in a truck as a weapon of mass
destruction
19 against a federal building and the people inside of it.
You
20 were the ones that found that deaths were foreseeable
and that
21 deaths resulted. That is the verdict that you rendered
based
22 on the law as the Court instructed you. No one can

question

because 23 that verdict, nor can any of you change it. And it is
death 24 of those findings that we argue to you today that the
25 penalty is a just punishment for Terry Nichols.

15893

doubt 1 With your verdict of guilt beyond a reasonable
2 for Count One, the conspiracy to use the weapon of mass
3 destruction against the Alfred P. Murrah Building and
the 4 people inside of it, you had to make several findings.
You had 5 to make several findings that were set forth for you in
the 6 Court's instructions.

and 7 First, you found that Terry Nichols knowingly
8 deliberately agreed to use a weapon of mass destruction
against 9 the Alfred P. Murrah Building in Oklahoma City and the
persons 10 inside of it. The Judge instructed you that you had to
make 11 that finding beyond a reasonable doubt before you could
convict 12 Terry Nichols of Count One, and you did that. Terry
Nichols

P. 13 knew what the agreement was. It was to bomb the Alfred
Timothy 14 Murrah Building and the people inside of it. He and
15 McVeigh agreed to do that.

16 MR. TIGAR: Your Honor, I'm going to object to
17 mischaracterization of the Court's instructions.

original 18 THE COURT: Well, the jury will have the
19 instructions.

of you 20 You'll have the original instructions in front
21 in your deliberations.

22 So you may proceed.

23 MS. WILKINSON: Thank you.

purpose 24 Second, you found that Terry Nichols knew the
entered 25 or the goal of the agreement and that he deliberately

15894

the 1 into that agreement intending in some way to accomplish
make 2 goal. The Judge instructed you on that, and you had to
find 3 that finding beyond a reasonable doubt before you could
4 Terry Nichols guilty of Count One.

5 Third, you had to find that the crime
substantially

6 affected interstate commerce.

7 If there is any question about the law that
you had to

8 apply to find Terry Nichols guilty beyond a reasonable
doubt,

9 as the Court said, you will have a copy of the
instructions,

10 and you can refer to them at any time during your
deliberations

11 in this phase.

12 You made two additional findings when you
returned

13 your verdict. And you said, one, that the deaths in
this case

14 were foreseeable; two, that the deaths in fact resulted
from

15 the crime of conspiracy.

16 We know that the foreseeability of the deaths
is

17 obvious from the agreement to bomb the building and the
people

18 inside of it. We submit to you, ladies and gentlemen,
no one

19 could not have contemplated the possible deaths of the
people

20 inside the building when they agreed to use a weapon of
mass

21 destruction. You found that Terry Nichols and Timothy
McVeigh

22 agreed to use that weapon of mass destruction. It

wasn't a

23 cherry bomb. It wasn't a bottle rocket. This was a
24 4,000-pound bomb of -- weapon of mass destruction. And
it was
25 intended for use against the Murrah Building and the
people

15895

1 that worked there. That is the agreement that you
found, and
2 Terry Nichols knew that deaths could result from that
3 agreement.

4 To carry out your duties during this phase,
you must
5 also follow the law as the Judge instructs you. And he
will
6 tell you and you will see from the special findings
form that
7 you have to make a series of decisions that I have just
8 referred to. The findings are the framework that you
must use
9 to make your decision. And because this framework is
so
10 important, I want to spend my time reviewing with you
the
11 evidence and the information that you've received that
you
12 should consider when you follow his Honor's
instructions.

13 First, you should know that you are permitted
to
14 consider all of the information from the guilt phase.
You can
15 consider that for the sentencing decisions. And you
probably
16 have noticed during this past week that neither the
defense nor
17 the Government presented evidence during the penalty
phase on
18 all of the aggravating and mitigating factors that you
will see
19 in your verdict form. Neither side has to. We don't
have to
20 do that because you are permitted to consider the
evidence that
21 you have already heard. So even though the defense did
not
22 present any evidence in the penalty argument about
Terry
23 Nichols' role in the offense, they can still argue that
as a
24 mitigating factor. So, too, can we argue that the
deaths or
25 injuries resulting in the deaths occurred from a crime
of

15896

1 transporting explosives over state lines, even though
we did
2 not present any of that evidence during the penalty

phase.

3 I say this just so you know there's no
confusion --

4 all of the evidence that you've already considered in
the guilt
5 phase, you can apply to your decisions in sentencing.

6 But before you all get to consider the
aggravating and

7 the mitigating factors that you must balance and decide
what

8 the just punishment is, there are findings that you
must make

9 and findings that I want to review with you. You must
make

10 findings about the intent, the intent of Terry Nichols.
And in

11 this case, there are two different intent findings that
you

12 must review.

13 The first -- and you can find either one or
both --

14 the first is that Terry Nichols intentionally
participated in

15 an act. You will hear from his Honor, I believe, that
an act

16 is a conspiracy, and of course that makes sense because
someone

17 makes an agreement and we punish someone for a
conspiracy, so a

18 conspiracy is an act. And you know that Terry Nichols

19 intentionally participated in the conspiracy, so you
can find

act. 20 that Terry Nichols intentionally participated in an

contemplating 21 The next requirement is that he did that

already 22 that the life of a person would be taken. You have

sufficient 23 found that the deaths were foreseeable. That is a

life of 24 basis to find that Terry Nichols contemplated that the

common 25 a person would be taken. But you can also use your

15897

agreed to use 1 sense. You found that he knowingly and willingly

inside 2 that bomb against not only the building but the people

do to 3 of it. What in the world did he think that bomb would

4 the people inside of the Murrah Building?

didn't 5 He knew that death was a possibility, and he

6 care.

which 7 The second portion of that intent requirement,

lethal force 8 you can find, is that Terry Nichols intended that

died as a 9 would be used against a person and that the victims

10 result. Again, you've already found that Terry Nichols
agreed
11 to use a weapon of mass destruction. Your common sense
tells
12 you that a weapon of mass destruction is lethal force.
He knew
13 that would be used against a person because he agreed
to use
14 that weapon of mass destruction against the Murrah
Building and
15 the people inside of it. And you have already found
that the
16 victims died as a result of that act, that act being
the
17 conspiracy.

18 So you should have no difficulty, ladies and
19 gentlemen, finding the intent as described in the first
intent
20 requirement, either as contemplating the life of a
person would
21 be taken or that lethal force would be used against a
person
22 and that someone would die as a result.

23 The second intent requirement or finding that
you can
24 make is that Terry Nichols intentionally and
specifically
25 engaged in an act of violence. Well, you know he
intentionally

1 and specifically agreed to conspire with Timothy
McVeigh. You
2 already made that finding. The question is: What is
an act of
3 violence? The Court will give you instructions on this
also
4 and tell you that an act of violence can be a
conspiracy.

5 We ask you to find that a conspiracy to use a
bomb
6 against a building and people is an act of violence.
If that
7 is not a violent conspiracy, then what is? The only
purpose of
8 Terry Nichols' conspiracy with Timothy McVeigh was to
destroy
9 the Murrah Building and the people inside of it. That
was what
10 they intended to do. That was why they agreed to work
11 together. Terry Nichols engaged in an act of violence
on the
12 day that he and Timothy McVeigh agreed to bomb the
Murrah
13 Building.

14 Once you find that, you must find that he knew
that
15 the act -- that is, the conspiracy -- created a grave
risk of
16 death to a person other than the person who is
participating in
17 the event, or the offense, such that that constituted
what we

died as 18 call a reckless disregard for human life, and a victim
19 a result.

20 A grave risk of death. Did the conspiracy
create a 21 grave risk of death? You know from all of the evidence
that we 22 presented to you in the guilt phase and the penalty
phase, and 23 from the evidence that Mr. Nichols presented, that he
knew that 24 a mass -- a weapon of mass destruction used against the
Murrah 25 Building could create a grave risk of death. He
admitted to

15899

1 the FBI that he knew how to build bombs. He admitted
that he 2 knew what ammonium nitrate and fuel oil could do. And
he had 3 agreed to use that weapon against the Alfred P. Murrah
Building 4 and the people inside of it.

5 But if there was anything that showed you that
he knew 6 the grave risk of death that would be created, it was
his own 7 brother Les Nichols. He saw his own brother almost die
as a

and 8 result of a fuel blast. Les Nichols suffered horribly
Nichols 9 almost died as a result of those blast injuries. Terry
the 10 was there by his side. He knew up close and personal
explosion. A 11 horrors that one suffers as a result of a fuel
only be 12 bomb of ammonium nitrate and fuel of 4,000 pounds could
the 13 worse. You will recall the scars on Les Nichols' face,
saw those 14 burns and the skin grafts that he had. Terry Nichols
15 scars.

16 How can he tell Royia Sims who looked like
this before 17 the blast and looked like this after that he had no
idea that 18 placing a weapon of mass destruction in front of the
Alfred P. 19 Murrah Building would make her go from this to this?
He knew 20 the grave risk of death. Royia Sims almost died that
day.

21 You heard from Melissa Webster that she
literally 22 saved Royia Sims' life by putting her in the ambulance
instead 23 of tagging her for dead as everyone else had instructed
her to 24 do. Royia Sims suffered the grave risk of death.

25 Terry Nichols cannot say that he did not know
that a

15900

1 massive truck bomb used against the Alfred P. Murrah
Building
2 would create a grave risk of harm and death for anyone
in the
3 vicinity of that truck bomb.

4 You must also find that he did this with a
reckless
5 disregard for human life. Well, I submit to you that
knowing

6 what he knew about his own brother, knowing what he
knew about
7 bombs, Terry Nichols' picture should be in the
dictionary next

8 to the words "reckless disregard." He did not care
about the
9 consequences of his choices. He did not care who lived
and who
10 died.

11 And as you found, victims did die as a result
of his
12 conspiracy. So when you go back and you review the
special
13 verdict form, find Terry Nichols had the intent as set
forth by
14 his Honor in each and every instance. The findings
that you've

15 already made in this case make it easy for you to find
that
16 Terry Nichols specifically engaged in a conspiracy --
violent
17 conspiracy; that he created the grave risk of death;
and that
18 he had reckless disregard for human life.

19 Once you make those findings, your next step
will be
20 to analyze what we call the statutory aggravating
factors, and
21 those are the factors that the Government presents to
you to
22 show you why Terry Nichols' sentence should be death.
All of
23 those factors, we submit to you, have been proven
beyond a
24 reasonable doubt. The first one is that death or
injuries
25 resulting in death occurred during the commission of
the

15901

1 offense of transporting explosives in interstate
commerce,
2 which really just means transporting explosives over
state
3 line.

4 As we review the evidence for that, we must
look back

5 at the guilt phase, evidence that was presented to you,
but
6 looking back at it in light of the findings that you've
already
7 made, in light of the verdict. You have already said
that
8 Terry Nichols knowingly agreed to bomb the Alfred P.
Murrah
9 Building and the people inside of it, so let's review
what he
10 did in light of that.

11 He knew in the fall of 1994 what the goal of
the
12 conspiracy was, and you found that he joined that
conspiracy to
13 help accomplish the goal. So what did he do knowing
that's
14 what he and Timothy McVeigh intended to do? He bought
15 4,000 pounds of ammonium nitrate. He stole explosives
from the
16 quarry. He transported those explosives to Arizona.
He
17 transported those explosives later back from Arizona to
Kansas.
18 And finally, just three days before the bombing, he
drove to
19 Oklahoma City to stash the getaway car with Timothy
McVeigh.
20 Three days before the bombing, he was in the city in
which he
21 knew was the target of the bombing.

22 Your findings show that Terry Nichols agreed
to bomb

23 the Alfred P. Murrah Building, not just the federal
building,
24 but the Alfred P. Murrah Building. So he was in that
city
25 three days before the bombing, knowing exactly what
Timothy

15902

1 McVeigh intended to do.
2 When he left that getaway car there with
Timothy
3 McVeigh and drove McVeigh back to Kansas, he was
assisting
4 Timothy McVeigh in the most basic way in transporting
those
5 explosives on April 19. Timothy McVeigh was able to
drive that
6 Ryder truck from Kansas to Oklahoma City on April 19
because
7 his car, his getaway car, was left there. He was able
to cross
8 state lines with 4,000 -- with a 4,000-pound truck bomb
because
9 Terry Nichols helped him just three days before.
10 Now, the Judge will instruct you that you do
not have
11 to find that Terry Nichols himself transported the
explosives.
12 He could have done something to assist Timothy McVeigh,
and

13 that is enough to find this aggravating factor beyond a
14 reasonable doubt. But you can also find that he
transported
15 explosives in the fall of 1994 with the knowledge and
intent
16 that they would be used unlawfully to damage or destroy
any
17 building or property. Well, you know Terry Nichols did
that
18 because you found that he knew what the goal of the
conspiracy
19 was. The goal was to bomb the Alfred P. Murrah
Building and
20 the people inside of it. So in the fall of 1994 when
he
21 transported explosives for Terry Nichols -- for Timothy
22 McVeigh, he knew that those explosives would be used
for an
23 unlawful purpose and for destroying a building.
24 So you can find either. You can find that
Terry
25 Nichols, just days before the bombing, assisted Timothy
McVeigh

15903

1 with the transportation of the explosives by helping
him stash
2 the getaway car, or you can find that he transported
explosives

3 himself in the fall of 1994 in furtherance of the
conspiracy.

4 The second statutory aggravating factor that
you'll

5 have to look at is that in the commission of the
conspiracy

6 offense, Terry Nichols knowingly created a grave risk
of death

7 to one or more persons in addition to the actual
victims; that

8 is, that people who weren't killed were faced with the
grave

9 risk of death. You know that Terry Nichols didn't
create this

10 grave risk of death by accident or mistake. He knew
there was

11 a grave risk of death just by virtue of the size of the
bomb.

12 He purchased 4,000 pounds of ammonium nitrate.
He

13 assisted Timothy McVeigh in obtaining 1500 pounds of

14 nitromethane. Now, knowingly creating that grave risk
of death

15 is not the same as intending the deaths of the
individuals.

16 Terry Nichols doesn't need to intend to kill the
victims to

17 create that grave risk of harm. Terry Nichols did
create that

18 grave risk of harm when he participated in the
conspiracy, and

19 that grave risk of harm actually occurred when Timothy
McVeigh

20 detonated that bomb outside the Alfred P. Murrah
Building at
21 9:02 a.m.
22 You heard from numerous survivors during this
penalty
23 phase as well as Sue Mallonee from the Oklahoma
Department of
24 Public Health who told you about the grave risk of
death that
25 hundreds of people faced on the day of the explosion.

15904

1 You heard the story of course of Royia Sims.
But you
2 also heard from Dr. Andy Sullivan who told you about
Daina
3 Bradley, the woman who was trapped in the rubble, about
to die,
4 her leg crushed under thousands and thousands of pounds
of
5 rubble. Dr. Sullivan himself was scared, afraid the
building
6 would come down on both of them. They both faced the
grave
7 risk of death that day. They faced it because of
Terry's
8 indiscrim -- Terry Nichols' indiscriminate actions. He
and
9 Timothy McVeigh didn't care how that building came
down, but

and the 10 they wanted to destroy the Alfred P. Murrah Building
11 people inside of it.

12 Luckily for Daina Bradley, Dr. Andrew Sullivan
was a 13 hero that day. He stayed in that little hole, and he
described 14 to you quite graphically, was able to amputate Miss
Bradley's 15 leg and remove her from the building. She survived the
grave 16 risk of death, but her family did not. She lost her
two 17 children and her mother, and her sister suffered
serious 18 injuries, all because Terry Nichols created the grave
risk of 19 death when he agreed with Timothy McVeigh to bomb the
Alfred P. 20 Murrah Building.

21 That aggravating factor, we submit to you,
ladies and 22 gentlemen, was proven beyond any doubt.

23 The final statutory aggravating factor that
you will 24 review when you deliberate together is that Terry
Nichols 25 committed the conspiracy offense of a substantial
planning and

1 premeditation to create an act of terrorism. Again,
this one
2 is almost self-explanatory. Terry Nichols and Timothy
McVeigh
3 agreed to bomb a federal building and to use a weapon
of mass
4 destruction against the people inside of it. That is
plain and
5 simple an act of terrorism, indiscriminate bombing and
killing
6 against not only men and women of the federal
government, but
7 against innocent civilians, children, and babies.

8 Terry Nichols participated in the substantial
planning
9 and premeditation because he agreed almost seven months
before
10 the bombing to assist Timothy McVeigh with their
criminal
11 conspiracy. Terry Nichols back in the fall of 1994
plotted and
12 planned with Timothy McVeigh. He quit his job, he
joined
13 forces with Mr. McVeigh and in a little less than five
weeks
14 had bought or obtained all the components that they
needed to
15 bomb the Murrah Building and the people inside of it.

16 But you know that Terry Nichols engaged in
substantial
17 planning and premeditation during the conspiracy
because of the

18 letter that he wrote on November 5 to his cohort in
crime,
19 Timothy McVeigh. Terry Nichols was so concerned about
the
20 planning and the plotting of this crime that he let --
he set
21 forth the circumstances for the continuation of that
plot even
22 in the event of his own death. You can't get much more
23 planning and premeditation than that.

24 And when you hear the testimony of the
mitigating
25 factors of Mr. Nichols, that he was a good father, that
he

15906

1 now -- that he, now that's he's in prison that he's
been caught
2 for his crime, has written letters to his son Josh
about the
3 three Rs, think about where he was on November 5,
November 7,
4 and November 22, when he wrote those letters to Timothy
McVeigh
5 and Lana Padilla. As Mr. Mackey pointed out to you in
closing
6 rebuttal argument, there is no letter from Terry
Nichols to his
7 son Joshua back then about the importance of doing his
best and

8 about reading, writing, and arithmetic.

9 When Terry Nichols thought that he might never
return
10 to the United States, he thought about only one thing.
He
11 thought about Timothy McVeigh and their plot to bomb
the Murrah
12 Building. And you have seen that letter -- and you can
look at
13 it again if you like -- where Terry Nichols tells
Timothy
14 McVeigh where the storage sheds are, where the stolen
goods are
15 stored, and how he might keep those storage sheds until
the
16 spring of 1995 when he knew Timothy McVeigh would
detonate that
17 bomb in front of the Alfred P. Murrah Building.

18 That factor of premeditation and planning as
to the
19 conspiracy, which is the only offense that you are
considering
20 in this penalty phase, was proven beyond any doubt.

21 Once you analyze those three, as I said,
statutory
22 factors, there are three additional non-statutory
aggravating
23 factors that we present to you. And I suggest that
these three
24 factors will not be disputed. The first one is that
the
25 conspiracy offense in question was committed by Terry

Nichols

15907

no doubt 1 and it resulted in the deaths of 168 people. There's
of 168 2 whatsoever that the conspiracy resulted in the deaths
crime to 3 people. And that is the true horror of Terry Nichols'
McVeigh 4 plot the bombing of the Murrah Building. His plot, his
in the 5 criminal agreement, and his actions with Timothy
6 resulted in the largest number of deaths from any crime
7 history of America.

beyond 8 Not only can you find that aggravating factor
that very 9 any possible doubt, we submit that you should weigh
mitigating 10 heavily when you consider all of the aggravating and
sentence. 11 factors you must analyze in determining Mr. Nichols'
use the 12 Terry Nichols agreed to and participated in the plot to
that 168 13 weapon of mass destruction, and whether he intended
he 14 people die is irrelevant to this factor. The point is
15 participated in the offense, the deaths resulted.

16 You have already found in the guilt phase that
deaths 17 resulted from the conspiracy. This is why we have the
 18 possibility of a death sentence for a crime such as
this one. 19 Terry Nichols conspired to do something that can only
be 20 described as evil. He agreed to use a truck bomb
against a 21 building and against people who had no idea; and he
didn't 22 care, based on that agreement, whether those people
lived or 23 died.

24 I ask you, isn't 168 incidents of reckless
disregard 25 for another person's life enough? If Terry Nichols
didn't know

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1 that there was a day-care center in the building and he
agreed 2 to bomb that building, he should have known. If he did
not 3 care enough to find out who the targets were, should he
somehow 4 be rewarded with his life? No. He didn't have to
agree with 5 Timothy McVeigh to bomb the Alfred P. Murrah Building
and the

6 people inside of it. Others said no to Timothy
McVeigh. Terry
7 Nichols said yes.
8 In the end when you weigh these factors, ask
9 yourselves if as the conscience of the community you
want to
10 tell Terry Nichols and others that his reckless
disregard for
11 168 human lives somehow makes his participation in this
crime
12 any less heinous.
13 Terry Nichols didn't care who his victims
were, and he
14 did not take one step to ensure that the results of his
15 criminal conspiracy would not total 168 deaths and 500
wounded
16 and injured. He didn't care. The results of his acts
are not
17 disputed. You found the 168 deaths resulted -- or you
found
18 that deaths resulted from his conspiracy. His
responsibility
19 is not diminished in any way, and you should find that
this
20 factor weighs heavy on the scales of justice when you
decide
21 what the just and reasoned and moral punishment is for
a man
22 who commits this crime.
23 The second factor, the non-statutory
aggravating

24 factor, you must weigh is that the committing of this
25 conspiracy offense, Terry Nichols caused serious
physical and

15909

1 emotional injury, including maiming, disfigurement, and
2 permanent disability, to numerous individuals. Again,
Terry
3 Nichols' actions caused all of these injuries. And the
key
4 word here is "caused." That word does not mean
specific intent
5 to do so. It is just like the deaths that resulted
from the
6 conspiracy.

7 The injuries of Sue Walton, who two-and-a-half
years
8 ago -- who -- excuse me, who two-and-a-half years later
still
9 wears that contraption on her leg that looks like a
torture
10 device, the injuries suffered by Captain Randy Norfleet
that
11 ended his career as a Marine pilot were the result of
Terry
12 Nichols' agreement and actions to bomb the Murrah
Building and
13 the people inside of it.

14 And the scars on Sergeant Titsworth's face and
heart

15 that he will carry with him as he lives with the
reality that
16 not only did he suffer serious injuries during his
first day at
17 the Murrah Building, but that he lost his youngest
daughter,
18 Kayla, four, even the emotional injuries to families,
friends,
19 rescuers, and survivors described for you were caused
by Terry
20 Nichols' choices and by Terry Nichols' actions.

21 Alice Dennison, who you may recall is the
daughter of
22 Secret Service Agent Mickey Maroney, has a heart that
is now
23 broken because of the loss of the one man she told you
promised
24 would never break her heart.

25 The emotional injuries to people like John
Youngblood,

15910

1 Jr., and Megan Allen who lost their fathers and go on
in life
2 without the guidance and love that only parents can
give them,
3 those are the results of Terry Nichols' choices.
4 You heard information on this aggravating
factor not

families and 5 to generate any undue sadness or sympathy for the
from 6 the survivors but to give you the facts that resulted
to hear 7 Terry Nichols' actions. As difficult as it was for you
must rely 8 some of these stories, it's not the emotion that you
9 on to make your decision.

10 But in some way, it is the facts of this case
that are 11 the most tragic and long-lasting results of Terry
Nichols' 12 conspiracy. The facts are that 168 people were killed.
The 13 facts are that mothers and fathers were taken from
their 14 children. The reality is sisters and brothers lost
their 15 siblings in the blast. And the grim and unbelievable
fact of 16 scores of parents who lost a total of 19 children from
the age 17 of four months to five years in the bombing, that is
not 18 emotion, unfortunately, that is not a nightmare. Those
are 19 facts, facts you must consider when you determine if
Terry 20 Nichols should be sentenced to life or death.

21 When you go back to deliberate and you put the
emotion 22 aside, what you will be left with are all of those

facts, all

23 of those facts that were presented to you, as we are
permitted
24 to do, to prove those aggravating factors beyond any
possible
25 doubt.

15911

1 The final aggravating factor that we have
proven to
2 you is that committing the conspiracy, Terry Nichols
caused
3 several injuries and losses suffered by the victims'
families.
4 This aggravating factor we commonly refer to as "victim
impact"
5 is the final aggravating factor we ask you to consider.
But
6 here again, there is no dispute that the conspiracy
that Terry
7 Nichols participated in caused the severe injuries and
losses
8 to the victims' families. You've already found that
the deaths
9 were foreseeable and that the deaths resulted from this
10 conspiracy, so obviously the injuries also resulted
from this
11 conspiracy.

12 But amazingly enough, after all you heard
during the

13 three days of the Government's penalty-phase
information, it
14 was just a glimpse into the pain and suffering these
families
15 have experienced. At times I'm sure it was more than
you
16 thought you could hear. Each story was sad and
poignant in its
17 own way. But the fact is the losses these families
suffered
18 are realities of this kind of horrible crime. There
are so
19 many terrible effects of a crime to bomb a federal
building and
20 the people inside of it. These are the consequences of
Terry
21 Nichols' choices.

22 As one of you has said during jury selection,
whoever
23 participated in this crime played judge, jury, and
executioner
24 and had to know about the devastation it would cause.

25 MR. TIGAR: Objection, your Honor.

15912

1 THE COURT: Yes, we'll strike that reference.

2 MS. WILKINSON: The devastation began -- or
the actual

3 devastation began on April 19, 1995, but it continues

today.

4 And it will be in the hearts of all Americans for many
years to
5 come. The impact on the families, the community, and
our
6 country cannot be underestimated.

7 A few of the stories you heard in the past few
days

8 represent the impact of this crime on all of our
citizens, the

9 youngest ones like Don Ferrell's granddaughter who says
when

10 she plays with her dolls that they're going to Oklahoma
City

11 and they'll be killed by a bomb, or Glen Westberry's

12 five-year-old son who asked his mother to run a red
light so he

13 could die and go to heaven to be with his Paw Paw,
older

14 children like Karla Wade who described the effect of
the loss

15 of her father with so many eloquent words and also with
the

16 sadness of feeling like a 40-year-old woman in a 23-
year-old

17 body, parents like Constance Favourite who felt like
the death

18 of her daughter, Lakesha Levy, happened twice, once
when she

19 died in the bombing and the second time when she had to
be

20 exhumed and buried again, and even grandparents like
Carl Brown

Cooper, 21 who lost his daughter Dana and his grandson, Anthony
toys for 22 and he also lost that day his will and desire to carve
23 the only grandchild he had.

but 24 The impact on these people was quite personal,
who 25 there's also been an impact on every mother or father

15913

causes us to 1 thinks about sending their child to day care. It
outside a 2 look twice when we see an unattended Ryder truck
of our 3 building, and it makes us all wonder about the security
act of 4 own citizens who were never before the victims of an
5 terrorism by our fellow Americans.

crime. 6 These are all the results of Terry Nichols'

comprehend 7 Sometimes it seems almost too hard to imagine and
that 8 the full extent of the damage, death, and destruction
glimpse. But 9 occurred. The three days of testimony gave you a
and loss 10 don't forget, it was only a glimpse of the suffering

11 that resulted from Terry Nichols' actions. This was a
crime so
12 grave, so far-reaching that we could not bring you
every
13 victim, every survivor, and every family member that
was
14 affected by this tragedy. You saw just a few,
unfortunately,
15 who described for you in their own words the impact of
this
16 crime on them, a legitimate factor for you to consider
when you
17 determine Terry Nichols' sentence.

18 But please recall that this tragedy did not
start on
19 April 19, 1995. It began when Terry Nichols said yes
to
20 Timothy McVeigh. It began when Terry Nichols knowingly
and
21 deliberately agreed to use the weapon of mass
destruction
22 against the Murrah Building and the people inside of
it. The
23 crime he agreed to commit happened. The consequences
of that
24 crime are before you, and you must analyze the facts
that
25 resulted when you weigh them against the mitigating
factors

1 that the defense has presented to you.

2 You will see when you look at the special
verdict form

3 that the defense has presented 14 mitigating factors
for you to

4 consider, but these mitigating factors are different
from

5 aggravating factors. Unlike the aggravating factors,
you and

6 your fellow jurors do not have to agree that the
defendant

7 proved each factor. The standard is that the defense
has the

8 burden of proof to show by a preponderance of the
evidence that

9 the mitigating factors have been proven. And some of
these

10 factors we do not dispute. Terry Nichols has no
criminal

11 record, and all 12 of you should so find. But there is
a

12 serious dispute about some of the factors, and I wanted
to

13 spend a few minutes addressing some of those factors
that we do

14 not think Terry Nichols has proved.

15 The Judge will tell you that the burden is on
the

16 defendant to proof by a preponderance of the evidence
each of

17 the mitigating factors has been established. Some of
you may

18 agree. Some of you may disagree. The special findings
form
19 allows you to record the number of jurors that agree
that that
20 factor was found. Of course that does not mean that
every
21 mitigating factor has to be given any particular
weight. One
22 of you may believe one factor was proven but may decide
that it
23 doesn't carry much weight when you balance those
factors
24 against the aggravating ones.
25 No one in this courtroom will ever tell you
that you

15915

1 must weigh the factors evenly, and that is the
difficult part
2 about your decision. You all must decide together and
3 individually the weight you will give those factors and
then
4 how you weigh one factor against another.
5 For example, if you find that Terry Nichols
had no
6 criminal record, that doesn't mean it has to be a
significant
7 factor in your weighing process. You all will decide
what

8 weight to give each factor that is proven. But I want
to
9 discuss the factors we believe have not been proven and
that
10 none of you should find.

11 The first is that Terry Nichols' participation
in the
12 conspiracy was relatively minor. The question is: Did
the
13 defense prove by a preponderance of the evidence that
Terry
14 Nichols' participation in the conspiracy, not the other
crimes,
15 but in the conspiracy, was relatively minor?

16 We submit to you that Terry Nichols was a
major
17 participant in the conspiracy. That is the relevant
offense
18 here. Not Counts Two or Three, but the participation
in the
19 conspiracy. You have already found that he agreed with
Timothy
20 McVeigh, and now you must look at what he did knowing
that he
21 made that agreement.

22 He agreed almost seven months before to bomb
the
23 Alfred P. Murrah Building and the people inside of it.
He
24 bought 4,000 pounds of ammonium nitrate almost six
months
25 before. He stole explosives around that time and
assisted with

15916

1 the purchase of 1500 pounds of nitromethane. He wrote
the
2 letter five months before. He robbed Roger Moore and
kept
3 stolen property in his house. But perhaps most
importantly, he
4 knew about the plan for months and months. He had
plenty of
5 time to change his mind. And he didn't.

6 Indeed, three days before the bombing, he went
to
7 Oklahoma City, the target of their conspiracy; and that
8 evening, as he told the FBI, he drove by the Alfred P.
Murrah
9 Building several times. He could have changed his mind
at that
10 moment. He could see that glass wall facing 5th Street
as he
11 drove by the Alfred P. Murrah Building. He knew the
grave risk
12 of death it would create to put a truck bomb in front
of that
13 building, glass shards going everywhere, concrete
tumbling down
14 on the people inside of it. He saw that, knowing the
agreement
15 they had three days before the bombing; and he did
nothing.

16 In fact, he did everything to cover his
tracks. You
17 know -- and it's not been disputed because Marife
Nichols told
18 you -- he lied to his own family about where he was
going.
19 That shows you he knew what he was doing was wrong. He
didn't
20 forget that he and Timothy McVeigh had agreed to bomb
the
21 Murrah Building in April of 1995. He knew that was the
target
22 of destruction. And so he didn't want his wife to have
any
23 idea that he had been in that city in the days before
the
24 bombing. So he lied to his wife that he now tells you
he's
25 such a loving husband to. And he lied to his son Josh
and told

15917

1 him that even though it was the day before Josh was
leaving to
2 go home, he couldn't ride with him to Omaha because he
didn't
3 know if there would be enough room and what kind of
trouble
4 Timothy McVeigh was in.

5 His state of mind based on your findings is

clear that

6 day. He knew that he was going to help Timothy McVeigh
leave

7 the getaway car in Oklahoma City, and he didn't care.

But even

8 up to 24 hours before the bombing, he helped Timothy
McVeigh.

9 We proved to you that Terry Nichols built the
bomb at

10 Geary Lake with Timothy McVeigh and that he lied about
his

11 whereabouts that morning on April 18. Terry Nichols
told the

12 FBI that he loaned Timothy McVeigh his car. At this
point, it

13 doesn't matter which one you believe. Either way,
based on

14 your finding that he knew the goal of the conspiracy,
he was

15 assisting Timothy McVeigh with the plot. He knew that
Timothy

16 McVeigh was going to bomb the Alfred P. Murrah
Building, and it

17 didn't matter if he knew when or at what time. He knew
that

18 was a goal; and on April 18, he built the bomb, or
according to

19 Mr. Nichols, loaned his truck to Timothy McVeigh.

20 The months of the agreement, the actions that
he took,

21 and all of the waiting show you that Terry Nichols was
a

22 substantial player in this conspiracy. Terry Nichols

did many

23 things throughout the fall and spring of 1995. Do not
say in
24 your verdict that Terry Nichols had a relatively minor
role in
25 this conspiracy.

15918

1 The second mitigating factor that we dispute
is that
2 another defendant or defendant that's equally culpable
in this
3 crime will not be punished by death. You know that's
not true
4 for Timothy McVeigh. And the only other individual who
you
5 know about this crime -- or who knew about this crime
was
6 Michael Fortier. He said no to Timothy McVeigh, and
Timothy
7 McVeigh left Arizona. Terry Nichols said yes, and
Timothy
8 McVeigh stayed in Kansas in the fall of 1994 and stored
all of
9 the bomb components near Terry Nichols until the day
before the
10 bombing. Michael Fortier is not equally culpable to
Terry
11 Nichols.

12 But don't get me wrong. Michael Fortier did

an

bombing 13 unforgivable thing. When he failed to report the
14 before it occurred, he did something that no one should
ever 15 do. But that is not the crime that we are here to
discuss. We 16 are here to discuss the conspiracy, the agreement, and
the 17 actions to plot the bombing of the Murrah Building.

18 What Terry Nichols did that Michael Fortier
did not do 19 was agree to bomb the building and the people inside of
it and 20 then take action to participate in that conspiracy.
The 21 defense has not met its burden of proving that anyone
was 22 equally culpable of the crime, not Michael Fortier and
23 certainly not any of the John Doe 2 suspects.

24 First, you should not find that any other
suspect has 25 been proven because there is no evidence as to the
actual

15919

1 identity of any John Doe 2 sighting. That would be
pure 2 speculation on your part and inappropriate. And there
has been

3 no evidence that if this John Doe 2 were ever
identified that
4 he would not get the death penalty, so it would be
wrong for
5 you to find that someone who was equally culpable for
this
6 crime was not going to receive the death penalty.
7 The final factor or mitigating factor that I
want to
8 discuss with you this morning is the one that says
Terry
9 Nichols was under unusual and substantial duress.
There is no
10 basis for that finding. The crime we are discussing
here is
11 conspiracy. No one forced Terry Nichols to agree to
bomb the
12 building and the people inside of it; and in the fall
of 1994,
13 Terry Nichols wasn't under any duress. Terry Nichols
had a
14 good job. He had a wife and a family. He chose, he
made the
15 choice, to quit his job, send his family away, and
conspire
16 with Timothy McVeigh. That is not duress. Where is
the
17 evidence that Terry Nichols was under this supposed
unusual and
18 substantial duress? Not just duress, but unusual and
19 substantial duress. No one held a gun to his head and
said:

20 Agree to bomb the building, or we'll kill you. He
agreed in
21 the fall on his own. You found that he knowingly and
22 deliberately entered that conspiracy. That defies a
finding of
23 duress.

24 He also spent the fall and the spring
participating in
25 that conspiracy. Do not tell the community that you
represent

15920

1 that Terry Nichols was forced to commit the crime of
conspiracy
2 to bomb the Murrah Building and the people inside of
it. No
3 one could have forced Terry Nichols to agree to that
plan.

4 Terry Nichols could have done what everyone
else did
5 when Tim McVeigh discussed taking action against the
6 government. They said no. Terry Nichols said yes.

And if
7 there was any evidence that Terry Nichols was under
unusual and
8 substantial duress, he had every opportunity to do two
things:
9 He could have called the police and reported the crime.
He
10 could have told the police where Timothy McVeigh was,

where the

11 bomb components were, and he could have stopped this
crime from

12 ever happening. And that would have ended any supposed
duress
13 that he was under.

14 But he got a second opportunity. On April 21,
he knew

15 that Timothy McVeigh was in custody. He spoke to the
FBI for

16 nine-and-a-half hours, and he didn't mention one word
about

17 unusual or substantial duress. He didn't say that he
was

18 forced to do anything. In fact, he lied about what he
did, and

19 he lied about Timothy McVeigh. He said he trusted
Timothy

20 McVeigh to live up to his agreements. If there had
been any

21 duress, any force used on Terry Nichols to agree to
bomb the

22 Murrah Building and the people inside of it, he could
have

23 reported it when he knew Timothy McVeigh was safely in
federal

24 custody, and he did not.

25 How can you permit a defendant who had every

commit 1 opportunity to tell the police that he was forced to
that he 2 this crime to now claim, two-and-a-half years later,
what those 3 was under unusual and substantial duress? You know
mean. There 4 words mean. They mean exactly what you think they
Terry 5 was no evidence that Timothy McVeigh held a gun to
opportunity 6 Nichols' head for seven months. Terry Nichols had
report the 7 after opportunity to get out of the conspiracy and
8 crime to the authorities.

duress, 9 He never did it because he wasn't under any
Terry 10 either usual or unusual, substantial or insubstantial.
entered this 11 Nichols, as you found, knowingly and deliberately
12 conspiracy.

forth by 13 Now, many of the other factors that are set
you. 14 the defense are debatable, but I will leave those up to

findings 15 You all can decide among yourselves who believes those
just 16 or those factors were proven and who does not. But
and son 17 remember: As you review what kind of father, husband,

about 18 Terry Nichols was that he deceived everyone around him
with 19 his plan to bomb the Murrah Building and his activities
20 Timothy McVeigh.
what 21 Once you go through the process of determining
the 22 factors have been proven, then you must sit down and do
Some of 23 most difficult task. You must weigh those factors.
matters is 24 you may disagree on the mitigating factors, but what
just, moral 25 how you weigh those factors and how you determine a

15922

1 sentence for Terry Nichols.
2 You were chosen as a body of 12 to make this
decision.
3 Each and every one of you must make a moral judgment.
But you 4 are not alone responsible for the decision. Our
citizens have 5 decided that 12 people are to the make this decision,
not one.
6 As one unanimous body, you must decide if a punishment
of life 7 or death is warranted for Terry Nichols' crimes and for
his

will 8 life. That is the simple but difficult question you
speak as 9 confront. Confront it together, and remember that you
10 the conscience of the community.

11 As such, you have the responsibility, the
important 12 responsibility, to tell Terry Nichols and the citizens
of this 13 country what a just sentence is. You must make that
moral 14 judgment about the worth of Terry Nichols' life,
balanced 15 against the societal value of the deserved punishment
for this 16 crime. And your reasoned judgment must not be
arbitrary. You 17 all know that this crime was heinous. You all know
that this 18 was a crime against the American citizens, and you all
know 19 that the impact of this crime was felt in every corner
of our 20 country.

21 With that in mind, you must look at Terry
Nichols, you 22 must look at his life and the actions that he took. We
know 23 that what we're asking you to do is very difficult.
But your 24 emotion, your sadness, your sympathy, or your
preconceived 25 notions should not affect your moral, reasoned

judgment.

15923

1 Terry Nichols said yes. He made a choice, a
knowing,
2 informed choice. He chose with Timothy McVeigh to bomb
the
3 Alfred P. Murrah Building with a weapon of mass
destruction and
4 use it against the people inside. The consequences of
his
5 choices and his actions are 168 dead people and
hundreds and
6 thousands of injured. That is the crime that Terry
Nichols is
7 guilty of. When you look at that crime and you look at
Terry
8 Nichols, you will see that the just sentence, the
sentence
9 based on a moral, reasoned decision, is death.
10 THE COURT: Members of the jury, we're going
to take
11 the recess before hearing from defense counsel. It is
a little
12 earlier than our normal time but a more appropriate
time to
13 break in. I don't want to interrupt counsel. And
we'll be
14 taking our recess for the usual 20-minute period.
15 But before you go, I just want to explain

something

16 with respect to an objection made and sustained by me
and the

17 requirement that you disregard the statement, which was
when

18 Ms. Wilkinson made a reference to what she remembers
one of you

19 may have said in the course of the jury selection.
And, of

20 course, we ask each one of you separately and
individually a

21 lot of things about what you thought with respect to
penalty

22 and sentencing. And I just want to explain that I
sustained

23 that objection and you must disregard. It isn't what
you said

24 you thought before you came in here. That was a part
of the

25 jury selection process. But what is the -- what are
the

15924

1 important words for each of you on the jury is what you
said in

2 the oath and agreeing in the oath not to go according
to what

3 you think the law ought to be but what it is, as I
explained it

4 to you and as I will explain it to you in more detail
at the

5 conclusion of the arguments.

6 So I simply want to make it clear the basis
for the
7 objection and my sustaining it. No one of you in any
way is
8 held to what you said when we were asking you about
your
9 attitudes and experiences and beliefs excepting with
your
10 understanding and agreement that you will follow the
law and
11 decide the case, decide this sentence issue, according
to the
12 evidence and the law as I will give it to you, which,
of
13 course, will happen after the completion of the
arguments. As
14 I said earlier, there will be defense counsel's
arguments, and
15 the Government has a rebuttal opportunity; and then
I'll
16 instruct you.

17 And, of course, as you well know, during the
time of
18 this recess, you must continue to have open minds. It
isn't
19 until you've heard it all that even in your own minds
you
20 should address the questions put to you and of course
not
21 discuss the case with other jurors or anyone else and
continue

22 to avoid things outside the evidence.

23 So we're going to excuse you now for 20
minutes.

24 You're excused.

25 (Jury out at 9:52 a.m.)

15925

20 1 THE COURT: All right. We'll be in recess.

2 minutes.

3 (Recess at 9:53 a.m.)

4 (Reconvened at 10:11 a.m.)

5 THE COURT: Please be seated.

6 (Jury in at 10:11 a.m.)

7 THE COURT: All right. Members of the jury,
we're

8 ready to hear from defense counsel.

9 Mr. Tigar . . .

10 MR. TIGAR: May it please the Court . . .

11 THE COURT: Counsel.

12 CLOSING ARGUMENT

13 MR. TIGAR: . . . Counsel, Mr. Nichols,
members of the

14 jury, just shy of two weeks ago -- it was in the
afternoon --

15 you came in and you rendered a verdict in this case.
And since

16 that time, it would come as no surprise to you to know
that
17 pundits and hired lawyers and TV-talk-show hosts and
lawyers
18 and everybody has tried to figure it out. But the
Judge is
19 going to tell you in a few minutes when we're all done
that all
20 of that figuring and all of that posturing and all of
that
21 parading can't change a fact and it can't change the
law. The
22 verdict that you rendered is your verdict. It is
final. It is
23 binding on everybody in this courtroom, including the
jurors
24 who reached it.
25 And I am not going to spend any time at all
trying to

15926

1 tell you what you decided. I think that would be
arrogance for
2 me to tell you what you decided. Rather, I'm going to
talk
3 about the things that the Judge will when we're all
done here
4 tell you that are yet to be decided, keeping in mind
that there
5 is no going back on what's been done.

6 I won't take long. When we're done here, this
time
7 that we've spent together, which has represented an
enormous
8 sacrifice, I know, for all of you, will be done and
you'll go
9 back to your jobs and back to the community. We'll all
go back
10 to our jobs, the prosecutors to other cases, me back to
11 teaching school, Mr. Nichols to a prison, which is the
result
12 of the verdict that you already reached, not a pretrial
13 detention facility but a prison. And one of the things
we're
14 here to decide today is whether or not in addition to
that,
15 beyond that, over and above that, 12 of you should sign
a piece
16 of paper that authorizes a sentence of death to be
carried out
17 with respect to Mr. Nichols; that authorizes somebody
to come
18 get him one day and carry out a sentence that he be put
to
19 death.

20 What you won't see when you go back, by the
way, is
21 any of us on this side joining the parade of talk-show
hosts
22 and as-told-to books. I think those things are a
disgrace to a
23 profession that tolerates them, and I think they are a

disgrace

24 to lawyers who do that.

25 So when I'm done, the prosecutors will get a
chance to

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1 rebut. We won't have any chance to respond to that.
But let

2 me talk about this process.

3 Your verdict was that Mr. Nichols was guilty
of the

4 crime of conspiracy to carry out -- use a weapon of
mass

5 destruction; that he was not guilty of use of the
weapon of

6 mass destruction; that he was not guilty on Count
Three, and

7 then with respect to those eight counts, an acquittal
on the

8 first-degree and second-degree murder charges and a
conviction

9 on the involuntary manslaughter.

10 Now, the Judge gave instructions at that time.
And as

11 I say, I can't describe for you what it is that you
decided,

12 and I don't think it's right for anybody to try to tell
you

13 what it is that you decided. The Judge did permit you
to

14 convict Mr. Nichols of the crime of conspiracy even if
he did

15 not know all the details of the agreement or
understanding or

16 even if he played only a minor role so long as he
understood

17 the unlawful nature of the plan and voluntarily and

18 intentionally participated in it.

19 I ask you when you look at the effect of what
you

20 decided on what you're going to do now to look back at
the

21 instructions that the Court gave you at that time
because it

22 was clear to us, although we might be wrong, that you
had read

23 those instructions with extraordinary care and
discussed

24 amongst yourselves what those words meant as you were
making a

25 decision.

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1 Well, as you discussed what the words meant
and then

2 applied them in your decision, that's the decision you
made.

3 So you'll have them again so that you can go back and
refresh

4 your mind about what it is that was involved in the
things that
5 you did and what was involved in the things that you
didn't do.

6 And if you do that, I suggest that you will
avoid an
7 error such as the one made no doubt unintentionally by
the
8 prosecutor in summing up: The crime he agreed to
commit
9 happened. Well, the happening of it, I had always
thought, was
10 Count Two and the agreeing part was Count One. But
that, as I
11 say, will be before you to decide.

12 Now, why does the Government want you to reach
a
13 verdict of death in this case? Well, they say it is to
14 vindicate some vision of the law. They say it is
because of
15 certain facts that they have shown to you.

16 Let me talk, if I might, about the facts and
the law.

17 The process that you'll get into when you go
back into
18 the jury room to deliberate is in three stages. The
first
19 stage, as Counsel said, requires you to look at two
findings.

20 And unless you are unanimous beyond a reasonable doubt
as to
21 these, the process is over -- if you answer no; that
is, there

22 is a reasonable doubt. You come back and the Judge
sentences
23 on Counts One as he will on Counts Four through Eleven
in
24 accordance with the law.

25 The first of these is "The defendant
intentionally

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1 participated in an act contemplating that the life of a
person
2 or lives of persons would be taken or intending that
lethal
3 force would be used against a person."

4 There was no requirement in your Count One
finding
5 that you find intent to kill, and therefore as you
consider
6 this, this first issue, you have the freedom given to
you by
7 what you understand to be your verdict and by what the
law is
8 as the Judge instructed you.

9 The Government has spent a great deal of time
this
10 morning going back over the evidence in the earlier
phase of
11 the trial. Well, I'm not going to go back over it with
them,

12 but I heard an extraordinary thing. I heard that
Government
13 urging you to find beyond a reasonable doubt that this
happened
14 based on the assertion which was repeated here that Mr.
Nichols
15 helped Mr. McVeigh build a bomb at Geary Lake on April
18,
16 1995. That assertion, I suggest, is like the 13th
stroke of a
17 grandfather clock in the night: It casts doubt not
only on
18 itself but upon everything you heard up to that point,
because
19 the evidence was initially from Mr. Wahl -- and you'll
recall
20 this and you'll have the chance to talk it over -- that
there
21 was a blue or a brown pickup out there; that it was
parked next
22 to a Ryder truck, and that was -- and Mr. Wahl had
plenty of
23 opportunity to observe. And then all of a sudden, that
theory
24 of the case that that -- those two trucks had been
parked
25 together to build a bomb came crashing down around the

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1 prosecutors' ears when it turned out that the
description of

2 the headlights didn't match the kind of a truck that
3 Mr. Nichols had; that in fact you couldn't see the
white line
4 of any kind of a camper top on the truck that Mr.
Nichols had,
5 and most dramatically of all that for two-and-a-half
years the
6 FBI hid from everybody the fact that when Mr. Wahl
first
7 described the episode, he said the truck was gray.

8 I don't want to rehash what we argued about in
the
9 guilt phase, but I respectfully suggest to you that
this takes
10 you back to that evidence from the prior phase.

11 Then the Government spent some time in talking
about
12 these issues, telling you about Oklahoma City. Well,
most of
13 that evidence did come in in the trial of the earlier
phase.

14 But you remember at this phase Mr. Norfleet, Randy
Norfleet,
15 the Marine. He had been to a prayer breakfast at the
Myriad
16 Convention Center near the federal building. He has a
1992
17 black Ranger pickup truck, a picture of which you saw;
and he
18 was in a hurry to get to the office and so he parked in
front
19 of the Murrah Building shortly before 9:00 and took the

20 elevator up. And he said he was amazed to find a
parking place

21 in front of the Murrah Building at that hour of the
morning.

22 Well, here we are again: How did the Ryder
truck that

23 Timothy McVeigh was driving get a place to pull in that
wasn't

24 already occupied in front of the Murrah Building at
9:00 in the

25 morning? Well, two witnesses told you that they saw
somebody

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1 with that Mercury before and shortly after the event so
that

2 somebody could go in there and reserve or help to make
sure

3 that that parking place would be available.

4 I'm not going to give my earlier summation
again. You

5 know what you found, you know what the evidence is.

6 Well, then the second one: "The defendant
7 intentionally and specifically engaged in an act of
violence."

8 The Judge will tell that you a conspiracy can be an act
of

9 violence but it need not be. That's for you to decide
whether

doubt. That 10 you think that's satisfied and beyond a reasonable

11 lies within your discretion.

12 "Knowing that the act created a grave risk of death

13 such that participation constituted a reckless disregard for

14 human life." And there again, you'll go back to the verdicts

15 that you've already reached with respect to resulting death in

16 Counts Four through Eleven and you'll look at the evidence in

17 this case and you'll make a decision.

18 And, members of the jury, let me be clear again about

19 this: That at that point, if you -- unless you're satisfied

20 beyond a reasonable doubt that the Government has met that

21 burden, the process of deliberation is finished and the Judge

22 is the one that sentenced -- who does the sentencing.

23 Now, we did not hear in oral argument here -- maybe

24 we'll hear it on rebuttal -- but, you know, you heard 55

25 witnesses, and the Judge repeatedly cautioned you about those

1 things. And the only one that you heard that had
anything to
2 do with Mr. Nichols' intent was Mr. Dilly, William
Dilly, who
3 had been with him in the Army. And you remember Mr.
Dilly. He
4 came and said, well, everybody looked up to Terry
Nichols,
5 including Timothy McVeigh, although that was proof that
somehow
6 that Terry Nichols must have controlled Timothy McVeigh
and not
7 the other way around.

8 Well, cross-examination quickly revealed that
9 Mr. Nichols was only in the Army for a year; that after
he got
10 out of the Army, Mr. McVeigh accelerated through the
ranks and
11 became a leader in his own right; that he had a storage
shed in
12 Junction City; that he bought manuals connected with
bombs, and
13 that one of his buddies was Joel Johnson, who had been
14 dishonorably discharged and was also interested in
bombs --
15 facts, by the way, that emerged only when we had
produced for
16 us Mr. Dilly's first call to the FBI, not some later
interview
17 that was done.

18 I do think it's important in considering these

first

19 two things that evidence that you saw that -- that you
didn't
20 see in the first part of the case could be considered;
that is
21 to say, when you saw Mr. Nichols and heard about his
relation
22 with his family, you might think it unlikely that he
would form
23 such an intention, and you could consider that.

24 I want also to emphasize a distinction that
the
25 prosecutors made. Lana Padilla was asked when she was
here:

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1 Isn't it a fact that Terry Nichols and his son Josh
built
2 explosive things together? Yeah, they built pop bottle
things,
3 is what that turned out to be, to use on the farm
during the
4 time that they were together. To attribute that or to
make
5 that equivalent to some plan to blow up a building, we
suggest,
6 loses all sense of proportion.

7 If there had been any more to it than that,
believe
8 me, with 30,000 interviews and thousands of agents to

conduct

9 them, you would have heard about it. And the burden is
theirs,
10 not ours. The burden is theirs and it's beyond a
reasonable
11 doubt.

12 Think, then, back to the witnesses. Passing
reference
13 was paid in the prosecutor's summation to the evidence
that we
14 put on: Who was with Timothy McVeigh and Eldon Elliott
and
15 Vicki Beemer at the Ryder rental place? Who was with
Timothy
16 McVeigh since that wasn't Terry Nichols' truck? What
about
17 Mr. Farley and what he saw on the evening of the 18th,
all
18 those people and the ammonium nitrate fertilizer? What
about
19 the scientists with the flooded laboratory? What about
the
20 fingerprint man who couldn't count fingerprints? And
I'll come
21 to Michael Fortier in a little while.

22 So we respectfully suggest -- and I won't
labor it --
23 that the answers to the first two questions are that
there is a
24 reasonable doubt and that the Judge should sentence on
Count
25 One.

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1 Then if you did get past that and say yes, you
come to 2 Part 2; and if they don't make it past Part 2, once
again it 3 goes back to the Judge.

4 What's this first aggravator? What's the
first one 5 they want you to find beyond a reasonable doubt?
During the 6 commission of an offense under 18 U.S.C. Section
844(d), 7 transportation of explosives in interstate commerce for
certain 8 purposes. And the Judge will give you detailed
instructions 9 about what that means, the intent with which one must
act. 10 That's an aggravating circumstance that the Government
must 11 either prove Mr. Nichols did directly or that he aided
and 12 abetted. The definition of "aiding and abetting" is
the same 13 one that you had in Counts Two and Three and Eight and
Four, 14 Five, Six, on through Eleven in the first part of your
 15 deliberations. So it's exactly the same definition.

16 What is the transportation of explosives that

is

17 alleged here? Well, is it from Kansas to Arizona? Oh,
yes,

18 says the Government. That's Kansas to Arizona. And
what is

19 the evidence of that? Why, Michael Fortier, of course.

20 Or it's from Arizona back to Kansas? And what
is the

21 evidence of that? Michael Fortier, of course -- but

22 contradicted by the phone records because the
Government's

23 theory was that Mr. Nichols came, got a key from
Michael

24 Fortier, got the explosives, and met Tim McVeigh
somewhere.

25 And the timing Michael Fortier described was absolutely

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Nichols 1 contradicted by the phone records that show that Mr.

2 had, at the time Mr. Fortier said he was handing him a
key,

3 been calling from Las Vegas, Nevada, which is 90 miles
away.

4 The other evidence: transportation of
nitromethane.

5 You heard the evidence, and I'm not going to tell you
what to

6 think about it. That was, as I said in opening
statement, the

7 man who didn't recognize a pickup truck and said that
he sold

8 nitromethane to someone who looked like a possum.

9 With respect to the events shortly before
April 19 --

10 that is, the three days -- again, you're going to have
to

11 consider the relationship between that and the findings
you've

12 already made with respect to Counts Two and Three.

13 Let's look at Michael Fortier for a minute,
because

14 it's going to be relevant to some of the things we're
talking

15 about here. Did Michael Fortier say no? The Judge
instructed

16 you that one can become a member of the conspiracy
without any

17 formal kind of agreement or a handshake. Michael
Fortier

18 stored explosives, discussed the use of explosives,
helped find

19 a storage shed, had explosives, wrapped up explosives
in

20 Christmas paper, went to Oklahoma City, cased the
building,

21 helped make a false ID, transported stolen weapons,
committed

22 theft, had plastic barrels -- I mean, you remember that
even on

23 redirect examination Government counsel said, "Well,
you didn't

24 have any plastic barrels, did you?"

had for 25 "I had three of them, three 55-gallon ones I

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1 my trash."

Michael 2 We're not here to judge Michael Fortier.

3 Fortier will be sentenced to a term of imprisonment by
a

4 federal judge, not Judge Matsch, not a judge in
Oklahoma, for

5 the things that the Government asked him and required
him to

6 plead guilty to. That's what's going to happen to him.

7 But for the Government to come in here and
suggest

8 that beyond a reasonable doubt you should find that Mr.
Nichols

9 committed some other crime or aided and abetted it
based on the

10 testimony of Michael Fortier is subject, we suggest, to
all of

11 the objections that we made the last time that I stood
before

12 you and made a closing argument.

13 Then the second: "The defendant in the
commission of

14 the offense knowingly created a grave risk of death";
that is

15 to say that this defendant specifically knowingly
wanted --
16 knowingly created this grave risk of death to others.
It isn't
17 simply the risk of death was created -- and let me stop
here
18 and say again what I've said, I think, since the first
time I
19 stood here: We know what happened in Oklahoma City.
We know
20 the devastation that it caused. We were always and
have always
21 been prepared to acknowledge that fact to you. There
isn't any
22 question about that. And if you happened to look over
at us
23 while we were watching this evidence and think that
maybe our
24 reactions weren't what you would have expected, we've
seen all
25 the tapes. We've seen all the photographs. We've read
all the

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1 victims' interviews. For two-and-a-half years, we have
dealt
2 on a daily basis with that reality and understood it.
3 That is not the issue. Anytime you get to an
issue in
4 this case that requires you to find that there was

devastation,

5 that there was harm, that there was injury, I don't
think the

6 evidence permits you to hesitate. But that is not the
finding

7 you're being asked to make here. You're being asked to
make a

8 finding about Mr. Nichols' relationship to that harm
that we

9 all concede existed.

10 And then the third: "The defendant committed
the

11 offense after substantial planning and premeditation to
cause

12 the death." The word "premeditation" has been before
you

13 before. You have confronted it in your verdict on
Counts Four

14 through Eleven.

15 I'm not going to suggest to you that there is
any

16 particular result that is required by your verdict.
You know

17 what you decided, and I'm not going to insult you by
telling

18 you what you decided. But the Government is asking you
to find

19 that beyond a reasonable doubt, and we say to you that
there is

20 at least a reasonable doubt as to that.

21 And so if you do not answer yes unanimously to
these

22 three, once again, the matter comes back to Judge
Matsch, who
23 sentences Mr. Nichols along with his sentence on Counts
Four
24 through Eleven in accordance with the law.
25 Well, then we get to Part 3. Suppose that you
did

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1 answer yes beyond a reasonable doubt to the questions
on 1.
2 Suppose that you did answer the questions yes beyond a
3 reasonable doubt on Part 2, all three of them -- or any
of the
4 three, rather, and you got to this third decision, the
weighing
5 process.
6 Well, Judge Matsch will tell you that although
we
7 sometimes call it weighing, that's probably a mistake,
because
8 as I said in opening statement, you will be asked to
make some
9 decisions and then to reach inside yourselves to go to
a place
10 that you have never been, perhaps, and to make a
decision. And
11 because it's a place that is so deep inside you, it's
not one
12 that I or anyone else is permitted to be. Because it

is a

13 decision described as one of morals and conscience,
it's one in

14 which I don't think that I or anyone else is permitted
to try

15 to instruct you or to guide you or to suggest to you.

16 These are decisions that you will make. And
the

17 interesting thing about them is that when you look at
these

18 things, this is something that with respect to
mitigating

19 factors, if one juror finds a mitigating factor to have
been

20 shown, for that juror, for that one of you, you'd say,
I find

21 that and I vote it and I weigh it and that's going to
be part

22 of my decision. So unlike this process of looking for
some

23 sort of unanimity or uniformity, individual decision is
the

24 watchword. And you'll see that on the form.

25 And if you get that far, it will be clear that
there

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1 were 168 people that died. Whether you find causation
-- that

2 is to say that his actions caused it or resulted in it

--

3 that's for you to find.

4 "The defendant caused serious physical and
emotional
5 injury." No question there was injury. The question
of
6 causation is for you to find.

7 "By committing the offense, the defendant
caused
8 severe injuries." The question of causation is for you
to
9 find.

10 I don't know what to say about the evidence
that was
11 introduced here, the 54 people who testified beyond
what you
12 already saw. The proceedings were interrupted several
times by
13 the Judge reminding us that the evidence that we saw
there
14 could only be considered with respect to the third set
of
15 decisions, the final set of decisions you were going to
reach.
16 And it wasn't -- isn't even relevant for the most part
to the
17 earlier decisions that you're going to confront on the
verdict
18 form that's in front of you.

19 And then even if you thought that it was
important or
20 relevant for those, it only goes to the question of

what harm

21 was caused and not on the question of what Mr. Nichols'
role or
22 responsibility or participation was.

23 I feel now when I think about that evidence as
though
24 I'm standing before you and trying to sweep back a tide
of
25 anger and grief and vengeance. And I'm given pause by
the fact

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1 that I feel that way, and I wonder if sometimes you
might feel
2 that way. But when I think that, then I think also of
the
3 instructions that the Judge is going to give you,
because those
4 instructions, as we contemplate this tide of anger and
grief
5 and vengeance, can get us all to higher ground, because
the
6 instructions will tell you that neither anger nor grief
nor
7 vengeance can ever be a part of a decision reached in a
case of
8 this kind.

9 I am, when I say this, not attacking these
victims.

10 We know their sacrifice. But we know that with the

centuries

11 of our civilization piled so high that we have come a
very long

12 way from justice based on vengeance and blood feuds.

13 This trial was moved from Oklahoma City
because, I

14 submit to you, it was thought that even the neighbors
of those

15 who lost so much would not do to sit in judgment. And
to them,

16 therefore, we can only say when we hear their grief and
their

17 anger and their desire for vengeance, "Bless those in
need of

18 healing."

19 But when I talk about this process, I want to
say that

20 I believe something else. And I don't want to say it
in an

21 effort to reach into a place that I'm not entitled to
be but to

22 share with you some thoughts about a concept of
justice, to

23 share with you some thoughts that suggest that if you
come to

24 this point you would turn your face towards the future
and not

25 towards the past.

1 We presented to you only nine witnesses. We
could, as
2 I suppose the other side could for theirs, have
presented to
3 you many, many more. But they told you about Terry
Nichols,
4 the son of Robert and Joyce, the brother of Susie and
James and
5 Les, the father of Christian and Nicole and Joshua, the
husband
6 of Marife, the friend who had helped save the farm of
Lyle
7 Rauh. Each of these witnesses lives in a community.
And we
8 were trying to give you a picture of what Terry Nichols
was
9 like, this -- his life that we're presenting to you.
10 And I was interested to see the reaction of
the
11 prosecutors to that, because I respectfully submit to
you that
12 it really wasn't fair. You remember when Donna Carino
13 testified, the midwife, about the home birth, and the
14 prosecutor took out an exhibit that the defense had but
didn't
15 offer about whether or not the midwife had signed a
form saying
16 there was no chromosomal damage, suggesting to you that
maybe
17 there is something irresponsible about having a home
birth with
18 a midwife because how could she know that.

19 Well, I submit that that's not fair. 35 years
ago
20 when my son was born at home and the midwife attended,
I didn't
21 think I was doing anything wrong; and if I was ever
tried for
22 anything, I wouldn't suggest that that is something
that ought
23 to be held against one.
24 MR. MACKEY: Judge, let me interject and
object to
25 personal rendition.

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1 THE COURT: Overruled.
2 MR. TIGAR: Of course, my son did turn out to
be a
3 public defender, and maybe that's something other than
what one
4 would hope.
5 MR. MACKEY: Same objection.
6 THE COURT: Proceed.
7 MR. TIGAR: I don't think that's fair.
8 Letters: The prosecutor tells you he went
away to the
9 Philippines and he didn't even think about Josh; all he
thought
10 about was Tim McVeigh. Nonsense. Nonsense. You heard

the

11 evidence. You heard the evidence that early in
November, Lana

12 Padilla wrote him a letter and said, "There is a
problem with

13 Josh," and he dropped everything, he went home, he took
Josh,

14 they went camping, he spent all that time with him.

15 You heard that he had been away from Marife
for less

16 than two months, and he couldn't stand the fact that he
was

17 away from her, so he changed the power of attorney on
his

18 stock, changed the life insurance, put everything in
storage,

19 went to the Philippines, and surprised her. You heard
the

20 evidence.

21 And then they say that even in the letters he
left

22 behind there was no concern for Josh. Well, members of
the

23 jury, you'll have the letters. You just have to ask
for them.

24 They won't all be in the room again for you to look at,
but you

25 can get them. But you remember them.

1 What does he say to Tim? The storage sheds
are going

2 to be -- the rent was up in February, not April,
nothing to do

3 with April. The pickup truck -- that's for Josh. Make
sure

4 that Marife gets the money. Give Josh this money.
Give Josh

5 that money. Here's the money I left behind the
counter. I

6 mean on and on for pages, members of the jury.

7 Why is it necessary if you're going to ask 12
people

8 to sign a piece of paper that says go get him someday
and take

9 him and put him on a gurney and put poison in his veins
-- why

10 do they have to exaggerate? Why do they have to do
that?

11 Terry Nichols: Did he trust too much? Did
Terry

12 Nichols trust too much? Did he make that mistake? On
the 4th

13 of May, 1995 -- M621 -- the first letter he wrote after
he was

14 in jail. Now, mind you, all of this has happened.
Here he is,

15 he goes in, he talks to the FBI, they've recorded -- he
doesn't

16 know it -- they've recorded his conversation with his
momma,

17 they've got him in jail, and he writes a letter:
"Mother --"

of. And 18 and he asks her to make sure that Marife is taken care

"See if 19 who does he ask her to turn to even at that moment?

Crabtree, FBI, 20 you can help her out by talking to Agent Scott

Nichols still 21 Salina, Kansas." On the 4th of May, 1995, Terry

least so far 22 thinks that Scott Crabtree could be his friend, at

23 as helping Marife Nichols.

moral 24 Well, I cannot instruct you, as I say, on the

25 choice. I can remind you that every one of the Judge's

15944

including the 1 instructions from the prior phase applies here,

the fact 2 one about no inference being drawn, no discussion of

something that 3 that Mr. Nichols did not take the stand. That's

with 4 is between Mr. Nichols and his counsel, a decision that

reasonably make. 5 further proceedings hanging over him, he might

6 MR. MACKEY: Objection.

7 THE COURT: Overruled.

8 MR. TIGAR: But it is something about which

the Judge

9 is going to instruct you.

list of 10 Now, if you get there, you're going to find a

that, a 11 mitigators at page 5 of your jury form and then after

individually, and 12 place to consider all of these things, each

life 13 then a place to sign that says do you think it's death,

to be 14 without possibility of parole, or some lesser sentence

Matsch to 15 decided by the Court, which sends it back to Judge

here, 16 consider in accordance with the law which binds us all

guilty of 17 and along with those counts on which you found him

18 involuntary manslaughter.

participation in the 19 Mitigator 1: That Terry Nichols'

for you 20 offense was relatively minor. The term "relatively" is

Judge's 21 to define. I've already read out the excerpt from the

him 22 instruction on Count One, which permitted you to find

minor 23 guilty of conspiracy even if you found he only played a

24 role. That's for you.

equally 25 Second, that another defendant or defendants

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Michael 1 culpable in the crime will not be punished by death.
2 Fortier -- Michael Fortier was not asked to take a
count that 3 would carry a death sentence. He wasn't even asked to
do that. 4 His wife, Lori, is home with the kids. You heard what
Michael 5 Fortier did. You heard his relationship with Timothy
McVeigh;
6 and without suggesting for a moment that you should
decide, try 7 to dictate to you one way or another, because again
this is 8 bound up with what you did before -- you know what you
thought 9 about that. That mitigator is in there for your
consideration.
10 Duress. Why is that in there? Well, that's
in there 11 because at one time Michael Fortier (sic) said, "I'm
going to 12 force Terry Nichols to do it." I don't know what you
thought 13 about that statement of Michael Fortier's made at a
time when 14 he himself was carrying a gun because he was
frightened, but 15 it's in there for your consideration.

16 No prior criminal record. Of course.
17 A concerned and loving son.
18 A concerned and loving father.
19 A devoted and loving husband.
20 These are by a preponderance, by the way. No
one is
21 requiring you to find or asking you to find that he was
a
22 perfect any of these. That is a standard, I suggest,
that none
23 of us could meet.
24 Concern for the welfare of his family, even in
25 difficult circumstances, to the point where when his
mother

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1 would send him money to buy things that they don't give
you
2 when you're in the prison, his commissary money, he
would turn
3 right around and send that to Marife in the
Philippines.
4 That he's a caretaker for others including
those not
5 related to him by blood: Lyle Rauh, Simpson, Walsh.
6 A creative person, who has tried to use his
creativity
7 for the benefit of others.

8 A positive impact on the lives of many people.
9 Committed to self-improvement.
10 Served honorably in the United States Army.
11 And then one that may give you pause, if you
get
12 there, No. 14: That Terry Nichols is a human being.
Well,
13 you'll find it, I suggest; but this emphasizes the
14 individuality of the decision that you're to reach, the
15 decision that says that for each individual
deliberating juror,
16 the weighing, how much of it goes into this process of
decision
17 is for you; that ultimately, when the matter is in your
hands,
18 you're going to decide what feels for you to be this
19 conscientious response, this reasoned moral response.
20 Now, what if you get back there and somebody
says: An
21 eye for an eye? Well, you could start by saying: Wait
a
22 minute. Let's read the instructions. Shall we?
Because there
23 is no place for vengeance of that character in the
decision
24 that all of us here took an oath to administer.
25 You took an oath with respect to the
questionnaire,

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and forth 1 another oath when we had you here to talk to you back
well and 2 and asked all of those questions, and another oath to
necessity and 3 truly try. And all of those oaths dealt with the
4 importance of following the Judge's instructions.

5 But, of course, even then, an eye for an eye,
appear, I 6 conscience of the community? Well, the words do
God is 7 know, in the Old Testament. They appear at a time when
blood feud 8 instructing the people of Israel about a system of
court was 9 and vengeance. But later on even at that time when a
called a 10 convened to decide who should live and who should die,
could only 11 Sanhedrin, it was decided that a judgment of death
stopped 12 be pronounced in the Temple. And so the Sanhedrin
earliest 13 meeting in the Temple. And why? Because in the
was 14 stages of the development of our cultural tradition, it
directs that 15 recognized that when the law in its solemn majesty
vengeance 16 life be taken, that can be crueler than deliberate

17 because it teaches, because it is a voice that comes
from a
18 place that is at war with a reasoned and compassionate
system
19 of social organization.

20 I suggest to you that the Government wants to
drag you
21 back to a time of vengeance. I suggest to you that the
FBI
22 agent who said to Lana Padilla on the 21st of April,
1995,
23 before a jot of evidence was in his hand, "Those two
guys are
24 going to fry," symbolized a rush to judgment that is at
war
25 with what the conscience of the community ought to do
and ought

15948

1 to think about.

2 I submit to you that to surrender your
deliberations
3 to vengeance is to turn your back on lessons that we
have all
4 learned with great difficulty and a great deal of pain.

5 Nobody knows the depths of human suffering
more than
6 those who have been the systematic victims of terror;
and yet
7 in country after country, judicial systems are saying

that in

8 each case, the individual decision must triumph over
our sense
9 of anger. Even the Supreme Court of Israel freed from
a death
10 sentence a man found to have no direct participation in
the
11 deaths of people that he had been accused of killing.

12 In South Africa, when Mandela was released
from
13 prison, it was decided that it would be very, very
difficult
14 despite the record of violence against the black
majority to
15 obtain a death sentence and that a system would be put
in place
16 to make sure that acts of vengeance and anger were not
carried
17 out in the name of the law.

18 Well, I've gone through the form and I've gone
through
19 the instructions. And if I've said anything that makes
you
20 think that I'm trying to tell you what you already
decided or
21 what you ought to think in terms of your deepest
convictions,
22 please disregard it.

23 The last time I spoke to you in a closing
argument, I
24 said some things. Let me finish now by noting: The
25 recommendation you're going to make, if you get to the

point of

15949

1 choosing one of those three things, is binding on the
Judge.

2 If you get to that point, you've got those three
choices and

3 that's what's going to happen: death, life without
parole, some

4 other sentence.

5 When I concluded my earlier summation, I
walked over

6 to Terry Nichols and said, "This is my brother." And
the

7 prosecutor got up and reminded all of us, thinking that
he

8 would remind me, that there were brothers and sisters
and

9 mothers and fathers all killed in Oklahoma City. Of
course,

10 when I said, "This is my brother," I wasn't denying the
reality

11 of that. I hope I was saying something else. I was
talking

12 about a tradition that goes back thousands of years,
talking

13 about a particular incident, as a matter of fact. You
may

14 remember -- most of us learned it I think when we were
young --

15 the story of Joseph's older brothers, Joseph of the
16 many-colored coat, now the "Technicolor Dream Coat" in
the MTV
17 version. And they were jealous of him, cast him into a
pit
18 thinking he would die, and then sold him into slavery.
And
19 years later, Joseph turns out to become a judicial
officer of
20 the pharaoh, and it happens that he is in a position to
judge
21 his brothers. And his brother Judah is pleading for
the life
22 or for the liberty of the younger brother, Benjamin;
and Joseph
23 sends all the other people out of the room and
announces, "I am
24 Joseph, your brother." That was the story, that was
the idea
25 that I was trying to get across; that in that moment,
in that

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1 moment of judgment, addressing the very human being,
his older
2 brother Judah, who had put his life at risk and then
sold him
3 into slavery, he reached out, because even in that
moment of
4 judgment he could understand that this is a human
process and

5 that what we all share looks to the future and not to
the past.

6 Members of the jury, we ask you, we suggest to
you,

7 that under the law, your judgment should be that this
case go

8 back to Judge Matsch and that he reach the just and
appropriate

9 sentence under the law and under the verdict that
you've

10 already reached.

11 I won't have a chance to respond to what the
12 prosecutor says, but I know that after your 41 hours of
13 deliberations on the earlier phase, you're all very,
very

14 accustomed to thinking up of everything that could be
thought.

15 My brother is in your hands.

16 THE COURT: Mr. Ryan . . .

17 REBUTTAL ARGUMENT

18 MR. RYAN: Thank you, your Honor.

19 May it please the Court . . .

20 THE COURT: Counsel.

21 MR. RYAN: . . . members of the jury, good
morning.

22 Nine weeks ago, we began this process. As
23 Ms. Wilkinson told you earlier, you've heard a lot of
evidence,

24 seen a lot of witnesses, over 150, 160 witnesses, seen
many

25 exhibits. You've deliberated. And I'm confident
you've heard

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1 more about the Oklahoma City bombing and its effects
than you
2 really wanted to know, information that I told you when
we
3 began this process would be painful for you to hear.
And
4 finally, you've heard information about the defendant,
Terry
5 Nichols. In the months and years ahead, the witnesses,
even
6 the important witnesses, the exhibits, your memory will
begin
7 to fade.

8 But there is one thing that no one of us will
ever
9 forget, and that is that a tragedy befell Oklahoma City
on
10 April 19, 1995, a terrible, terrible tragedy. And
unlike other
11 tragedies in history, this was no act of God. This was
not an
12 earthquake or a flood. It was not a ship running into
an
13 iceberg. It was not a disease or a tornado or a
plague. This
14 was an act that resulted from the conspiracy of two

men,

15 Timothy McVeigh and Terry Nichols. It was an act of
injustice.

16 Injustice.

17 Now, there is nothing you can do as a jury to
bring

18 back to life those who died. There is nothing you can
do to

19 make whole the bodies who were maimed --

20 MR. TIGAR: Your Honor, I'm going to object to
21 improper rebuttal.

22 THE COURT: Overruled. You may proceed.

23 MR. RYAN: -- or the injuries that so many
people

24 received, and there is nothing you can do to mend the
broken

25 spirits of those who remain. But it is your
responsibility to

15952

1 write the final chapter in the history of the Oklahoma
City

2 bombing. It's your duty. It is your responsibility.

3 And that chapter should read history -- should
record

4 that history reflects that justice was done in this
trial.

5 You've been selected by both the United States
and the

6 defense to act as the conscience of the community in
this case,
7 and you've seen it. You've seen what occurred and
you've seen
8 the tragedy that resulted in Oklahoma like few people
in this
9 world will ever see.

10 If this had been a case involving a conspiracy
to
11 result in the death of a single person, you know, there
is no
12 question that that family member, family member from
that
13 deceased, should be brought before you to tell you
about the
14 impact of that crime. I hope we did not offend you by
bringing
15 you 39 members of 39 deceaseds' families. Please
remember that
16 129 families had to be told that they could have no one
testify
17 in this case.

18 If an occasional witness became angry or
showed
19 emotion, please set aside that display of emotion but
don't
20 disregard the scope and extent of their loss.

21 Judge Matsch advised you early in this
proceeding
22 there were three choices that you have with respect to
a
23 sentence. The first was a choice of the death penalty,

a

24 choice to be made by the jury. The second option was
life
25 imprisonment, again an option only available as a
sentence by

15953

1 the jury. And the third option is a lesser sentence,
some
2 lesser term of years than life to be decided by Judge
Matsch.

3 MR. TIGAR: Objection, your Honor.

4 THE COURT: Overruled.

5 MR. RYAN: Now, I know it must be tempting to
refer
6 the matter for sentencing to Judge Matsch. I'm sure
you feel
7 that he's a wise man, a wise judge with many years of
8 experience. But that's not the question of who imposes
the
9 sentence or who decides the sentence. The question is
do you
10 want Terry Nichols to receive a punishment of less than
life.

11 If you do, then the option is Judge Matsch.

12 THE COURT: Well, that's an incorrect
statement of the
13 law. The Court can impose a life sentence.

14 MR. RYAN: I'm sorry, your Honor. I

misunderstood

15 your instructions to us last week.

16 THE COURT: Proceed.

17 MR. RYAN: But before I proceed one moment
longer, let

18 me urge you that in a crime that resulted in the deaths
of more

19 people that can fill this entire courtroom at this
moment, a

20 sentence of less than life would be an unconscionable
result.

21 It would be simply unconscionable.

22 MR. TIGAR: Object, your Honor.

23 THE COURT: The objection is overruled.

24 Let me just say now to you, members of jury,
that I

25 will be telling you that if you choose to have as your
decision

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1 in here a sentencing to be done by the Court, the Court
would

2 sentence according to law and include all of the
options that

3 are available, and there are certain guidelines that
the Court

4 would follow. I'm not going to go through all of those

5 guidelines with you. But, of course, that can mean a
sentence

6 of less than life.

7 jury, that

8 life

9 this

10 less

11 results, a

12 moral

13 conscience of the American community.
14 about these

15 first

16 step with

17 this

18 room after

19 findings

20 counsel

21 "murder"

22 "malice"

MR. RYAN: I would urge you, members of the

the only real choice in this case is the choice between

imprisonment and death. The facts and circumstances of

case simply do not warrant the option of a sentence of

than life. For a crime of this nature with these

sentence of less than life would never, ever be the

conscience of the American community.

Now, defense counsel spoke to you earlier

steps that the Court will instruct you upon. And the

step that was discussed with you by Mr. Tigar was the

respect to the intent of the defendant in entering into

conspiracy. Now, when you get a -- back in the jury

the Court has instructed you, you'll receive a special

form for you to examine. And contrary to what defense

said to you moments ago, you will not find the words

or "kill" or "intent to murder" or "intent to kill" or

23 or "malice aforethought" anywhere in that verdict form.

24 And it's not like premeditation that you were

25 instructed on with respect to the murder counts.
You're not

15955

1 being asked to respond with respect to the intent to
commit

2 murder. You've already done that. And that's why
those words

3 are not in this instruction.

4 These instructions deal with issues such as
was it

5 contemplated when this conspiracy was entered into that
death

6 would result. That's the intent element.

7 The second hurdle, according to the defense,
is the

8 question of the statutory aggravating factors. Those
were

9 discussed with you briefly this morning, and I won't
repeat

10 that. I will simply note defense counsel gave short
shrift of

11 that aggravating factor that deals with did this
conspiracy

12 pose a grave risk of death to others.

13 I intend to speak to you some this morning
about how

14 you might look at the mitigation that was offered in
this case
15 by the defense, the perspective that you might bring to
that
16 mitigation.

17 At the outset, let me make it clear we don't
contest

18 many of these factors that are offered in mitigation.
We don't

19 contest that Terry Nichols is a human being or that he
was

20 committed to his own self-improvement or that he was in
the

21 Army for a year or that he is a creative person.

22 But please consider this: Don't think the
fact that

23 Terry Nichols is a human being or that he made
Christmas

24 pinatas or he drew pretty pictures while he's been in
prison is

25 some type of real mitigation, is some sort of
justification for

15956

1 this crime. If you give that any weight, it should be
very

2 little, particularly when you place that up against --
side by

3 side with the aggravating factors shown in this case
through

4 the evidence that you've heard.

5 The defense has put on a good deal of
information

6 about the life of Terry Nichols, called several
witnesses, told

7 you about that life; that he came from a good family,
he had

8 loving parents, parents and a family that were so nice
they set

9 aside what they were doing to go help a neighbor who
was

10 needing his cows to be milked. A respected farm
family,

11 according to his sister.

12 He had one few criminals have. He had a good
home, he

13 had loving parents, and he had supporting siblings,
supportive

14 brothers and sisters.

15 This is not a reason or a justification for
conspiring

16 with Tim McVeigh to use a weapon of mass destruction
against

17 the Murrah Building.

18 They also presented information to you about
the fact

19 that Terry Nichols is intelligent; that he was
educated; that

20 he was creative; that he was artistic. They showed you
a Terry

21 Nichols who had the financial means to take his family
snow-

Terry 22 skiing, water-skiing, to vacation in Florida. Clearly,
23 Nichols had all the advantages.

24 But when you think about this -- and the
perspective

25 that I ask you to approach this information with is, is
this

15957

1 information mitigation? Does it really mitigate the
offense?

2 Terry Nichols did not grow up in a crime-
ridden

3 neighborhood. He didn't have a mother who was on crack
4 cocaine. He didn't have an absent father when he was a
child.

5 He wasn't born with fetal alcohol syndrome. He wasn't
taught

6 to hate. He wasn't deprived of moral guidance. He
wasn't born

7 with some type of mental defect or learning disorder.

8 The facts I've just mentioned -- they might be
real

9 mitigation for some crimes, but that's not the
information that

10 you've heard.

11 If anything, the information you heard makes
it more

12 difficult to comprehend and understand what would make
someone

no 13 enter into this type of conspiracy, a conspiracy with
14 parallel in American history.

okay to 15 Surely the defense is not suggesting that it's
16 execute someone who comes from a ghetto or from a lower
class 17 than to treat someone with all the advantages
differently,
18 better, to spare his life.

equal 19 In this country, we have, or we should have,
20 treatment for all. And I urge you to reject this type
of
21 emotional bond that the defense has tried to build that
Terry
22 Nichols is like us, he's not so horrible, he's just
like one of
23 us.

Nichols 24 Terry Nichols is not like one of us. Terry
25 conspired to use a weapon of mass destruction, a truck
bomb,

15958

1 against a building in a downtown metropolitan
community.

2 Give him equal treatment. Don't give him the
3 advantage of his advantages.

4 The remaining mitigating factors that you
heard about

5 Mr. Tigar discussing this morning, or many of them,
revolve

6 around the notion that Terry Nichols was a loving son,
a loving

7 husband, and a loving father. Was he a loving son?

8 You heard that Terry Nichols went to Michigan
where

9 his mother lives in April of '95 to attend gun shows.
While he

10 was in the area, he stopped by her house only to find
that she

11 was in Florida.

12 You received a great deal of information,
stacks and

13 stacks, sheets, about phone records made by Terry
Nichols.

14 You'll not find a record there where Terry Nichols
called his

15 mother, Joyce Wilt.

16 Was he a loving father? Mr. Tigar reminded
you this

17 morning about that call between Lana Padilla and Terry
Nichols

18 in November of 1994, a couple of days after the Roger
Moore

19 robbery. Lana Padilla didn't know how to find Terry
Nichols.

20 She had to write a mail drop in Manhattan, Kansas, to
ask him

21 to please call home so she could talk to him about

Josh.

22 And you remember that testimony when she said
when he
23 called and she was wanting to talk about the welfare of
Josh,
24 Terry Nichols was wanting to talk about an uprising
against the
25 government.

15959

1 The defense called Lana Padilla to say what
you would
2 expect the mother of his child to say. And it wasn't
moments
3 later they called witnesses to trash her.
4 And remember that one of the skills that Terry
Nichols
5 taught his son, his 11-year-old son, was how to make an
6 explosive. It was belittled today as a small
explosive. And
7 remember how Terry Nichols when he went to go to the
8 Philippines in November of '94 -- how he left 200 pages
of
9 antigovernment rhetoric with Barry Osentoski with one
request:
10 Please teach this information to Josh Nichols.
11 MR. TIGAR: Objection, your Honor. This
misstates the
12 evidence.

and can 13 THE COURT: Well, the jury knows the evidence

14 consider whether it's a misstatement.

15 Proceed.

husband? 16 MR. RYAN: Remember -- was he a loving

to the 17 Remember how Terry Nichols sent Marife and his daughter

remember 18 Philippines so he could go be with Tim McVeigh? And

and 19 when defense counsel -- when Marife was on the stand

Nichols to 20 defense counsel said there is 117 calls from Terry

Philippines? 21 Marife during the six months she was in the
They

those calls 22 neglected to tell you that only a tiny fraction of

time of 23 were ever completed. Five. Five calls for a total

24 less than an hour and a half.

Easter 25 This is a man, a husband, who got up from

15960

went to 1 dinner three days before the bombing, left his family,

lied to 2 Oklahoma City to be with his friend, Tim McVeigh, who

3 his wife about where he was going, lied to his wife
about what
4 he was doing the week before the bomb, a man who only
now
5 prepares Valentines and Easter cards knowing that one
day they
6 would be exhibits in a hearing.
7 Would a loving son, husband and father commit
an act
8 of terrorism and leave his family to pick up the
aftermath?
9 You know, I say these things to you about him,
Terry
10 Nichols, as a son and a father and a husband not
because he
11 deserves the death penalty for the way he treated his
family,
12 simply to point out that that's not really mitigation.
His
13 actions towards his family are not mitigation. We're
asking
14 for the death penalty because of the crime he
committed, an act
15 of terrorism.
16 The nine witnesses the defense called
attempted to
17 tell you the story of Terry Nichols; but you know they
didn't
18 tell you the whole story, not by any means. There were
no
19 photographs, there was no testimony about what occurred
the
20 year before the bombing, how he treated his family

during that

21 year. You know at some point in his life something
went

22 terribly wrong; and when something went terribly wrong
in his

23 life, it went terribly wrong for 168 people in Oklahoma
City.

24 Terry Nichols is a product of his choices, as
25 Ms. Wilkinson reminded you. He chose to leave the
family farm

15961

1 in Michigan, he chose to leave the Donahue farm in
Kansas to be

2 with Tim McVeigh, and he chose to enter into this
conspiracy.

3 Now it's time -- it's time for Terry Nichols to accept
4 responsibility for his actions.

5 One of the mitigating -- claimed mitigating
factors

6 mentioned by the defense this morning was that there is
another

7 defendant who is equally culpable to Terry Nichols who
didn't

8 get the death penalty. As Ms. Wilkinson pointed out,
we can't

9 charge someone that we can't identify, so you must
disregard

10 all of that information about whether or not there is
someone

found, 11 out there. If there is someone out there and they're
12 they'll be prosecuted.

13 What he's referring to is Michael Fortier.
But before

14 I respond to that argument, let me make one thing very
clear:

15 We are not here to defend Michael Fortier. Michael
Fortier, as

16 Ms. Wilkinson reminded you, could have picked up a
telephone,

17 called the police, and most likely prevented this
tragedy.

18 What he failed to do is indefensible. His omission is
19 unforgivable.

20 But Michael Fortier is not as culpable as
Terry

21 Nichols. Michael Fortier did not rent two storage
lockers in

22 Council Grove, Kansas, to store bomb components. Terry
Nichols

23 did that.

24 And Michael Fortier did not clean out Terry --
Tim

25 McVeigh's locker in Herington the day after the
Oklahoma City

15962

1 bombing. Terry Nichols did that.

in 2 And Michael Fortier did not steal explosives
Nichols 3 Marion, Kansas, and transport them to Arizona. Terry
4 did that.

5 And Michael Fortier did not go to Ennis,
Texas, to buy 6 nitromethane with Tim McVeigh. Terry Nichols did that,
too.

7 And Michael Fortier did not sell gold coins to
finance 8 the purchase of the nitromethane. Those were the acts
of Terry 9 Nichols.

10 And Michael Fortier did not buy 4,000 pounds
of 11 ammonium nitrate, the main charge of this bomb. Terry
Nichols 12 did that.

13 And Michael Fortier did not obtain the Bridges
credit 14 card under an alias name and share it with Tim McVeigh,
a 15 call -- a card that was used to make telephone calls to
acquire 16 bomb components. That was a card that Tim McVeigh
shared with 17 Terry Nichols.

18 Michael Fortier did not rob Roger Moore, and
19 Fortier did not knowingly and intentionally drive five
hours

20 each way on Easter Sunday to help Tim McVeigh stash the
getaway
21 car. And central Kansas is a place that Michael
Fortier was
22 nowhere near in April of '95. That was Terry Nichols'
23 backyard.

24 The next factor, mitigating factor, the
defense claims
25 is that Terry Nichols' role in the conspiracy was a
minor one.

15963

1 I want to remind you with respect to this that this
burden,
2 unlike the other burdens in this case, is on the
defense. They
3 must prove to you by a preponderance of the evidence
that Terry
4 Nichols had a minor role in the conspiracy.

5 And I ask you when you analyze this question
of minor
6 role, please remember that you're analyzing his role
and the
7 crime for which you found him guilty, conspiring to use
a
8 weapon of mass destruction against the Murrah Building.

9 You are not -- and I emphasize not --
analyzing what
10 his role was in taking the truck bomb to Oklahoma City

and

will 11 igniting the bomb. That's not the crime. The Court

12 instruct you on this. It's the role in the conspiracy.

13 And, you know, who is to say how this
conspiracy got

14 started, who influenced who. Whose idea was it: Was
it Terry

15 Nichols', or Tim McVeigh's to bomb the Murrah Building?

16 The evidence is that both of these men were
upset with

17 the government. And you remember the testimony of
Marife. She

18 was so concerned about Terry Nichols' antigovernment
views that

19 she called Terry Nichols' mother to ask for guidance.

20 Both these men were upset over Waco, both had
21 antigovernment material, both shared antigovernment
feelings.

22 And remember, please, when you deliberate that Terry
Nichols is

23 12 years older than Tim McVeigh. You heard from Dave
Dilly.

24 Mr. Tigar talked about him this morning. The one thing
that

25 came out clear from his testimony is that as between
the two

1 men, Terry Nichols was the leader, Tim McVeigh the
follower.
2 You've heard how intelligent Terry Nichols is. You've
heard
3 how he was the platoon leader the entire time these
men's
4 company was being in Army training.
5 And you heard how Tim Mc -- excuse me -- and
you heard
6 how Terry Nichols knew how to make an ammonium nitrate
bomb
7 well before he ever met Tim McVeigh. By your verdict,
you've
8 already found that Terry Nichols knowingly and
deliberately
9 entered into this conspiracy. You have found that it
was
10 foreseeable that death would result from this
conspiracy. And
11 you know all of the actions that Terry Nichols took
right up
12 until the end. These were not minor actions.
13 You know, minor role might be someone who gave
the
14 plans of the Murrah Building to his co-conspirators or
15 suggested a place to rent a truck where they wouldn't
ask for
16 identification. But a minor role is not someone who
17 deliberately and knowingly planned the attack,
purchased and
18 stole the components and stored them in lockers and
stashed a

not met 19 getaway car days before the bombing. The defense has
role. 20 its burden of proving that Terry Nichols had a minor

21 The final mitigating factor raised by the
defense was 22 that Terry Nichols was under some sort of unusual or
23 substantial duress. Defense counsel didn't talk long
about 24 that and for good reason. There is not much to say.
He picked 25 out a line that Michael Fortier told you about where
Tim

15965

1 McVeigh said, "I think I can make Terry do it." This
is the 2 same Michael Fortier that just two weeks ago the
defense was 3 calling this crazed methamphetamine user. Either
accept his 4 testimony or don't, but don't allow the defense to pick
and 5 choose what they like.

6 The burden of duress -- proving this is upon
the 7 defense. And they haven't met that burden. They
called no 8 witnesses, introduced no exhibits. Who knows what Tim
McVeigh

9 meant when he said that to Michael Fortier? Was he
bragging?

10 Was he trying to sound like a tough guy? Was it some
ploy to

11 recruit Michael Fortier? Who knows? But one thing is
clear:

12 The statement that we're talking about was made in
March of

13 1995, a time frame after which Terry Nichols had
already done

14 quite a number of things. And you recall those things,
and I

15 won't discuss them further with you. But the bomb
components

16 were already in storage under aliases of Ted Parker and
Joe

17 Kyle.

18 You've not heard any evidence at all, not a
shred,

19 that Terry Nichols was ever afraid of Tim McVeigh or
that Terry

20 Nichols was ever threatened by Tim McVeigh. And as
21 Ms. Wilkinson pointed out, Terry Nichols spent nine
hours with

22 the FBI at a point in time that Tim McVeigh was well in
custody

23 and of no possible threat, and he mentioned not a word
of

24 duress. And he didn't mention it for a reason: There
was no

25 duress. These were his voluntary actions.

15966

1 The evidence you've heard is that Terry
Nichols and
2 Tim McVeigh were friends. They were business partners.
They
3 were Army buddies. They shared a calling card. They
spent
4 time together. They spent so much time together that
Marife
5 Nichols was jealous.

6 Nothing in this case, ladies and gentlemen,
when you
7 look at all the mitigation you've heard, comes close to
8 minimizing Terry Nichols' participation in this
conspiracy to
9 bomb the Murrah Building and the people inside. It in
no way
10 lessens his responsibility for this crime, and it in no
way
11 explains his reprehensible conduct and actions.

12 As you deliberate in this case and you
consider these
13 matters of mitigation and aggravation, I ask you to
think of
14 the lady of justice with the blindfold across her eyes
and a
15 scale on each side. And when you think about the scale
that
16 holds the aggravation and aggravating circumstances of
this

17 case, think about 4,000 pounds of weight that causes
that scale
18 to fall. And when you think about the mitigation, the
19 justification you've heard, think about grains of sand
softly
20 falling on the plate of mitigation.

21 This trial has almost come to a close. And an
irony
22 struck me this morning as I was preparing to come here
today.
23 From April, 1995, until January, 1998, over two-and-a-
half
24 years, Terry Nichols has received due process. The
United
25 States is such a remarkable country. He has had a full
and

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1 complete trial. He's had extremely competent counsel.
He's
2 been afforded every right guaranteed by our
constitution. He
3 and his counsel participated in the selection of you,
the jury.
4 He's had numerous counsel including paralegals,
investigators.

5 And I ask you: Where was the due process for the men,
women
6 and children of Oklahoma City, of the Murrah Building?

7 MR. TIGAR: Objection, your Honor.

had a 8 MR. RYAN: They never had a trial. They never
They 9 team of lawyers. They never had a moment's warning.
so 10 never had a chance to beg for mercy, as Mr. Tigar has
11 eloquently done for Mr. Nichols today.

don't 12 And the mothers and fathers of the 19 children
13 hold their babies, as Terry Nichols does every week.

this 14 I've talked to you -- I've spoken to you some
15 morning about what has not been proven in mitigation.

What I'd 16 like to talk to you in the few minutes I have remaining
is what

17 has been proven. You learned that Terry Nichols was
raised by

Nichols and 18 his family on a farm. You saw a picture of Terry

19 his mother sitting on a tractor. Blake Kennedy will
never sit

20 with his mother on a tractor on their farm in Amber,
Oklahoma.

the Boy 21 You saw -- and you heard about Terry Nichols,

22 Scout. Elijah and Aaron Coverdale will never enjoy
scouting.

23 You heard about Terry Nichols who liked to
climb

24 trees. Jaci Rae Coyne died before she ever saw the
world from

25 the top of a tree.

15968

on his
Brandon
his

1 You learned that Terry Nichols enjoyed walking
2 hands when he was a boy. You remember the video of
3 Denny, the child that you saw limping in the office of
4 physical therapist. He can't even hold a bag of Animal
5 Crackers in his hand.

Christmas
take a
at a

6 You saw a picture of Terry Nichols and his
7 pinatas. Antonio Cooper, Little Tone: He'll never
8 swing at a Christmas pinata. He'll never take a swing
9 ball.

newborn
never
help her
the
arms.

10 You saw a picture of Terry Nichols holding his
11 son -- excuse me -- newborn daughter. Mike Lenz will
12 have a chance to coach his wife while she's pregnant,
13 in her delivery, be with that child and its mother when
14 child is born; and he will never hold his son in his

the

15 When you go back to deliberate and talk about

16 case, consider first, if you will, please, the
voluntary acts
17 of Terry Nichols that led to the attack on the Murrah
Building;
18 second, consider the extreme consequences of those
voluntary
19 acts; and third, consider the excuses that were offered
to you
20 as justification for this crime.

21 And then I ask you to render a sentence, an
22 appropriate sentence, a sentence that reflects the
moral
23 conscience of the community, a sentence that is
appropriate for
24 the deaths of 168 American men, women, and children.

25 And I thank you.

15969

1 THE COURT: Members of the jury, everyone
comfortable
2 enough to go forward? I'd like to go forward with the
3 instructions.

4 JURY INSTRUCTIONS

5 THE COURT: Now, of course as I tell you in
these
6 instructions -- and you will have a copy of the
original
7 instructions that I gave you in detail at the close of

the

8 evidence in the case when it was given for you to
decide on the

9 charges in the case, and I'm not going to repeat all of
them

10 now. You'll have that in writing. But before I begin
with

11 these instructions, I just remind you of two things
said then.

12 One is, of course, that these arguments of counsel are
just

13 that. They're arguments in the case and they are not a
part of

14 the evidence or the information to be considered.
That's what

15 came from the witness stand and the testimony of the
witnesses

16 and the exhibits that were received.

17 Also, as I said in the original instructions,
it's

18 appropriate for counsel in the case to state in their
arguments

19 what they believe the law may be -- and there has been
some

20 dispute about that and I've made some quick rulings
here, but I

21 just want to remind you that if any difference appears
to you

22 between the law as stated by any of the lawyers in the
case and

23 the law as I give it to you in the instructions, you
are, of

24 course, to be bound by the law as given to you by the

Court in

25 the instructions.

15970

1 Now, Terry Lynn Nichols has been found guilty
of the
2 crime of conspiracy as charged in Count One of the
indictment.
3 The jury in this case also decided that Terry Lynn
Nichols was
4 not proved guilty beyond a reasonable doubt of the
crimes
5 charged in Counts Two and Three in the indictment and,
as to
6 the eight counts of first-degree murder, found him
guilty of
7 the lesser included offense of involuntary
manslaughter. The
8 sentencing on the guilty counts on those eight counts
of
9 involuntarily manslaughter is a matter to be determined
by the
10 Court.

11 Your prior verdict acquitted Mr. Nichols of
Counts Two
12 and Three and acquitted him of first-degree murder and
13 second-degree murder on Counts Four through Eleven. I
instruct
14 you that these verdicts represent final and binding

15 determinations as to the issues that you necessarily
decided in
16 reaching your decisions; that is, as I have said, no
party is
17 entitled to ask you to change your verdict at this
stage, nor
18 are you entitled to do so under the law.

19 The statute defining the Count One offense, 18
United
20 States Code Section 2332(a), provides that if death
results
21 from the conspiracy, the punishment may be death,
imprisonment
22 for life without any possibility of being released, or
any
23 lesser sentence provided by law and decided upon by the
Court.
24 The selection among these three choices must be made by
the
25 jury. Even though you have found Mr. Nichols guilty of
this

15971

1 charge carrying a possible death sentence, the law
requires
2 that you approach this sentencing decision with an open
mind,
3 able to give meaningful consideration to all possible
4 sentences.

5 A copy of the indictment, a copy of your

completed

6 verdict form, and a copy of the previous instructions
given to
7 you at the close of the trial will be given to you for
your
8 reference in making your findings. You will also have
9 individual copies of these instructions and the special
10 findings form.

11 As I have told you previously, you must decide
whether

12 the appropriate sentence for the defendant is: (1)
death, (2)
13 life in prison without possibility of release, or (3)
some
14 other lesser sentence to be decided by the Court. Your
15 recommendation that the defendant be sentenced either
to death
16 or to life in prison without possibility of release
will be
17 binding on this court, and I will sentence the
defendant
18 according to your recommendation. In the event you
choose the
19 third option and recommend that the defendant receive
some
20 lesser sentence, I will impose some other lesser
sentence than
21 death or life in prison without the possibility of
release in
22 accordance with applicable law.

23 As I mentioned during arguments here, that
will be

24 done according to certain guidelines, which I'm not
going to go
25 into you -- into detail with you now; but, of course, a

15972

1 sentence to a number of years -- and there is no parole
in the
2 federal system of sentencing. Under federal
sentencing, the
3 sentence of whatever number of years is the number of
years the
4 person serves. There is no parole board to release
anyone
5 early. So, of course, given the defendant's age, a
sentence to
6 a specific number of years could be a sufficient number
of
7 years as to be the equivalent of a life sentence for
that
8 person.

9 Now, before deciding on the appropriate
punishment,
10 you must consider additional information about the
crime and
11 about the uniqueness of the defendant as an individual
human
12 being. The parties have presented information
pertaining to
13 aggravating and mitigating factors at this sentencing
hearing.

evidence 14 The information you may consider also includes the
arriving 15 presented at trial and any fact findings you made in
16 at your verdict. Thus, you may consider the testimony,
17 exhibits, and stipulations offered by both sides during
the 18 guilt phase and the parties were not required to
reoffer that.

19 Based on your consideration of evidence
presented at 20 trial and the information presented at this sentencing
hearing, 21 you must make a series of findings to guide you in
arriving at 22 a reasoned moral response to Mr. Nichols' crime,
background, 23 character, and circumstances of the crime. These
findings are 24 to be entered on the special findings form, and you
will have 25 this form, each one of you, a draft copy of it. And it
is in

15973

1 sections.
2 Section 1 of the special findings form asks
you to 3 decide what the evidence and information provided to
you at the

Nichols' 4 trial and at the sentencing hearing proved as to Mr.
Nichols 5 intentions. The Government has alleged that Terry Lynn
6 engaged in the conspiracy with two types of intent:
7 (1) That Mr. Nichols intentionally
participated in an 8 act contemplating that the life of a person or persons
would be 9 taken or intending that lethal force would be used
against a 10 person or persons and the victim or victims died as a
result of 11 that act;
12 Second, that Mr. Nichols intentionally and
13 specifically engaged in an act of violence knowing that
the act 14 created a grave risk of death to a person or persons
other than 15 a participant in the offense, such that participation
in the 16 act constituted a reckless disregard for human life and
the 17 victim or victims died as a direct result of the act.
18 Participation in a conspiracy involves the act
of 19 conspiring or agreeing with one or more other persons
to commit 20 a crime. The act of conspiracy or agreeing to use a
weapon of 21 mass destruction against persons and property may but
need not

22 be considered to be an act of violence.

23 There can be no sentence to death or
imprisonment for

24 life without release unless all of the jurors agree
that the

25 Government has proven at least one of these intentions
beyond a

15974

1 reasonable doubt. You will recall that the
instructions given

2 at the close of the trial informed you that a
reasonable doubt

3 is the kind of doubt that would make a reasonable
person

4 hesitate to act in the most important of his own or her
own

5 affairs. When you have unanimously agreed on your
answers to

6 these two questions, the foreperson will write "yes" or
"no" on

7 the appropriate lines on Section 1 of the special
finding --

8 findings form for each of these two intent elements.
If you

9 answer "no" with respect to both elements, then
conclude your

10 deliberations, sign the certification in Section 6 of
this form

11 and advise the Court that you have reached a decision.

If you

12 answer "yes" with respect to either or both of these
intent
13 elements, then continue your deliberations and proceed
to
14 Section 2 of the form.

15 Section 2 of the special findings form asks
whether
16 the Government has proved beyond a reasonable doubt
three
17 statutory aggravating factors. An "aggravating factor"
is some
18 circumstance that tends to support imposition of the
death
19 penalty. A "statutory aggravating factor" is one
specifically
20 prescribed by Congress. The Government has alleged
three such
21 statutory aggravating factors:

22 (1) That the deaths or injuries resulting in
death
23 occurred during the commission -- during the commission
of an
24 offense under 18 United States Code Section 844(d);
that is,
25 transportation of explosives in interstate commerce for
certain

15975

1 purposes.

2 (2) That the defendant in the commission of
the
3 conspiracy offense knowingly created a grave risk of
death to
4 one or more persons in addition to the victims of the
offense.

5 (3) That the defendant committed the
conspiracy
6 offense after substantial planning and premeditation to
commit
7 an act of terrorism.

8 There are specific elements that must be
established
9 by proof beyond a reasonable doubt for each of these
three
10 statutory aggravating factors.

11 The first statutory aggravating factor alleged
is that
12 the deaths or injuries resulting in death occurred
during the
13 defendant's commission of another crime, the interstate
14 transportation of an explosive with the knowledge and
intent
15 that the explosive will be used unlawfully to damage or
destroy
16 any building or property. To establish this
aggravating
17 factor, the Government must prove beyond a reasonable
doubt
18 each of the essential elements of that crime as set
forth in
19 Title 18 United States Code Section 844(d). This was

not one

20 of the crimes charged in the indictment.

that:

21 That section provides, in pertinent part,

any

22 "Whoever transports . . . in interstate . . . commerce

used

23 explosive with the knowledge or intent that it will be

or other

24 unlawfully to damage or destroy any building, vehicle,

felony.

25 real or personal property shall be guilty of a federal

15976

the

1 There are two essential elements to this crime: First,

or

2 defendant must knowingly and willfully have transported

from

3 aided and abetted in the transportation of an explosive

done so

4 one state to another. Second, the defendant must have

be used

5 with the knowledge or intent that the explosive would

or other

6 unlawfully to damage or destroy any building, vehicle,

7 real property.

must have

8 To act knowingly and willfully, a defendant

9 been conscious and aware of his action, must have

realized what

10 he was doing, and must not have acted because of
ignorance,
11 mistake or accident. The defendant must also be shown
to have
12 acted with a bad purpose or evil intent; that is, he
must have
13 transported or aided and abetted in the transportation
of the
14 explosive with the knowledge or intent that it would be
used
15 unlawfully to damage or destroy any building, vehicle,
or other
16 real or personal property.

17 The term "explosive" means gunpowders, powders
used
18 for blasting, all forms of high explosives, blasting
materials,
19 detonators, and other detonating agents, smokeless
powders, and
20 any chemical compounds, mechanical mixture, or device
that
21 contains any oxidizing and combustible units, or other
22 ingredients, in such proportions, quantities, or
packing that
23 ignition by fire, by friction, by concussion, by
percussion, or
24 by detonation of the compound, mixture, or device or
any part
25 thereof may cause an explosion.

1 The second statutory aggravating factor
alleged is 2
3 that the defendant, in the commission of the conspiracy
offense 4
5 in the indictment, knowingly created a grave risk of
death to 6
7 one or more persons in addition to the dead victims of
the 8
9 offense. This aggravating factor requires the
Government to 10
11 prove the defendant's conduct not only resulted in
death but 12
13 also posed a significant risk of death to other persons
who 14
15 were in close proximity to those who died in terms of
time and 16
17 location. The defendant must have acted knowingly in
creating 18
19 this grave risk of death to other persons, which means
that he 20
21 must have been conscious and aware of the grave risk of
death, 22
23 must have realized what he was doing, and must not have
acted 24
25 because of ignorance, mistake or accident.

26 The third statutory aggravating factor alleged
is that 27
28 the defendant participated in the conspiracy offense
after 29
30 substantial planning and premeditation to commit an act
of 31

17 terrorism. "Premeditation" means that the defendant
must have
18 considered and reflected upon the plan at least long
enough to
19 give it a second thought. "Substantial" means that the
20 planning and premeditation must be more than the
minimum
21 required for the commission of the offense. An "act of
22 terrorism" means an activity that involves: (a) a
violent act
23 or an act dangerous to human life that violates federal
law;
24 and (b) appears to be intended to intimidate or coerce
a
25 civilian population or to influence the policy of a
government

15978

1 by intimidation or coercion.
2 The Government must prove at least one of
these
3 statutory aggravating factors beyond a reasonable
doubt. You
4 should write "Yes" or "No" on the appropriate lines on
Section
5 II of the special findings form to indicate your
unanimous
6 answers to the question of whether the Government
proved the

doubt. 7 existence of such particular factor beyond a reasonable
8 If you answer "No" with respect to all three factors,
then 9 conclude your deliberations, sign the certification in
Section 10 VI of the form, and advise the Court you have reached a
11 decision. If you answer "Yes" with respect to one or
more of 12 these three factors, then continue your deliberations
and 13 proceed to Section III of the form.

14 Section III of the special findings form asks
you to 15 find whether the Government has proved beyond a
reasonable 16 doubt three additional aggravating factors, called
17 non-statutory aggravating factors, it has alleged.
Again, an 18 "aggravating factor" is a circumstance that tends to
support 19 imposition of the death penalty. A non-statutory
aggravating 20 factor is one that Congress has not specifically
prescribed.

21 The three non-statutory aggravating factors alleged
are:

22 (1) That the offense committed by the
defendant 23 resulted in the deaths of 168 persons.

24 (2) That in committing the offense, the
defendant

25 caused serious physical and emotional injury, including

15979

numerous 1 maiming, disfigurement, and permanent disability to
2 individuals.

defendant 3 (3) That by committing the offense, the
4 caused severe injuries and losses suffered by the
victims' 5 families.

6 These non-statutory factors are self-
explanatory and
7 do not require further instruction. You should write
"Yes" or
8 "No" on the appropriate lines on Section III of the
special
9 findings form for each of these three non-statutory
aggravating
10 factors to indicate whether you unanimously find that
the
11 Government proved each factor beyond a reasonable
doubt.

12 Regardless of your findings as to any non-statutory
aggravating
13 factors, you should continue your deliberations and
proceed to
14 Section IV.

15 Section IV of the special findings form asks
you to

16 find whether the defendant has proved any mitigating
factors by
17 a preponderance of the evidence. Mitigating factors
are not
18 limited by statute. The law permits you to consider
any
19 relevant mitigating information presented by the
defendant.
20 "Relevant mitigating information" include -- includes
anything
21 in the defendant's background, record, or character, or
any
22 circumstances of the offense which suggests to you that
a
23 sentence other than death should be imposed. The
defendant
24 must prove the existence of mitigating factors by a
25 preponderance of the evidence or information.

15980

1 A "preponderance of the evidence" or
information means
2 an amount of evidence or information sufficient to
persuade you
3 that a contention is more likely true than not true or
that a
4 factor is more likely present than not present.
5 Not only is the burden of persuasion different
for

6 aggravating and mitigating factors, the unanimity
requirement
7 that exists for aggravating factors does not exist with
respect
8 to mitigating factors. Any one or more jurors may find
the
9 existence of a mitigating factor and may then consider
that
10 factor in weighing the aggravating and mitigating
factors even
11 though other jurors may not agree that the particular
12 mitigating factor has been established. This weighing
decision
13 must be made by each juror giving individual
consideration to
14 the aggravating factors unanimously found by all of the
jurors
15 and such mitigating factors as may be found by that
juror.

16 After completing your findings as to the
existence or
17 absence of any aggravating or mitigating factors, you
will then
18 engage in a weighing process. In determining whether a
19 sentence of death is appropriate, all of you must weigh
any
20 aggravating factors -- statutory and non-statutory --
that you
21 unanimously found to exist, and each of you must weigh
any
22 mitigating factors that you individually found to
exist.

23 Because the findings of mitigating factors are

24 individual to each juror, the weighing that each of you
must
25 engage in is necessarily an individual process. After
each

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1 juror has performed that individual weighing process,
the jury
2 as a whole must determine by unanimous vote whether the
proven
3 aggravating factor or factors sufficiently outweigh any
proven
4 mitigating factor or factors to justify a sentence of
death.

5 The process of weighing aggravating and
mitigating
6 factors is not a mechanical process. You should not
simply
7 count the number of aggravating and mitigating factors
and
8 decide which number is greater, but instead you must
consider
9 the weight and value of each factor. Whatever findings
you
10 make with respect to aggravating and mitigating
factors, the
11 jury is never required to impose a death sentence.

12 Your role in this proceeding is to be the
conscience
13 of the community in making a moral judgment about the

worth of

14 a specific life balanced against the societal value of
what the
15 Government contends is the deserved punishment for this
16 particular crime. Your decision must be a reasoned
one, free
17 from the influence of passion, prejudice, or any other
18 arbitrary factor. In this regard, I repeat the
cautions that I
19 gave you during the hearing with respect to particular
20 witnesses.

21 After engaging in the process described above,
the
22 jury must record the moral judgment as to the
appropriate
23 sentence. The place for recording the sentence is
Section V of
24 the special findings form. The jury must write in on
the line
25 one of three possible sentences: (1) "Death"; (2)
"Life in

15982

1 Prison -- Imprisonment Without Possibility of Release";
or (3)
2 "Some Other Lesser Sentence." Each member of the jury
then
3 should sign his or her name at the bottom of Section V.
4 The jury, in considering whether a sentence of

death

5 is justified, shall not consider the race, color,
religious
6 beliefs, national origin, or sex of the defendant or of
any
7 victim, and the jury is not to recommend a sentence of
death
8 unless it has concluded that it would recommend a
sentence of
9 death for the crime no matter what the race, color,
religious
10 beliefs, national origin, or sex of the defendant or
any victim
11 may be. Section VI of the special findings form
contains a
12 certification to this effect and must be signed by each
juror.

13 So again, you will have, each of you, a
working copy
14 of the special findings form; and, of course, it simply
goes
15 step by step with these instructions and compares with
the
16 instructions that I have given to you; and each of you,
of
17 course, will have a copy of these instructions. And it
simply
18 has beside each -- or below each question the words
"Yes" or
19 "No" and a space provided and where the foreperson
would write
20 in your answers to these questions, be they "Yes" or
"No," and

21 proceeds in the manner that I have instructed; and with
respect
22 to the mitigating factors, you will see them listed.
And with
23 respect to them, rather than a "Yes" or "No" finding,
it simply
24 describes the factor -- for example, that Terry
Nichols'
25 participation in the offense was relatively minor --
and then

15983

1 it has number of jurors who so find. These are
individual
2 findings, as I've said, in these instructions; so the
3 foreperson would simply write numerically the number of
persons
4 finding that, if it be zero, zero; if it be 12, 12, or
of
5 course any number in between.
6 And then the form, as I say, tracks along with
the
7 instructions; and as I said in the instruction, it
begins,
8 Section I, with these two questions about intent and
says that
9 if you answered "No" with respect to both of the above,
then
10 you conclude your deliberations and you don't do the
rest of

on that 11 it, you go directly to Section VI of the form and sign
in the 12 if it be true, and you've arrived at a decision because
the 13 absence of a finding of either of these intents, then
Court for 14 matter is the equivalent of returning the case to the
15 decision.

possibility 16 And the same is true with respect to the
should 17 that on the statutory aggravating factors if the jury
reasonable 18 determine that none of them has been proven beyond a
because the 19 doubt, then again, you conclude your deliberations
that's what 20 law requires at least one of those to be found. So
and why 21 this means with respect to the sections in which you go
22 this is a process that goes through those sections.

23 Then, of course, if one -- at least one of the
is 24 intentions is found and one of the aggravating factors
25 found, then you do complete all of the verdict form and

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statutory 1 including each of the -- consider each of the non-

factors 2 aggravating factors and consider each of the mitigating

3 that are set out on this special findings form.

4 And then, of course, ultimately, under the
5 recommendations section, it simply has this "defendant,
Terry

6 Lynn Nichols, shall be sentenced to," and there is a
line upon

7 which the foreperson would write that decision, be it
death,

8 life imprisonment without possibility of release, some
other

9 lesser sentence to be decided by the Court. And then
again

10 different from the original verdict form, each of the
jurors

11 signs. And there is a space provided for the signature
of each

12 juror; and finally the certification with respect to
that no

13 discriminatory basis was applied here.

14 Now, if you'll excuse us for just a moment,
I'm going

15 to have one last conference at the bench with counsel.

16 (At the bench:)

17 (Bench Conference 154B2 is not herein transcribed
by court

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

19

20

21
22
23
24
25

15988

1 (In open court:)

2 THE COURT: Word processors are wonderful
things,
3 except that they make mistakes sometimes -- or the
people using
4 them do. There is a typo in the verdict form, and
counsel have
5 kindly brought that to my attention; and we will change
the
6 verdict form because there is an inadvertent
typographical
7 error.

8 Now, it is time to turn this matter to the
jury for
9 decision. And, of course, we've had 18 people in the
jury box
10 throughout this trial so that we would have alternate
jurors to
11 be available if need should arise.

12 12 of you in the first 12 chairs here are the
ones who

13 deliberated and decided on the verdict in this case;
and unless
14 there be some reason or illness or something like that
15 affecting any of you now, it will be the 12 of you who
will
16 decide.

17 Everybody ready on the deliberating jury to
proceed?

18 All right. Then the six alternate jurors are
now
19 excused in the case. We're not going to have you wait
20 somewhere, because your job is now done. And of
course, I know
21 you -- as was the case when I told you you weren't
going to
22 participate in deliberations on the counts of the case,
you may
23 have mixed feelings with respect to that; but I want
you to
24 know that all of us involved in this case genuinely and
25 sincerely appreciate the commitment that you have made,
the

15989

1 time that you have invested, your attention to this
case, and
2 your being a part of this trial. It is simply,
however, the
3 law that 12 people make the decision; and as I've said,

there

that 4 is always -- and there always has been the possibility

And of 5 some person or persons would be unable to continue.

could 6 course, we wanted to be sure that we had 12 people who

7 decide in the case.

jurors 8 So what I am going to now ask of the alternate

counts 9 is, as was the case when I turned the decision on the

room and 10 over to the jury -- we'll ask you to go to the jury

stand by for 11 get your things and then go to a different room to

minutes 12 a few minutes, because I'll just visit with you a few

you're 13 before asking you to -- or discharging you. As I said,

from 14 not going to be standing by now. You'll be discharged

please 15 your duty in this case. So if the alternates would

16 proceed to the jury room and get your things.

17 (Alternate jurors out at 12:08 p.m.)

discuss 18 THE COURT: And, of course, what I'm going to

talking 19 with the alternate jurors is that they're not to be

we're going 20 about this case while the jury is deliberating. So

the 21 to at this time, as soon as we get the clearance from
to the 22 alternate jurors, members of the jury, have you retire
until 23 jury room to begin your deliberations. But we'll wait
to talk 24 those folks clear the area. So, of course, you're not
jury. And 25 to them or to anybody other than the members of the

15990

you've 1 of course, in your deliberations, now, again the person
deliberations 2 selected as the foreperson will preside over your
3 in the manner previously followed.

look at 4 I've mentioned, I think, that if you want to
your 5 any of the original exhibits, they can be provided at
set up 6 request. We don't intend, unless it's necessary, to
7 that exhibits room again but simply provide any other
came in 8 exhibits -- from the trial, I mean. The exhibits that
hearing, will 9 during this information, sentencing phase of the
10 of course be provided to you now.

11 And do we have an index of those that's been

prepared?

12 MR. MACKEY: For the penalty hearing, yes,
your Honor.

13 THE COURT: Yes.

14 MR. TIGAR: Yes, your Honor.

15 THE COURT: Okay. We'll provide that to you;
and

16 we'll also, of course, provide you with some lunch.

17 So, members of the jury, at this time, you
will retire

18 to deliberate on the issues before you.

19 (Jury out at 12:09 p.m.)

20 THE COURT: All right. We'll be in recess
subject to

21 call.

22 (Recess at 12:10 p.m.)

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4 CLOSING ARGUMENTS

15888 5 By Ms. Wilkinson

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15969 8 JURY INSTRUCTIONS

9 * * * * *

10 REPORTERS' CERTIFICATE

11 We certify that the foregoing is a correct
transcript from

Dated 12 the record of proceedings in the above-entitled matter.

13 at Denver, Colorado, this 5th day of January, 1998.

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Paul Zuckerman

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Kara Spitler

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