

Thursday, June 12, 1997 (morning)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,
Plaintiff,

vs.

TIMOTHY JAMES McVEIGH,
Defendant.

REPORTER'S TRANSCRIPT
(Trial to Jury - Volume 148)

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 8:30 a.m., on the 12th day of June,
1997, in Courtroom C-204, United States Courthouse, Denver,
Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
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78767-0280, appearing for Defendant McVeigh.

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PROCEEDINGS

(In open court at 8:41 a.m.)

THE COURT: Be seated, please.

Good morning.

Are we ready for the jury?

MR. HARTZLER: Yes.

MR. JONES: Yes, your Honor.

THE COURT: Very well.

(Jury in at 8:41 a.m.)

THE COURT: Members of the jury, good morning.

JURORS: Good morning.

THE COURT: We're now ready to submit these questions to you. And as I've already indicated to you when we started this sentencing hearing, we'll proceed as we did at the trial; and that is, you'll hear first from counsel for the Government, then counsel for the defense, then counsel for the Government on rebuttal, and then I will instruct you on the law.

So we'll proceed. Miss Wilkinson.

CLOSING ARGUMENT

MS. WILKINSON: May it please the Court, ladies and gentlemen of the jury, it's time. It's time for justice. A little over two years ago, Timothy McVeigh decided that he had no time for justice. He believed that it was his right to murder innocent women, men, and children. He believed that he could take the law into his own hands and declare war on his fellow Americans. He killed without regard to race, creed, color, or age. He destroyed the lives of families in Oklahoma City; also in Orlando, Florida; Fort Worth, Texas; Evergreen, Colorado; and everywhere else in the United States. Without even a nod to justice, he stole the innocence of our children who, like us, never believed that in America an American citizen would kill his own in the name of patriotism.

He gave his victims no warning. He scoffed at the concept of due process, and he mocked the lessons that he learned as an Army soldier. He carried out a daytime assault to ensure maximum carnage. By killing all of those babies, those mothers, those fathers, those grandmothers, those "Paw Paws," by killing and destroying so many others, Timothy McVeigh revealed his total disregard for the rights of his fellow citizens, including the most basic, their right to life.

But today, despite his total disregard for life, liberty, and justice, we give the defendant what every person in this country deserves: Justice. Timothy McVeigh has been presumed innocent. He's had a public trial, and he has had citizens from his community consider all of the evidence before declaring him guilty beyond a reasonable doubt to every crime charged. Unlike his victims, Timothy McVeigh receives justice.

But as you know, justice is not finished. There is

one decision that you all must make as the conscience of the community. Justice requires that you consider all of the information presented about this crime and about Mr. McVeigh. And then as Judge Matsch told you during his preliminary remarks, you must make a moral judgment about the worth of a specific life balanced against the societal value of a deserved punishment.

You may recall that during his opening statement, Mr. Hartzler told you that the Government would present so much evidence that your decision on guilt would be a rather easy one. That is not -- that is not the case at this stage. Everyone acknowledges that the decision that you are about to make is a difficult one. Weighing the worth of anyone's life is a gut-wrenching task. But you are not alone. The citizens of this country, the community whose conscience you now represent have already determined that the death penalty is appropriate in certain cases. Congress has passed laws, and the death -- for the death penalty and developed rules like those that govern the sentencing hearing that we just experienced.

And Judge Matsch will instruct you on the law. He will tell you the aggravating and mitigating circumstances that you are to consider, and the statute will provide you a framework for making your decision.

And each and every one of you told us during voir dire that you believed that the death penalty was appropriate, a just punishment in certain circumstances. Now it is time for you to set aside your emotions, be them sympathy, compassion, or fear, and make a decision about Timothy McVeigh based on the facts.

In his opening statement, Mr. Burr reminded you that the sentencing decision of life or death could only be based on the facts, and we agree. This trial is not a place for revenge, anger, or fear. It is for justice; it is time for justice, and justice demands that you deal with the facts.

168 people, including a baby that was only four months old and a man as old as 73, are dead. There would not be enough seats in this courtroom if we could bring them all back today. Those are the facts, and Timothy McVeigh is responsible for those facts. 19 children under the age of five were brutally murdered and ripped from the arms of their parents. Those are the facts, and Timothy McVeigh is responsible for those facts.

Eight law enforcement agents who proudly served their country were assassinated for doing their jobs. Those are the facts, and Timothy McVeigh is responsible for those facts.

Over 500 people were injured, the walking wounded. And those people, including little P. J. Allen, carry around horrific injuries, scars, and painful memories that will haunt

horrible injuries, scars, and painful memories that will haunt them forever. Timothy McVeigh did that.

Timothy McVeigh drove a truck bomb packed with explosives to the Alfred P. Murrah Building. As he watched his unsuspecting victims go into the building, he detonated an enormous bomb in the most bloody domestic terrorist act in the history of our country. There is no doubt that is a fact.

Clint Seidl was afraid that the man who killed his father -- that killed his mother, excuse me, was after him and his father.

Little five-year-old David Westberry wanted to die so he could go to heaven to be with his "Paw Paw."

And Special Agent Donald Leonard of the Secret Service

will never see his son graduate from college, nor will Agent Leonard's son ever see the proud smile of a father when he could have seen his son receive his college diploma.

Those are the facts, and Timothy McVeigh is responsible for those facts.

It is all of these facts and many more that you must consider when deciding whether Timothy McVeigh should live or die. We are asking you to do a difficult job. We know that. But we are asking you to do what is right and what is just.

Take a moment before we review the evidence and the information you received during the penalty case and look at Timothy McVeigh. Look into the eyes of a coward and tell him you will have courage. Tell him you will speak with one unified voice as the moral conscience of the community and tell him he is no patriot. He is a traitor and he deserves to die.

There are many reasons why the defendant should be punished with the ultimate sanction that our community has reserved for only the most heinous of crimes. Those reasons set out as aggravating factors may be weighed against the mitigation that the defense has presented. But it is only you who can determine the weight of each factor and the value of Timothy McVeigh's life. But for the next several minutes, I would like to review the information that you've received during the penalty hearing that proves beyond any doubt that the defendant's crimes were so despicable and the consequences of his murders so horrific that the only just sentence is a sentence of death.

To assist you during your deliberations and to record your findings, his Honor will give you this: Special Findings Form A; and in this form, you will see that you have to make four decisions. The first is to determine whether the defendant intended his crimes. Most of these issues you've already dealt with during the guilt phase.

Once you find that the defendant intended to commit his crimes, you'll be asked to review the statutory aggravating factors, which I will discuss with you in a minute. If you find that the Government has proved one of those factors, which

we submit you will have no problem doing, you can then move on to the nonstatutory aggravating factors. After that, you will look at the defense's mitigation factors. There are numerous factors listed there. But most importantly, after finding whether all of those factors exist, you must weigh the importance of each factor.

Now, you will receive no guidance about how one factor weighs or the import of one factor vs. another. But I'd like to give you just one example. One of the mitigation factors for Mr. McVeigh is that he had no criminal record, and of course we don't dispute that. But when put on the scales of justice next to 168 dead people, that factor -- that mitigation factor of no criminal record is a mere pebble compared to the pounds of death and destruction that Mr. McVeigh caused.

The first aggravating factor that you'll need to consider is whether Mr. McVeigh engaged in substantial planning and premeditation. During his opening statement for this phase, Mr. Ryan reviewed some of the evidence that you heard during the trial, and I don't want to repeat that for you, but I do want to remind you of one thing. When Timothy McVeigh and Terry Nichols obtained the bomb components and hid them in storage sheds, they waited. Timothy McVeigh laid in wait for his innocent victims. He waited months and months, while little children -- like Elijah and Aaron Coverdale -- went to America's Kids, the day-care center in the Murrah Building. Perhaps there's nothing more painfully poignant than the name of the day-care center in this case, America's Kids. Timothy McVeigh and Terry Nichols waited for those children and those government workers and for those citizens to go to Social Security Administration before he killed them on April 19, 1995.

And what mitigation evidence have you heard in contrast to the Government's evidence? The defense has suggested that Timothy McVeigh may have plotted and planned an act of domestic terrorism because he was angry about Waco. He thought the government had acted improperly, and he believed that the government had killed innocent women and children. But instead of doing what many patriotic Americans did -- question their government, write to their congressmen, protest the Department of Justice -- Timothy McVeigh turned around and killed and maimed hundreds of innocent men, women, and children himself.

But of course, we know that Timothy McVeigh had been predicting an uprising by the people against the government long before Waco happened. He told Sergeant Rodriguez that part of the reason he opposed gun control was because he didn't want the government to know who had registered or who had possessed weapons if there was an uprising.

And where did he learn this? Well, one place was in The Turner Diaries, because that was a major theme of that

novel. That was the same book that Timothy McVeigh carried with him everywhere he went. In fact, you heard that he even carried it to field maneuvers way back in 1990. So it wasn't just Timothy McVeigh's outrage over Waco that caused him to kill innocent victims, but a long-held belief that any form of gun control would put citizens at risk and justify a bloody confrontation with the government. He believed that violence and terrorism were legitimate tools to use against a democratically elected government that he disagreed with.

Even if you accept the mitigation information about Waco and Timothy McVeigh's misperceptions about the siege, what in the world did Tevin Garrett have to do with Waco? He and Blake Kennedy and many of the other babies who died in the Murrah Building were not even born when Waco occurred. What type of mitigation is it to speak out against an alleged government misconduct by murdering little babies? What does killing dedicated employees of the Housing and Urban Development, the Social Security Administration, and those folks who did not even work for the government have to do with Waco? How could there ever be a reason to kill men, women, and children whose only mistake was to be in a federal building on April 19, 1995?

You know that Timothy McVeigh planned and waited to execute his deadly crime on the anniversary of Waco, so there can be no doubt that there was substantial planning and premeditation involved in this crime, and on the other side of the scale is the defendant's pathetic explanation of his anger towards the government. You should dismiss his attempts to blame the government for his own monstrous conduct. He and he alone is responsible for his crimes, and no perception or misperception about Waco, no matter how strongly felt, mitigates the death and destruction, the injury and the ever-lasting pain he has caused.

Mr. Burr asked you during his opening statement to accept Timothy McVeigh's views as some sort of separate reality. It was not a reality. It was a misguided fantasy. And if Timothy McVeigh's beliefs about Waco justify murder, then every citizen in our community who disagrees with his government can do the same. Our democracy permits those who disagree with the government to speak out. This is the freest country in the world. We feel so strongly that everyone should be able to say their piece that the right to freedom of expression is the very first amendment in our Constitution. But what we do not and what we must not tolerate as a free society is someone trying to impose their political will on the rest of the community through violence and terror. No amount of anger at the government can ever justify the purposeful destruction of families, American lives, and security.

The second factor that you will have to consider during your deliberations is whether Timothy McVeigh killed victims during the commission of a federal crime; that is, transporting explosives across state lines with the intent to

cause death, injury, and destruction. Again, there's no question that this aggravating factor has been proved.

Mr. Ryan read to you a few of the chilling passages from The Turner Diaries that show in black and white the consequences of a large truck bomb being used against a building. The killing and maiming of hundreds of occupants of the targeted building, the pain and the suffering of the dead and the survivors, the destruction of the building and the risk

to so many others in the area, all of this was known to Timothy

McVeigh long before he drove that truck from Kansas to Oklahoma

City and lit the fuse in front of the Murrah Building.

He knew from reading The Turner Diaries what kind of hell he was going to unleash. One need only consider the size of the bomb, somewhere between 3,000 and 6,000 pounds of explosives, to know that Timothy McVeigh intended to kill people. No one builds a bomb of that size and that force unless they want to kill as many people as possible.

And what does the defense put forth as mitigation? You heard his Army colleagues tell you that he was a good gunner; in other words, a good killer. He could, in the words of Sergeant Daniels, put steel on steel -- which is like fire and hit the target, whatever he's aiming at -- he's got to be able to hit it fast, quick, and kill.

Well, tell that to Baylee Almon, tell that to her mother. Baylee had no steel protecting her in the day-care center.

And tell that to Diane Leonard who told you that if her husband could have defended himself, he would have. That wasn't possible on April 19, 1995, because Timothy McVeigh did not want to fight fair. He intended to kill and injure as many

people as possible in the most cowardly way possible. He drove

a bomb, hidden in a truck, and without warning, decimated an entire community.

There can be no doubt that there has been overwhelming evidence proving that Timothy McVeigh intended to cause death, injury, and destruction; nor can there be any question, as to

the third factor, that Timothy McVeigh wanted to kill federal agents because they were federal agents.

He told Michael Fortier and his sister Jennifer that federal agents deserved to die for the fire at Waco. But even more obvious than that, he chose the Murrah Building, which he knew contained offices of federal agents, agents he believed were at the Waco siege in 1993. He killed American law enforcement agents for doing their jobs, upholding the law, and

protecting our society, for fighting crime, for interdicting drugs, for seizing illegal currency, and for protecting the presidents of the United States.

But those eight law enforcement agents, like so many of the other victims in the Murrah Building, were also school

of the other victims in the Murkin Building, were also school teachers, fathers, grandfathers, new wives, former military soldiers, and of course public servants.

Kay Ice spoke to you about her brother, Paul, and she told you what kind of public servant he was as a federal agent.

She said, First and foremost what I want you to know is what a patriot my brother was. He was so proud of being an American ever since he was a little boy. He loved this country. He loved being a Marine. He loved being a government agent. Those were the kind of public servants that Timothy McVeigh killed. Those eight agents died serving their country.

It's not as if our community is not used to men and women of our armed services or the law enforcement dying in the line of duty. That is sometimes the price that we grudgingly pay for living in the greatest country in the world. But what we are not used to and what we can never get used to is one of our own citizens, a fellow American, killing public servants to serve some twisted political agenda. For that type of conduct, which is so detrimental to the fabric of our society and the security that we enjoy every day, Congress has said that that should be a specific aggravating factor justifying the death penalty. Here we have proven beyond any doubt, and you should so find during your deliberations.

The fourth factor, the fourth statutory aggravating factor that you need to look at is whether the defendant -- excuse me, the fifth, is whether the defendant caused a grave risk of death to others in committing his crimes. Of course he did. You heard evidence of that at trial, and you heard it during the penalty phase. You saw that many, many people were placed in harm's way and faced a grave risk of death on April 19, 1995.

Sue Mallonee from the Oklahoma State Department of Public Health told you about the numerous people whose lives were hanging in the balance on and after April 19, 1995.

And you saw for yourself pictures of children like Brandon Denny, P. J. Allen, and Nekia McCloud who all survived, although barely, and forever scarred. They survived the bombing despite the grave risk that Timothy McVeigh created in downtown Oklahoma City.

Other adults came forward like Susan Walton and Cliff Cagle, and they told you about their severe injuries and life-threatening surgeries that brought them close to death's door.

Rescue worker Melissa Webster told you how she literally saved Royia Sims' life by putting her in an ambulance instead of tagging her for dead. Thanks to Melissa's perseverance, Royia Sims lived.

But no story could be more telling about the grave risk of death than Daina Bradley's leg amputation as told by

Dr. Andy Sullivan. If not for his heroic efforts, Daina Bradley would not have been able to walk into this courtroom and tell you her story. Bleeding and in shock, trapped in the rubble, Daina Bradley was about to die. Dr. Sullivan did what no doctor should have to do. He struggled with the idea that his attempts to save her life, to save her from the grave risk of death, could kill her and himself. But with the miracles that always seem to surround such horrific tragedies, Dr. Sullivan was able to remove Daina Bradley from the rubble and save her life.

The fifth factor you must consider is whether the defendant caused serious physical and emotional injuries. You saw witness after witness come forward and tell you about the physical and emotional injuries that they and their loved ones suffered. We've already discussed some of the physical injuries, so I want to turn to the emotional injuries that you heard about.

Mrs. Leonard spoke on behalf of all the victims when she told you she had a hole in her heart like the hole that was created in the Murrah Building. Many others came forward and talked about their loneliness, their sorrow and the emptiness they have felt since April 19, 1995.

Mrs. Sharon Medearis described the pain she experienced when she was going to have to tell her daughter, who had already lost her husband during the Persian Gulf War, that the only other man in her life, her father, was also dead.

And in a story that every mother and father can relate to, Mrs. Jeannine Gist told you about losing her youngest daughter, Karen -- Mrs. Gist lives with many emotional scars, but the one that appeared to be most painful was her statement that as a mother, she should have died first. That is an emotional injury that every parent fears; and because of Timothy McVeigh, many parents have suffered that injury.

The next factor we ask you to look at is that the defendant killed 168 people. This factor, this factor alone, is enough when put on the scales of justice to sanction and warrant a sentence of death for Timothy McVeigh.

As the Judge will tell you, you have to decide how to weigh each factor, and of course you have to find one of the statutory factors first. But I submit to you, killing 168 people is enough. This is the crime that the death penalty was designed for. If not 168 people, then how many? Would 20 children have been enough? Would 10 law enforcement agents have been sufficient? Would 25 visitors to the Social Security office have been necessary to warrant the death penalty?

The numbers -- the number of deaths in this case is so overwhelming that it's difficult to contemplate how the murder of 168 individuals with families and friends, churches, hobbies, volunteer activities, and interests would not be

enough in and of itself to warrant the death penalty for the individual responsible no matter how good a neighbor he was, no matter how bright a student, no matter how hard a worker, and especially how angry he was at his government.

In contrast to these 168 people, the defense has urged you to consider Timothy McVeigh, and you should. We learned from the witnesses presented by the defense that Timothy McVeigh was brought up in a nice home, with parents that loved him. Timothy McVeigh had good adult role models throughout his youth and friends in school. Both his parents came before you and told you about Timothy McVeigh, but they told you about the Timothy McVeigh they used to know. They told you about Timothy McVeigh as a child. All of us can feel compassion for his parents, but they do not know the Timothy McVeigh who murdered innocent men, women, and children. Timothy McVeigh is no longer the sweet kid they want to remember. He is an adult who is responsible for his conduct, and he should be held responsible for his actions.

While Timothy McVeigh has had the benefit of his parents asking for his life, the victims of his crimes had no one. There was no Richard Burr to eloquently plead to Timothy McVeigh to save the lives of those people on April 19. Their mothers were not allowed to beg for their lives. And even if someone had pleaded for them, Timothy McVeigh would have turned a deaf ear. You heard that months before the crime he decided to murder all of those people because, in his words, they were part of an evil empire.

You also heard during this phase of the case that Timothy McVeigh was smart and a quick study when he put his mind to it. He served in the United States Army. With his intelligence, drive, and determination, Sergeant Major Harris told you, he could carry out any mission. Unfortunately after he got out of the military in 1991, the mission he chose was to try to destroy his own country.

Once in the Army, you heard again and again Timothy McVeigh was a good soldier. But unlike Sergeant Rodriguez and the others you heard that had left the military, who became nurses and clerks, Timothy McVeigh became obsessed with The Turner Diaries, gun control, Waco, and he rejected everything good about being a soldier, a patriot. He violated the cardinal rule of the military when he chose to kill innocent men, women, and children. Here is a man who had every chance to succeed, every opportunity, and instead he chose to be a mass murderer.

Timothy McVeigh murdered more American citizens in one day than were killed in combat in the entire Persian Gulf War. So to call him, as Mr. Burr did in his opening, "the most soldierly among us" is an insult to every man and woman who

solely among us is an insult to every man and woman who served in our armed services. Many of you have been in the military, yourselves, or have fathers or mothers who have served.

You know, as Sergeant Hardesty told you, that military service is a privilege, it's not an excuse. Timothy McVeigh knew that a soldier swears to uphold and defend the Constitution. He violated that oath on April 19, 1995, and he lost his right to be called a good soldier.

The final factor that you must consider when determining whether Timothy McVeigh should live or die is the severe impact this crime had on the victims. This I must tell you, ladies and gentlemen, must be the understatement of this case. Timothy McVeigh's crimes had a severe impact on the victims. In a little less than two and a half days, with approximately 38 Government witnesses who told you about the effects of Timothy McVeigh's murderous conduct, described for you the pain, the suffering, and the loss, they, as I'm sure you realize, were just a small sampling of the actual persons affected by this crime. We brought you just the tip of the iceberg of the suffering and loss, but we did it not to get your sympathy or to play to your emotions.

The stories that you heard from the witnesses were about individuals, but they were also a representative sample of the pain and the loss felt by people across America. We did not want to bring you those facts, those painful, heart-wrenching facts, but Timothy McVeigh caused all of that, and you are entitled to hear those facts. We presented fathers and mothers, sisters and grandmothers, children and rescue workers, who told you about the difficulties they have suffered from losing their loved ones or from incurring physical and emotional injuries, themselves.

But really, it was the defendant, Timothy McVeigh, who brought you those witnesses. He caused Michael Lenz to lose his wife and his unborn son on April 19.

Timothy McVeigh brought emptiness and loss to Evergreen, Colorado, when he killed David Klaus's daughter, forcing Mr. Klaus and his wife to change their wedding anniversary because April 19 is now too filled with sorrow to even contemplate celebration.

Officer Don Browning must live with the haunting memory of the little girl who approached his dog, Gunner, and said, "Please, Mr. Police Dog -- please find my friends." This is a nightmare that Officer Browning will live with for the rest of his life, because he didn't find any of the little girl's friends alive.

Kathleen Treanor talked to you about the horror and the loss of not just losing her youngest daughter but also her in-laws, who just happened to be in the Social Security office in April of 1995.

Todd McCarthy brought home the reality of trying to

raise a son who lost his grandfather in the bombing, the difficulty he will have explaining to his son why his grandfather was killed on April 19.

And Sergeant Greg Sohn has dealt with a similar problem, explaining to his blended family of five why their mother will never be at another birthday party.

Cindy Ashwood told you that to this day, she still turns around in her chair in her office to try and call her sister, Susan Ferrell, even though she knows she died on April 19.

The enormity of the impact of this crime cannot be overstated. It can barely be comprehended. It is not just the immediate families that have suffered loss; but communities, churches, employers, schools across this country have endured the repercussions of Timothy McVeigh's crimes.

You heard Pam Whicher when she told the story of her daughter. Mrs. Whicher, a widow of a Secret Service agent, Alan Whicher, told you about the paper her daughter wrote about

the day that changed her life. In that paper, her daughter told of a struggle to deal with her father's murder. She said,

"I never knew such a dark, horrible place existed until I had to claw my way out of there." She could have just as well been

speaking for the entire nation, which had never before had to endure such monstrous crimes as Timothy McVeigh's. We never knew that such a dark and horrible place could exist in America

until Timothy McVeigh sent us there.

In his opening statement to you, Mr. Jones recognized

that the bombing at Oklahoma City was seared into the memory of

our generation like the attack on Pearl Harbor was to the generation before us. Mr. Jones was right. Like the attack on

Pearl Harbor, the bombing in Oklahoma City threatened our sense

of security within our own borders; and this threat to our insecurity (sic) came from and was caused by Timothy McVeigh. He betrayed every American. He betrayed his fellow soldiers from the Persian Gulf. He betrayed his family, and he betrayed

you. He is a traitor who chose of his own volition to betray his country by murdering as many United States citizens as he could. No person, no government action, no second or third reality that Mr. Burr mentioned, made Timothy McVeigh murder 168 of his own people.

As the moral conscience of the community, you must speak on behalf of all Americans who rightly refuse to accept any justification for this horrible crime. It is time for justice. It is time to impose the ultimate sanction on the man

responsible for this terror. Serve justice, speak as the

moral
conscience of the community, and sentence Timothy McVeigh to
death.

MR. JONES: If your Honor please, Mr. Burr will open
for the defense; and I will conclude.

THE COURT: Very well.
Mr. Burr.

CLOSING ARGUMENT

MR. BURR: Your Honor, Ms. Wilkinson, Mr. Hartzler,
Mr. McVeigh, and colleagues in the defense of Mr. McVeigh,
ladies and gentlemen of the jury, we do not dispute one of the
things that Ms. Wilkinson said; indeed, we do not dispute many
of the things that she said. We certainly do not dispute that
the enormity of this crime cannot be understated. It can be
barely understood.

The immensity of the loss and suffering is so big
and
so staggering that most of us can only think about small parts
of it at a time. Yes, all the victims were innocent. The
babies, the grandparents, the parents, the children, the
brothers, the sisters targeted solely because of the
misfortune
of where they were or who they worked for. Yes, the attack
was
planned on our government; that is, for better or worse, the
entity that is our collective manifestation, the material
impression of all of us as a body politic: Us, all of us at
its core.

Those facts are not disputable. Neither I nor
Mr. Jones will stand here to try to justify or excuse what has
happened. But that is not the mission that faces you in this
part of the case. That is not the mission.

The mission is different. You will hear it stated
from Judge Matsch, but it's terribly important that you
understand it; and I will talk about it a bit before I talk
about the facts any more.

You have already heard several times from Judge
Matsch
that in deciding the appropriate sentence for Mr. McVeigh, you
must serve as the conscience of the community. Much has been
said about this. I will say more. And Judge Matsch will say
more.

It is terribly important that you listen to what is
said about this role and come to understand it in your own
terms, because it is at the heart of what you're called upon
to
do. Serving as the conscience of the community requires first
that you be willing to follow the law. Judge Matsch will
instruct you on the law. What he will tell you is so
important
that I'd like to take just a few moments to talk about it as
well.

The most important requirement of the law, again
which
you have heard already from Judge Matsch and you will hear
again, is that you be willing to consider both aggravating and
mitigating circumstances before you decide what the

mitigating circumstances before you decide what the appropriate sentence is. These concepts are new to most of us, so I want to address them briefly.

The fact that we have the death penalty as a possible punishment for certain kinds of crimes does not mean that it must be imposed for any particular crime. There was a time in our country that the death penalty was mandatory for certain kinds of crimes. Upon conviction of one of those crimes, the sentence was death, automatically. Nothing was taken into account except that the person was guilty of that particular kind of crime.

This is no longer the law. You know that from all the instructions Judge Matsch has given you so far, from jury selection to the present. There are some who say -- and some of the things that Ms. Wilkinson said reiterate this -- that this case is one in which the only conceivably appropriate sentence is death. The sentiment is expressed in various ways.

You've heard them. Indeed, many of us may have had these thoughts cross our mind at some point in thinking about this case. Some say if we're going to have the death penalty, this is the kind of case in which it has to be imposed. Others express it as Ms. Wilkinson did: How many must be killed; how many bodies must there be?

And perhaps the most direct way of expressing this is I don't care who Tim McVeigh is or why this happened; the fact that he killed 168 people is all that I need to know.

These sentiments are all understandable, totally understandable in the context of this case. However, the law of our land, the law that has grown directly out of our Bill of Rights, calls us to higher ground, calls us to struggle to get to higher ground in a case like this.

The Eighth Amendment in our first ten Bill of Rights protects against cruel and unusual punishment, and it teaches that it is cruel to decide a sentence solely on the basis of the kind of crime that has been committed. Who the offender is and why the crime has been committed may provide reasons to impose life instead of death.

The Supreme Court has explained that a capital sentencing procedure that ignores these factors is cruel for the very reason that -- and I quote: "It excludes from consideration in fixing the ultimate punishment of death the possibility of the compassionate or mitigating factors stemming from the diverse frailties of humankind."

To be able to consider both aggravating and mitigating circumstances, you have to understand what mitigating circumstances are. Let me address that briefly.

Judge Matsch explained in his instructions at the beginning of the penalty phase that mitigation circumstance --

circumstances are those factors which weigh in favor of a life sentence. They are those aspects of the background, character, and life of Mr. McVeigh and of the circumstances surrounding this offense that might cause you to question whether to impose a death sentence. They are the things that tug at you, they give you pause; that cause you to think in your quiet moments that perhaps life is the appropriate sentence.

Mitigating circumstances are not matters which excuse the crimes for which Mr. McVeigh has been convicted, nor do they lessen in any way the responsibility he bears for whatever he did. Either sentence, death or life without the possibility of release, is very severe. Choosing life over death does not mean that you in any sense excuse these crimes. It means only that you have found some reason to exercise a small measure of compassion. It is crucial that you appreciate this distinction.

There is one other terribly important difference in your consideration of aggravating and mitigating circumstances. You will hear from Judge Matsch that to find an aggravating circumstance, you must all 12 agree beyond a reasonable doubt that an aggravating circumstance exists. That is not the case with a mitigating circumstance. Each of you finds mitigating circumstances, yourself. There need be no agreement. It is your own individual decision as to whether mitigating circumstances exist; and if so, which ones, and if so, how much weight they have.

The final requirement of the law is that you engage in a process of weighing aggravating and mitigating circumstances. Some of the things that Ms. Wilkinson says suggested to you that common notions of weighing are the appropriate ones to use here. We submit that that's not right. Judge Matsch will instruct you. He will instruct that the weighing process is not a mechanical process, a counting and comparing in a quantitative way the number of aggravating and mitigating circumstances. Nor even is it a weighing process in the sense of a scale. The weighing process is qualitative, not quantitative. It requires that you consider aggravating and mitigating circumstances in light of each other and follow the dictates of your conscience as to what sentence should be imposed. Because your conscience is your guidepost Judge Matsch will instruct that you are never, never required to impose a death sentence.

Bringing your conscience to bear on the aggravating and mitigating circumstances calls for you to draw upon the deepest resources within you -- excuse me. You must draw upon your own sense of what is right and, because you're also

serving as the conscience of the community and the nation in this case, what you think is right from the perspective of the nation.

I'd now like to turn to the facts that have to be weighed. You know that the person that you found responsible for these crimes is quite human by now, just like you and many of the people you know and love. You know that Tim is not an evil man, not a man who was somehow defective in the way he thought or felt or dwelt among us in his lifetime, but instead a man who embodies much of the best that we call "human" and a young man who loved this country and proudly put his life on the line for all of us when we asked him to.

He has not changed; the evidence has shown no change. You'll remember Sheila Nicholas at the end of our testimony yesterday, the end of '94, early '95, the same Tim McVeigh that she described was the Tim McVeigh that people described throughout his lifetime. The Government is wrong to suggest to you that you can easily dismiss the humanity of Mr. McVeigh by saying that somehow he lost it along the way. It's not that simple.

The testimony of those who know Tim is still fresh with you, so I won't go over it in much detail; but I do want to recall with you briefly some of the qualities that define this man, Tim McVeigh. So many people from such different walks of life saw so many of the same qualities in Tim that you know these qualities are real and enduring. Who is he? He is an intelligent young man who is a positive thinker. As Debbie Carballo said about him from her perspective in high school, he felt he could do with hard work what he needed to do and be successful.

He is a hard worker, who eagerly takes on the hardest tasks, as Howard Thompson, one of the his military buddies, said, and one of his first roommates in the military said, Whenever you have something to do, he would always go ahead and face it and do it. Time and again in the Army and elsewhere, Tim faced challenges, rose to the occasion, and kept on.

Tim's dependable. Throughout his life, people have found what Debbie Carballo again expressed: We knew that if we needed something, we could ask Tim.

Tim's honest. No one found him otherwise. In a variety of situations, from turning in money from armored cars that he could have kept without anyone noticing, to speaking the truth to Howard Thompson, Ted Thorne, and others, Tim was straight with people.

Tim's helpful, compassionate, a good friend. Debbie Carballo remembers Tim as a person who was friends with everybody, who never got stuck in cliques that most high school

kids were stuck in. Many others experienced the generosity of that spirit, from strangers along the highway, to the McDermotts' children; to his cousin, Linda Daigler; to fellow soldiers who needed consoling, patient teaching, good advice, or someone who help them when they were drunk; to Sheila Nicholas, who needed a caring confidant at a critical crossroad in her life.

Vicki Hodge told you Tim has always been someone who he always looked out for the underdog. He took care of people who needed help.

And as Howard Thompson testified, if you're looking for a relationship where you have honesty, understanding, and someone that would be there for you at all times, he would be that kind of person.

Tim's funny, cheerful, happy. Mr. Drzyzga spoke for many others when he said that Tim was always cheerful, always looking for a laugh.

Because of these and other virtues, nearly everyone who knew Tim, who testified over the last few days, expressed their disbelief that Tim could have done what you have found that he did in Oklahoma City.

There are more qualities in Tim that can help us understand a bit more, however. Tim's longstanding and deep interest in guns can help us understand a bit more. Tim's interest in guns began early and gradually became an expression of his deepest feelings. Toward the end of his time in the Army, you will remember, he carried a gun with him most of the time; and he had guns placed about the house that he and Royal Witcher shared. This was a practice that continued. When Royal Witcher and others asked him why he felt he needed to have guns accessible, he said, "You never know."

The sense of foreboding, of impending danger found its expression as well in Tim's abiding interest in survivalism. Being prepared for disaster, preparing for a time of persecution, being vigilant were qualities that made Tim more sensitive than most of us to threats to well-being. Tim was sensitive to fear.

Tim was also deeply devoted to the ideals upon which this country was founded. He believed deeply in individual liberty and freedom. He believed deeply in the inalienable right to bear arms, to defend against governmental tyranny. He believed in the kind of rugged individualism that we used to be proud of.

And Tim, as we've noted, was willing to lay down his life for his country, though he did not have to, in the Gulf War.

We also know that this good young man, deeply devoted to his country, came to believe -- and Mr. Jones will argue this in more detail -- that the federal government was the enemy of the people of this country. The belief did not come overnight. It grew over time. It grew from a sense of fear,

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sensitivity to impending persecution, a sensitivity to governmental intrusion in the lives of ordinary citizens.

That fear began to grow as Timothy McVeigh began to be exposed to incidents that happened in the world. There is no doubt that an incident happened at Ruby Ridge, Idaho. There is no doubt that a federal marshal, a child, and a mother were killed there. Tim McVeigh believed that federal agents murdered the child and the mother.

There is no doubt that a short six months later, ATF agents, nearly a hundred of them, surrounded a church and resident -- residence called "Mt. Carmel" in Waco, Texas -- near Waco, Texas. There is no doubt that on that day, February the 28th, five Branch Davidians were killed and four ATF agents were killed. And there is no doubt that 51 days later, 74 more Branch Davidians died in a terrible fire that consumed that church and that residence.

Tim McVeigh believed that the government was responsible for the deaths of those people. All of them. You have seen what he learned from. You can evaluate his beliefs. You can give weight, however you see fit, to his beliefs.

But understand that these beliefs did not arise out of thin air. They were not misguided fantasies, as Ms. Wilkinson said they were. They were grounded in an indisputable reality. An interpretation of that reality followed; and you have heard the interpretation, you have seen the sources from which it came. You can decide what weight to give that; but you cannot dismiss it as nonexistent, as the delusions of a madman. They're not.

These are the realities that you must bring into the weighing process in considering the enormity of this crime. How do they relate to one another? The aggravating circumstances that Ms. Wilkinson went over with you are what they are. They are not diminished, nor is their gravity lessened by the mitigating circumstances. We do not contend that they are. There is no excuse, there is no justification. There is enormity and immensity so much that we cannot even wrap our minds around it. That is a clear reality.

The two areas of mitigation do not excuse and do not diminish or call for anything less than a severe, severe punishment, nothing less than life without the possibility of release. A death sentence of sorts, but a death sentence that implicates something about your conscience.

When Michael Fortier said from the witness stand, Tim McVeigh is a good man except for this, I'm sure most of you cringed. I did. We cringed because, of course, the "except for this" is virtually everything; but it is not totally everything. There is still a good man, and there is still a good man who, from no ill motive, perhaps from a

misperception, perhaps not, came to have certain impassioned and passionate beliefs about his government, about a government that he believed was acting like England in the 18th century, whose mission was -- had turned upon its own people.

The part of Tim McVeigh that Michael Fortier talked about is existent; and it is that part which you must allow to settle into your conscience, not ignore it, and give it whatever weight and whatever credit you will.

Now, there is no answer that's satisfactory to why a young man like Tim McVeigh, who lived the life that he lived, could have borne whatever responsibility for this crime that you have found. There is no satisfactory answer. There are some -- there is some insight; there is some insight based on who he is. Indeed, the impassioned person who believed in defending the underdog, the impassioned person who believed that governmental tyranny had been resisted begins to give some insight. It does not excuse, it does not justify, it does not diminish the horror of what happened. But it does raise a small, still voice about death or life.

Before concluding, I'd like to say one word about being a victim in this case. You did not hear from the witness stand any person who was a victim of this case call upon you as to sentence. You did not hear it. That's an important lesson.

Victims are honored and supported by having been here, by having been allowed to tell the story even in small ways of what happened to them or to their loved ones. There is not a necessary connection between the punishment of Tim McVeigh and the futures of people who were victimized and still living.

That was made clearest and elegantly, I think, by the testimony of Susan Urbach that I'd like to remind you of when she talked about the scar on her face. You'll remember she said: Any scar tells a story, and the story it tells is -- it tells a story of a wounding and a healing that goes along with that wounding. And the more deeply you're wounded, the more healing that must come your way. You must experience for that wound to close up and for you to get your scar. I mean, you don't get your scar unless you've been wounded and you have been healed, and I've got my scar, and I'm proud of it.

The wisdom of Ms. Urbach is that healing from the wounds in this case has to come from within, from within each person victimized, terribly wounded. Some may never heal. Many told you there is a hole in their heart that will always be there. But whatever healing may happen, it will come from within. It will not be hastened or indeed aided by the decision you make about sentence. That is another separate reality.

In closing, I would like to start with the question that Todd McCarthy raised for each of us when he talked about how he would teach his child. He said: I fear the job that I have, I fear my son coming home from elementary school or

junior high school and opening up his history book and asking me, Why, why did my grandfather die? He went to work to help people get housing who couldn't otherwise afford it or obtain it, and for that he -- his life was taken from him. I am now charged with teaching my son love and compassion when all he sees is hate. And that's a job I don't think anybody would want to have.

How do we teach love and compassion when what we are confronted with is hate? What is the response to hate that is guided by love and compassion? When hate leads to killing, do we abandon our commitment to love and compassion by killing the killer? Under our law, we do not so long as we have made a genuine and systematic effort to examine not only the harm caused by hate but also the life of the person who caused the harm and the reasons for the hate that led to the killing.

If in that process we decide that there is nothing in the life of the killer or in the reasons for the killing that touches our conscience and that we can rest easy with our conscience, if we put the killer to death, we have acted with love and compassion under the law, even though we ourselves have taken a life.

Here that process of examining facts and searching our conscience should lead us to imprison Tim McVeigh for the rest of his life rather than put him to death. Tim McVeigh's crime was not the product of evil motive. Deluded though you may think it was, his motive was based on qualities that in other contexts we applaud: Resistance to tyranny, sacrificing life in an attempt to accomplish a greater good, laying one's own life on the line to resist the encroachment of the nation's enemy. But even more important than that, aren't we all in some way implicated in his crime?

Mr. McVeigh's beliefs about Waco and Ruby Ridge and the threat presented by militarization of federal law enforcement did not arise in a vacuum, did not arise out of thin air. They are not the delusional fantasies of a madman. Somehow, somewhere, in the midst of Mr. McVeigh's misplaced, mistakenly acted upon, horrifyingly out-of-proportion beliefs, there is a reason for all of us to have concern. That we have not expressed that concern before this tragedy means that we all bear some responsibility for Oklahoma City. We should not feel a clear conscience if we kill Timothy McVeigh, and that is why we ask that you sentence him to life in prison without the possibility of release.

Thank you.

THE COURT: Mr. Jones.

CLOSING ARGUMENT

MR. JONES: May it please the Court.

THE COURT: Mr. Jones.

MR. JONES: Mr. Hartzler, Mr. Ryan, my colleagues, Mr. McVeigh, ladies and gentlemen of the jury, last Friday Mr. Burr stood at this same podium and asked the rhetorical question which must have been on your minds: How did this

question which must have been on your minds: how did this come to be, how did this come to be? And now you know. You know that the road to Oklahoma City ran through Waco and the small adjacent community of Mt. Carmel.

What occurred in Oklahoma City was an attack upon the constitutional system of the United States of America, and it was necessary in order for justice and indeed the Constitution to be restored to people who wondered whether it could survive amidst such carnage that the system be seen to work, all the more so because recent other dramatic trials had drawn into question whether in fact our courts had simply become a three-ring circus.

When this case is over with and you return to your normal lives and you catch up with everything that you have missed, you will know and come to understand, if you do not already, that the work of this court and in this trial has in fact restored that faith. I should like to think that we on the defense have made some small contribution to that, but that is for others to govern and to decide. What I do know is that the Court itself and you as members of the jury have contributed to that. You contributed to it first by participating in the longest voir dire ever conducted in any federal court in our history, an unprecedented, individualized voir dire in which the lawyers, following the Court's lead, asked you questions, almost unheard of, and certainly three weeks, it had never happened before.

You were called to sit in judgment upon facts that were strongly contested; it was our duty as a part of that system of justice under the Crimes and Offenses Act of 1790, the thirteenth piece of legislation signed into law by President George Washington, that Mr. McVeigh have counsel, and everything that could be reasonably accomplished on his behalf, supported by the Court, was done. And it was my duty then to raise every objection; as the Court told you, to question all of the evidence that I could; to present alternative explanations and theories, and to raise a reasonable doubt. I told you we would present no false defense then, and we will present no false mitigation now.

That was our duty. Our oath of office required it. Your oath of office, of course, required that you sit carefully and attentively, as you did, and that is what earned the respect, that and the time that you took to deliberate, to weigh the evidence carefully. And perhaps when you first went in the room, all 12 of you were of one mind; and then, led by your foreman and others, you decided to review the evidence to be certain, to be sure, because we all recognized that this was a very important matter that you were called upon to judge.

And so Mr. Burr has told you of the mitigating factors that we believe important for you to consider as they relate

to
Mr. McVeigh, the person. Conscious as I am of my responsibility to Mr. McVeigh as his lawyer, I do not believe that anything that I am about to say to you, which is drawn from the evidence and from our common experience as mature men and women in America, is contrary to that duty or responsibility. Indeed, I believe it complements it, though it is most assuredly of a different nature.

Ms. Wilkinson told you, and I don't dispute it, that Mr. McVeigh killed more people in Oklahoma City than all of the American dead in the Persian Gulf War. I am not here to dispute your verdict. When you returned your verdict, Judge Matsch told you that we accept your verdict, and I am not here to challenge it, to impeach it, or to question it. What I am about to say to you, on the contrary, accepts your verdict and all that it implies.

We have a situation here where if you were to think about it and follow through what Miss Wilkinson said -- you remember John Graham, the Denver citizen who in 1955 killed 44 innocent men, women, and children on board a United airliner that left the old Stapleton Field. He killed them in order to obtain \$36,000 life insurance on his mother he had bought at one of those machines at the airport.

And you remember the sadistic killer, Charles Manson, who slaughtered over 12 people spread over two nights. You remember Charles Whitman, the man who in 1966 climbed up to the tower of my alma mater at the University of Texas and proceeded to kill 16 people, mostly students. And of course we all remember John Gacy of Chicago. And we remember Ted Bundy who killed between 15 and 25 young women -- God knows how many he killed. But if you were to add them all up, they wouldn't equal the 168 or 169 killed in Oklahoma City.

And so as Miss Wilkinson says to you, if the death penalty has any meaning, then clearly it has meaning here. And

of course that's true if this crime were of the nature of Graham and Gacy and Bundy and Whitman and Manson, but it isn't.

It is a political crime. It is an ideological crime, and that is the difference. It may be that you ultimately decide that it is a distinction without a difference, that it means nothing. I hope that I am mistaken in that, because there are larger stakes here.

You see, as Mr. Burr told you and as you know from the evidence and your own recollection, at Ruby Ridge, as Mr. McVeigh saw it, the government killed 14-year-old Sammy Weaver by shooting him in the back and killed his mother while she held 18-month-old Elijah in her arms standing by her door. And as Mr. Burr told you, Marshal Bill Degan, courageous member

of the United States Marshal Service, was likewise killed.

And

the government said that Mr. Weaver was guilty of Officer Degan's murder. The jury said he was not guilty.

And at Waco, as you know, Mr. Burr told you -- and it's in evidence -- five BATF agents were killed -- or I think it's actually five Branch Davidians and four BATF agents were killed. And the government said that the surviving Branch Davidians were guilty of those murders and conspiracy to commit murder, and the jury said they were not guilty of murder and conspiracy to commit murder.

But in both cases, there was no accounting. Yes, we have the right under the First Amendment to petition the government for redress of grievances; and yes, that sometimes is successful; and yes, it should be reinforced. But there was not then nor has there ever been an accounting for the tragedy at Ruby Ridge and the tragedy at Waco.

As Mr. Burr told you, Mr. McVeigh's acts and thoughts, no matter however misguided they may be, no matter how misperceived, if in fact they are misperceptions, did not arise in a vacuum. They didn't just suddenly happen one night. The Government tells you it took place on the second anniversary, it took planning and deliberation and careful concealment.

And yes, all of that's true, there's no question about that.

But the issue before you is how did an otherwise normal human being who grew up in a small rural community in Upstate New York, who was raised by loving parents, who was member of a family with two sisters, who loved his grandfather and whose grandfather loved him, who was a good enough student in school that teachers a decade later not only remember him but come in to testify on his behalf -- he was a good employee,

he was a good inspector and supervisor. He was honest. He was the boy next door because the neighbors next door considered him the boy next door. They opened their house to him. Next door and across the street. He baby-sat for their children. He was alone with their children and their daughters. They played in each other's backyard. They swam together. They hunted together. They fished together.

And then after high school, he entered the Army after a short period of work. And he wasn't just any soldier. He was promoted ahead of his peers, the lieutenant's gunner, first across the line to liberate Kuwait, in the inner circle protecting General Schwarzkopf at the armistice talks, and ultimately awarded one of his country's highest military decorations, the Bronze Star, and the Army Commendation Medal for valor.

So how did valor become cowardice? How did loyal

service to the country become treason? And now did a loving youngster with all the advantages of life -- there is no abuse excuse here, there is no excuse offered by that, there is no defect here. How did that change?

Millions of Americans, millions, you know that, share Mr. McVeigh's views. They're as old as the struggle that led to the ratification of the Constitution. Mr. McVeigh acted on them. He acted on them because of what he understood had happened but, more importantly, what had not happened, and so he made it happen. They hurt, so you hurt. They died, so you die. They were innocent, you are innocent. What a terrible price for a failure to account, for a failure to instruct as

the government must.

Where were all of those constitutional systems and those processes that Ms. Wilkinson talked to you about that you

know exist? Why were they not put into effect? 40 years ago this summer, a president of the United States lived in this city over here at 750 Lafayette in his mother-in-law's house, and he was faced with a crisis of the same magnitude that split

this country like a fissure down the middle at a high school in

Little Rock, Arkansas, in which the full authority of the federal government and the Supreme Court and the decisions of the local United States district court were challenged, not by a group of religious dissidents with unorthodox, nontraditional

views, but by all of the power of the governor of the state and

the resources joined at his command by other sympathizers throughout the country and certainly in the South. And by patience, patience, patience, and firmness, he restored the rule of law and not a single person died. There was no 51-day siege. There was no Bradley tank. There was no CS gas.

There

was firmness and leadership of the highest order.

And in fact so firm and so strong and so persuasive was that moral force that within less than 10 years, within less than a decade, a way of life that had existed in much of the South and the border states and other places no longer (sic) ceased to exist. The changes were so great that they are

today largely invisible. No one recalls them. No one recalls them. And two subsequent presidents building on his leadership

accomplished that.

This tragedy at Ruby Ridge, this tragedy at Waco could

have been avoided. This tragedy at Oklahoma City could have been avoided. And whatever I may say and whatever I may do in this case in the defense of my client, I want to be held accountable for those words because they are the truth, and you

know it.

Now, that is certainly no justification for what

Now, there is certainly no justification for what happened here, and I don't argue it's a justification. Justification is a legal defense, and the elements of justification are not present here. If they were, I would have raised them. Nor do I offer it as a mitigating defense. Some people might; I don't.

But even in this courtroom, even with all of the lessons that we have come to see, there still was a little bit of that elitism. You don't have to work for a prominent newspaper -- although he did, wrote for the New York Times, which I suppose is about as prominent as you can get in the United States -- to have credible views. After all, Ernest Hemingway was a free-lancer for the Kansas City Star. You don't have to work for Time or Newsweek to understand what happened in Waco. You don't have to live in the right neighborhood or the right schools. You don't have to be an officer in the Army as opposed to an NCO, and you don't have to be insulted because of that, and you don't have to demean someone because we won the Persian Gulf War with a minimum of casualties.

We are all Americans, and we are all entitled to our individual views. The whole theme of this country today is the accept -- is the acceptance of tolerance. We tolerate different life styles. We tolerate different sexual preferences. We tolerate different hair lengths. We tolerate different backgrounds, ethnically. We tolerate just about everything except minority dissenting religious views. And as Miss Wilkinson told you, it is, after all, the First Amendment that guarantees religious freedom.

You know that valiant efforts were made to rescue the people in Oklahoma City, heroic efforts. That is why I had Dr. Sullivan tell you that he was with the University of Oklahoma faculty. As a graduate of the University of Oklahoma and as a Oklahoman by choice, not by accident of birth, I never saw Oklahoma stand more . . . the image of the Grapes of Wrath that John Steinbeck laid upon us, the Joad family in the 1930's, was erased forever by the bravery and the heroism.

But you know -- or you will know, if you watch the videos and the magazine articles and read them, that there were unfortunately no similar heroic efforts at Waco; because, you see, they were marginalized. They were members of a cult led by some sinful messiah. Wasn't that what the Waco newspaper called him on the morning of the raid? And you had a situation here with the man who just a few years before had been arrested on the charge of attempted murder by a telephone call from the church. And so now on a winter morning, two carloads of agents come up in cattle cars. It wasn't a compound. They had lived there 50 years, about as peaceful as any other members of the

society with some sinners and some malcontents, I'm sure, and assaulted.

What were people thinking when they thought that? Mr. Burr referred to it as the militarization of law enforcement. It wasn't so much the militarization of law enforcement as it was the commercialization of law enforcement.

Now, you may not care about that. You may say, well, we've decided that he killed 168 people, and that's all we want to know. Leave that for Congress, the courts to decide. Well, you can do that, of course. Except the Court has told you that you sit as the moral judgment of the community.

Of course the Government asks for Mr. McVeigh's death. In more than 30 years of the practice of law and the defense of countless criminal cases across north central Oklahoma, how many times have I seen a prosecutor, as Miss Wilkinson, turn to the defendant and point to him and say there's the thief, there's the murderer, there's the coward, we don't ask for emotion or sympathy for the victims, we want justice. And I'm sure those views are sincerely held and undoubtedly appropriate in many cases.

But something happened here, something happened. What happened was that Tim McVeigh didn't come to hold his beliefs about Waco in that vacuum that I mentioned to you. There was the input of his experience. For, you see, Tim McVeigh had trained with CS gas. He had driven -- or not driven -- he had been in a Bradley tank. He had been to war. And just as Miss Wilkinson told you, who could ever have imaged that an American citizen would kill his own in an act of political protest of this magnitude, who could have imaged what happened at Waco on April the 19th?

Some of you remember the Vietnam war and how public attitudes changed. What was the thing that changed public attitude? It wasn't just the mounting casualties, it was the way they were presented. Every night, five nights a week, 7:00

Eastern Daylight Time or Eastern Standard Time, Walter Cronkite, Howard K. Smith, Chet Huntley and David Brinkley began the nightly news which for a period of five years almost inevitably led to films of the carnage and violence and death in Vietnam. And gradually as people saw that and understood what it meant, right or wrong and whether you agree or disagree with our policy, I don't think there can be any disagreement that seeing that changed America's perceptions, individually.

Well, 51 days was Waco. Every night on the

television

American citizen vs. American citizen. People whose religious belief led them to believe they must survive and then perish in the tribulation in an apocalypse that was upon them were seeing a self-fulfilling prophesy. And as you will see from the evidence, if you read it, the FBI was advised by its own talented people, you're playing into the hands of this man, you're making it come true to these people.

So people like Tim McVeigh and others were stirred up by that, and there isn't anything new about that. You know, American history is not apple pie, it isn't. You go back all the way to the Whiskey Rebellion and Shay's Rebellion in western Massachusetts where General Washington had to call out the troops to put down insurrection; and when the country was formed, you know that the way the price for ratification of the Constitution was, it had to be ten amendments limiting the federal government. The federal government, not the state government, the federal government. And you know that the abolitionists and those who wanted to protect slavery engaged in bitter conflict, murderous conflict, all the way to bleeding Kansas and the Lecompton Constitution and finally ending on John Brown's raid in Harper's Ferry where he and his abolitionists slaughtered dozens of men, women, and children to get arms to give to the slaves in the south. A conflict so terrible, a Civil War in which more Americans lost their lives than all of the wars since then was fought. And then from that industrial might came the great labor strife, here in Colorado some of the greatest battles in which men, women and children lost their lives were fought. And then on down. The civil rights struggle.

So violence and the ability of the United States to adjust to it, to redress the grievances, to have an accounting has been important. And we have had that, sometimes at terrible cost; and you know from your own high school studies, the people like John Calhoun, the great southern statesmen, talked about the concurrent majority, that some things were just so important to Americans that you just simply couldn't do it by 51 percent vote, you had to have some consensus. We seem to have gone a long way from that today.

For those of us who believe in gun control, we know that Waco set that back a hundred years. It was another one of those self-fulfilling prophesies come true.

We live in an information age: television, radio, CB, Internet, computers. You've seen that information. A few years ago, you may recall the Progressive magazine printed the design for the H-bomb. You know from this case that you can

DESIGN FOR THE H BOMB. YOU KNOW FROM THIS CASE THAT YOU CAN buy Homemade C-4 and learn how to make bombs, that 20,000 people purchase that book, 200,000 over 19 years purchased The Turner Diaries. The Soldier of Fortune has to be profitable, so there must be people that read it. There must be people that see these videos. Mr. McVeigh was so impressed by it, he spliced them together and created his own video.

He is not alone. His fears are not alone. Neither are his beliefs, there are others who share those. He is not a demon though surely his act was demonic. And as Mr. McVeigh -
-
Mr. Burr told you, Mr. McVeigh could very easily be considered the boy next door. And that is what is serious about it because, you see, he is not an emotional or physical aberration. He is every man.

Now, that's the way he saw Waco. I'm not here to tell you you should see it that way. I'm not here to tell you I see it that way. But I am here to tell you that it is real in his mind and real in other people's minds.

When Mr. Mackey talked to you the other day, he used two expressions repeatedly. He said there's more, there's more. And think about or think back, so there is more, there's more to this than just a guy getting a Ryder truck. Think back. I agree with Mr. Mackey.

There are -- and I don't know what the Court's pleasure is, but if you wanted to break or if you want me to continue, I will certainly do that, but I'm at a place now where I intend to move into the second half of what I have to say.

THE COURT: I think we'll take the break.

MR. JONES: Thank you, your Honor.

THE COURT: And, members of the jury, we're going to recess for about 20 minutes, as we customarily have at this time of morning; and of course, as I have customarily cautioned

to you, you must -- and must do so again at this time, please let the matter rest at this time, avoid discussion among yourselves and of course with anybody else concerning the issues that you are to decide, recognizing that you're going to hear more argument and you're going to hear from me on the law.

So the matter is not given to you yet for decision. You're excused now for 20 minutes.

(Jury out at 10:18 a.m.)

THE COURT: We'll recess for 20 minutes.

(Recess at 10:19 a.m.)

(Reconvened at 10:36 a.m.)

THE COURT: Be seated, please.

(Jury in at 10:37 a.m.)

THE COURT: Mr. Jones, you may continue.

MR. JONES: Ladies and gentlemen, what I'm going to say to you now, I do not need notes.

Tim McVeigh is going to die in prison. There is no doubt about that. The question is when will he die in prison: sooner, or later? The Government asks you for him to die sooner. I ask for you to let him die later.

But there are three reasons why I ask for that, and they really don't have much to do with Tim McVeigh or his bringing-up or being in the military. They have to do with the United States of America, you and me.

But I want to be frank with you and tell you that there is no way, as Mrs. Frazer told you, Tim's mother -- there is no way that you or I or even her will know the depth, the sorrow, the loss, the pain that these people in my native state -- not my native state, I suppose, my adopted state.

And certainly, Ms. Wilkinson has eloquently and movingly and with detail reminded you of that; and you should be reminded of it. And Tim McVeigh should be reminded of it every day of the rest of his life, however long that may be. And it should stand as a memorial in much the same way as the Vietnam War Memorial in Washington stands, because they were innocent people.

Where Mr. Tritico grew up, in the Heights area of Houston, back many, many years ago, when I was going through college, working nights and on the weekends, those summer evenings, I worked at a Houston institution that he'll know, the old Heights Funeral Home in Houston, Texas. And it was kind of an unusual place. It was formed and organized by the wife of the principal of John Reagan High School Ed Waltrip and her son, Bobby. We all called her "Old Lady Waltrip," except, of course, when she was around. And we always knew when she was around because her cane come tapping on the floor; so wherever we were, whether we were out in the back hosing down the cars or shining them up or moving flowers or taking care of a family, answering the phone, the word would pass, "Ms. Waltrip is on the floor."

Now, in my day, Heights Funeral Home was the largest funeral home in Houston. Today it's the largest in the world. They handle over a thousand funerals. And one day in my impetuous youth and curiosity, Ms. Waltrip came by my workstation, and I made -- she said, "How are you doing, Jay Beck?" She knew my dad, so she knew my nickname.

And I said, "Ms. Waltrip, I'm pretty busy here getting ready. We've got five funerals tomorrow."

And she stopped, made me sit down. And she said, "We don't have five funerals tomorrow. We have one funeral tomorrow and then another. And that funeral you're working on is the most important funeral we have, because that's a family. We'll have a thousand funerals a year, Jay Beck. We have one at a time for that family, for that individual."

So there in the midst of so much death, I learned a

valuable lesson about life.

Now, if I thought for one minute that executing Tim McVeigh would restore Mr. Galen's sight, restore Daina Bradley's leg, take Baylee Almon out of the arms of that fireman and put him (sic) in the arm of his mother, there is no question that we would do so without a moment's hesitation. And if I thought and believed -- and I thought you believed -- that executing Tim McVeigh would somehow or the other end this pain and fill this vacuum -- now another kind of vacuum -- in these people's lives, in a heartbeat, wouldn't have to leave the jury box. That's how simple it would be.

But there are larger issues here. And science, metaphysics and medicine and psychology will not accomplish that, however desirable and enviable and attainable a goal that we would all want. But it isn't going to happen.

There are, it seems to me, three reasons to spare Mr. McVeigh's life in the sense that it's not a federal jury order of execution. Life as he knows it is over with. There is no question about that. What he's faced with, given his age, probably a normal life expectancy of somewhere between 40 and 50 years, if he's given life without ever being released. And boy, life without ever being released means that in the federal system. No doubt about that. What it means is day in and day out until sometime pretty close to the half-century mark of the next century, he will die an old man, carried out by the coroner. And every day of his life, he can never escape, never escape what has happened here.

You can't watch that much television or that much tick-tack-toe or write that many letters home, or your one or two or however many hours a day of exercise you get. You can't run from it. There is, as the French writer Jean-Paul Sartre said, "No Exit" from that reality.

Now, you might say, well, if that's true, then how come all these people that are on death row fight and stay alive? Well, they're not all fighting to stay alive. And it may not be just the Government that would like to see Mr. McVeigh receive an order of execution.

But I don't think that we should be in the business of letting the Government decide who lives and dies, because, you see, there is a couple of other things that have kind of been forgotten by the wayside in this second stage.

You now know, because the Court instructed you back at the end of the first stage, what a conspiracy is. You also know what it takes to be a member of that conspiracy, to be criminally liable. You may not be prosecuted for being a member of it, but you are a member of it.

Michael and Lori Fortier, I respectfully submit, if you'll recall those instructions, were members of this conspiracy. They aided and abetted it just as surely as you're sitting here: ordered fake IDs and typed up the name Robert Kling, went out to the desert to test a herb, looked for a

king, went out to the desert to test a bomb, looked for a place to store explosives, lied to the FBI about it, helped finance the bombing by selling those guns and giving \$2,000 to Terry Nichols. And the Government told you they didn't even need them.

Janice (sic) Coyne can never hold her child again. Diane Leonard's husband cannot ever come home. But Lori Fortier can hold her child, a normal child; and her husband will some day come home. And all they had to do was pick up a telephone. How in the name of God or any other deity can a woman who has given birth, has a small child, who knows what's coming -- how can you justify what has happened to her? She is as much a part of this as your verdict found my client was, and so is her husband.

We don't live in a country -- or we shouldn't live in a country -- where Sammy the Bull can kill 23 people but because he is willing to testify against John Gotti or other killers, he makes a deal, particularly if you don't need them or if it's just maybe helpful to the case, just prepares a narrative, a chronology.

There is no way, I respectfully submit, with a clear conscience that you can say this person dies and this person walks, not even fingerprinted.

That's the first reason.

There is a second reason. You will remember from the first stage -- and I believe the Court will tell you, may have already told you, as I recall -- that you can consider everything that happened in the first stage. Evidence doesn't need to be re-proved. And you remember what happened in the first stage, and you remember that his Honor read to you portions of the indictment. And among those portions of the indictment read to you -- and you maybe even carried it in the instructions back in the jury room -- was the fact that the United States grand jury sitting in Oklahoma City, which heard secret testimony, charged Terry Nichols and Tim McVeigh and others unknown.

Dead men do not tell tales. I say again the Government may not be the only people that want my client executed.

MR. HARTZLER: I'm sorry, your Honor. I believe this is objectionable.

THE COURT: Overruled.

MR. JONES: You know from all the evidence that you heard, this was a case about Tim McVeigh. Mr. Hartzler told you that. He told you, You may have unanswered questions; you're not requiring us to answer those unless it relates to Tim McVeigh. And each of you said no. He was very honest and very professional about that. But you also know you have questions, maybe not about Tim McVeigh -- well, you don't have questions about Tim McVeigh. You found him guilty beyond a reasonable doubt, so you don't have questions about him.

But you remember the rest of the evidence that is not here. You remember the rest of the story, the rest of the instructions.

Surely the Government is not going to repudiate the grand jury indictment that charges others unknown. You may well consider from everything that you have seen in this courtroom, from your observations of the participants, from the evidence that you have heard, from the Court's instructions and your deliberation, that two people share a terrible secret. One of them will not tell you and the other one cannot by his oath of office, but the one that can may.

There is a third reason. You have to make the first step to restore domestic tranquility. You can't do it all. You now know that Oklahoma City started something. Montana, Arizona, Texas, Atlanta: They're all familiar to you. You're the moral conscience of the community.

The Government never could convince Julius and Ethel Rosenberg, who stole atomic secrets, to talk. They went to their death without talking. We don't want a Lee Harvey Oswald here. We don't want an Oliver Stone movie. We don't want a Warren Commission report.

45 years is a long time, and there is no statute of limitation for murder. And I don't care how eloquent or how moving or how sincere or how passionate the Government may be in its closing argument. The chapter -- the book of the Oklahoma City bombing is not closed. Do not close it. Do not permit others to close it. Let there be a full accounting, not a partial accounting. But you have to take the first step.

There is an old proverb: A journey of a thousand miles -- and boy, this is a thousand-mile journey -- it begins with a single step. I cannot take that step, Mr. Hartzler cannot take it, the Judge cannot take it, and others have not taken it.

You must take it.

Some of you of my generation will remember that when you were in elementary school there used to be a magazine that came four or five times a year called Ideals. It was a slick, colored publication with beautiful pictures. Sitting down in Houston, Texas, that's how I learned about wheat fields in Kansas and the purple mountain majesties of Colorado. And on the back of that booklet or magazine -- and what an appropriate title, Ideals -- it always ended with the words of one of our great national songs. How far we have come from that. But you remember it: "America, America, God shed his grace on thee; and crown thy good with brotherhood from sea to shining sea."

Now, it is time for this madness to end. It is time to reconcile. It is time to find out the full truth. It is time for the full accounting. It is time to say, 250, 270

people who died as a result of Waco and Oklahoma City -- we must move on. We must find everyone. We must let the country know that there is a legitimate redress of grievances; that we don't cover it up, we don't just prosecute and then when the jury acquits them, we just sort of close the chapter on what happened.

That is what this case is about. It's not about saving my client's life.

Thank you.

THE COURT: Mr. Hartzler.

MR. HARTZLER: Thank you, your Honor.

REBUTTAL ARGUMENT

MR. HARTZLER: May it please the Court.

THE COURT: Mr. Hartzler.

MR. HARTZLER: Ladies and gentlemen of the jury,

good morning.

Seven weeks ago, I -- seven weeks ago today, I sat here before you and told you a story about Helena Garrett and what happened to her and her son, Tevin, on April 19, 1995. A lot has happened since then. You've heard a lot of evidence and information. You've had your deliberations. You delivered your guilty verdict. And I suspect in the months and years to come, your memories of the details of the evidence, the names of the witnesses, even the most significant witnesses, the dates, the various locations, your memories will begin to fade.

You'll forget a lot of the details about the process; but there

is certainly one thing that all of us, everyone who has been part of this, will forever remember, and that is a great tragedy befell Oklahoma City on April 19, 1995, a terrible, terrible historic tragedy. But unlike many of the tragedies that we've known of in history, this wasn't brought on by an act of God. It wasn't a flood or an earthquake. It wasn't a ship running into an iceberg. It wasn't a plague or deadly disease. This was an act of a man. This was a premeditated act, an act of injustice.

Timothy McVeigh got to write the first word in the history of this crime; and what he wrote was "injustice."

Now, as Mr. Jones has indicated, everyone agrees, there is nothing you can do to bring back to life the people that have died. There is nothing you can do to make whole those people that were maimed. But there is something you can do. You have a responsibility to write the final word on the history of this crime. It's your responsibility to do justice, and I'm sure you'll do that.

As you know, I was the first lawyer to speak to you seven weeks ago after the Judge introduced us, and I'm the last lawyer that has an opportunity to speak to you before he concludes the case with his instructions; so I feel sort of like a set of bookends, with seven weeks of substantial education about what happened in Oklahoma City on April 19

crammed in between. And you've had in addition tremendous education in the judicial process, I believe.

I recall from jury selection that some of you, like most people who were called for jury selection, had some initial reluctance, I suspect, to serve on the jury. But from my experience, I would be surprised if most of you don't think that it was a rewarding experience. I certainly hope so. And on behalf of the lawyers in this case -- and I'm sure I speak for the defense lawyers as well -- we thank you for your attentiveness. We thank you for your indulgence. I appreciate your patience particularly in those moments in this case when things didn't go quite as smoothly as we would have hoped.

And I also, of course, thank you for your acceptance of responsibility. It was clear to everyone when you deliberated last week or so that you took your responsibility seriously, and I'm confident that you'll execute that responsibility as seriously in this stage of the case.

I also need to ask you for another indulgence. You can see that I spent some time last week and again this morning in writing up some notes. I'm not going to be able to regale you with tales from history and from American novels like Mr. Jones did. I can't stand up at the side and tell you a folksy story about Old Lady Walton (sic) and things of that sort. I'm going to sit here and refer to my notes; but I'm confident that you will base your decision on the power of the evidence in the case, on the moral power of the evidence and the facts of this case, and not on the eloquence of the lawyers.

So I thank you for that indulgence.

As the Judge will instruct you, the initial findings you have to make relate to whether Mr. McVeigh acted intentionally and then whether or not certain aggravating factors have been proven.

You sat through the trial. You heard the evidence. You heard the information during the sentencing stage. I'm not going to go back over what Mr. Ryan and Ms. Wilkinson this morning told you. I have complete confidence that when you get back and start your deliberations and you see the forms of the verdict that you can go through and easily conclude, easily conclude, that Mr. McVeigh acted with precisely the intention that we all know and that our aggravating factors have proven beyond a reasonable doubt.

The aggravation, of course, is overwhelming. There is really no issue about that. Defense lawyers this morning have so much as conceded that, but what I do want to discuss with you are the mitigating factors that have been raised and that both Mr. Burr and Mr. Jones have talked about; and they really fall into three relatively simple categories. You'll see that there are a number of mitigating factors you'll have to consider, and you'll have to decide whether or not you find those factors to be true. That has nothing to do whatsoever with the weight you give the factors. I'm simply talking

with the weight you give the factors. I'm simply talking about the list of mitigating factors. There are really three categories.

The first is the "he was such a good boy" assertion, the second is -- second category is he was a great soldier, and the third is he was angry about Waco. And then I'll talk briefly about the matters that Mr. Jones just raised after the break. He gave you three additional reasons.

I want you to know those are really outside the law of aggravation and mitigation. The Judge will not instruct you on -- they are not mitigating factors. They are outside the mitigation and aggravating factors you'll consider, but I'll address them nevertheless.

So let me go back to the three categories. I'll talk about each in turn. I would like to talk mostly about the "he was such a good boy" assertion.

To be sure, we do not dispute that Timothy McVeigh was a good boy, and my emphasis is on the term "was." He's now a man. He's changed. He's no longer the good boy that he was.

Yesterday, we saw a photograph of Timothy McVeigh with his father. They were at a younger age. I believe it was -- forgive my memory -- three or four years ago; and they had their arms around each other. And you saw Mr. McVeigh, who was practically mournful as he looked at that photo and recalled the young man that he raised and loved. And everyone in the courtroom saw the video of Timothy McVeigh as a child, and I suspect that all of us felt the same sadness as we watched that video and saw that photograph.

And I believe the sadness really has two sources. The first, of course, is it saddens us to think that this man must die for the crime committed. But there is another source of the sadness; and I think that sadness arises from what we saw when Mr. McVeigh, Timothy's father, took the stand. There is a mournfulness about it because we are already grieving the loss of that innocent young man. He's gone. It's a matter in the past. That smiling young man you saw in that photograph -- he is not here, and he has not been here in the courtroom with us.

The man that you have seen committed mass murder. And there is no one who can commit that kind of mass murder, there is no one that can commit the crime that occurred in this case, who can still be a smiling, happy-go-lucky young man who worked at Burger King. They are different people.

So please, you should not feel responsible for

wiping
that smile off that young man's face. That smile was gone
some
years ago, when his hatred boiled over and he engaged and --
planned and engaged in this act of mass murder. You should
not
feel responsible for taking away the smile. It's been gone
for
a while.

So what is the point of this "good boy" assertion on
behalf of the defense? I mean, it really doesn't do much to
mitigate the crime. It doesn't reduce his responsibility.

And ironically, although it's the defense that
presents it as some kind of mitigation, it really presents you
with a no-excuses defense. I mean, Timothy McVeigh did not
grow up with a drug-addicted mother and father. He didn't
grow
up in a crime-ridden neighborhood. He wasn't an abandoned
child. I mean, you've heard these stories about children with
just terrible, terrible pasts, kids that are born with fetal
alcohol syndrome, or they're subjected to violence in their
home, they're taught to hate, they experience hate in their
homes, they're deprived of moral guidance. He went to church
up until eleventh grade. He doesn't suffer any mental
deficit.

It's really a no-excuses mitigation claim, which is
odd.

What the "good boy" assertion tells you is that he
had
a great childhood and, as Mr. Burr suggested to you, he grew
up
like many of us. I mean, Mr. Burr said to you that he could
be
like your brother or your son or your grandson.

And I think that really is the point. It's not so
much that it genuinely reduces culpability that he had a good
childhood, a great childhood. It doesn't reduce culpability
for his acts; but there is some suggestion that because he was
a good child, you should spare him, because he's more like us
than somebody who didn't have the same childhood, somebody who
was different.

Well, having a good childhood is no basis for
sparing
someone's life. I mean, if that was the case, imagine how few
cases -- none -- could involve capital punishment. I mean,
everyone at some point was good in their childhood. People
aren't born killers, and they're certainly not born mass
murderers.

But I think the point is in addition to sort of
softening his image up, making him not so much of the demon as
you might have thought when you first heard about this crime,
it's also to create some sympathy. It's to create an
emotional
bond between you and Timothy McVeigh.

I mean, Mr. Burr so much as said so when he uses
that

phrase that he almost used again today, saying that he could be your son or your grandson or your brother. "He's one of us" is the suggestion.

And indeed, there probably are some surface similarities between Timothy McVeigh and some of us or some of your families. And of course, some of the things you saw in that videotape yesterday, I'm sure, reminded you of things that you've experienced in your childhood: nice, middle-class home, public school, celebrated Halloween, ran track, had Garfield sheets and likes pop. So what? Where does that take us? That means that his life should be spared because he had a background similar to us? And it's more acceptable to decide to execute someone who has a different background?

Well, that's not especially an American concept; that we have a double standard. Surely the defense is not suggesting that it's okay to execute someone who grew up in a foreign country or in an inner city ghetto, someone from the lower class, but we impose a double standard. That's not America.

We have equal treatment for people from different socioeconomic backgrounds; so I urge you to reject that kind of emotional bond of "he's somebody like us; oh, gee, it's too bad; he's not a horrible person; he's sort of like us."

Give equal treatment. Disregard the fact that he came from a privileged background. Treat him as you would anyone, privileged or underprivileged, and in effect accept the fact that he had a good childhood; but reject it as having any weight in reducing his culpability.

I also suggest that you reject this effort to create an emotional bond between you and Timothy McVeigh for another reason. If there is to be an emotional bond created in this case, then I suggest it should be with the scores and scores of innocent men, women and children who were killed, not with Timothy McVeigh. Those are America's sons and daughters, not the man who murdered them.

The most offensive part about this alleged mitigation is the suggestion that you somehow reward Timothy McVeigh for having a good childhood, you somehow reward him for playing -- having the opportunity to play King of the Mountain and for collecting comic books and for hosting a haunted house and baby-sitting and working at Burger King and having Garfield sheets and eating Pop Tarts; that that's somehow something that should you cause to say, "Oh, we'll be lenient because of those things."

I'm sure I don't need to remind you that Tevin Garrett will never, ever play King of the Mountain. Timothy McVeigh

will never, ever play King of the Mountain. Timothy McVeigh

deprived him of that opportunity, took it away when he killed Tevin Garrett.

And think of little Brandon Denny. Remember the young man, the young boy that we saw on the videotape that he limped and he could hardly use his -- he tried to hold those little animal crackers with his right hand and they fell out. Can you imagine that child in his neighborhood trying to succeed at King of the Mountain or being king of anything? For the rest of his life, he's been deprived by Timothy McVeigh of the kind of opportunity that Timothy McVeigh because of his background got to enjoy.

Recall Aaron and Elijah Coverdale. They were two young boys. You saw them depicted there at the child-care center, and Helena Garrett when she testified in the guilt phase talked a little bit about them. One of them was a little boy that came up and comforted her little boy, patted him on the back when she was leaving and he was upset. Well, just think of those two young boys, if they had an opportunity ever -- they're dead now -- if they had an opportunity to grow up and be young teenagers. Wouldn't they love to have had the comic book collection that Timothy McVeigh enjoyed? Just imagine those two boys sharing comic books, exchanging comic books, reading to each other. They would love to have the comic book collection that Timothy McVeigh had.

And it would bring great pride to their mother and their grandmother to see them enjoy that kind of thing, the same pride and joy that I'm sure Mr. and Mrs. McVeigh enjoyed; but they had that opportunity: Mr. and Mrs. McVeigh. The grandmother and mother of Elijah and Aaron Coverdale will never have that opportunity because Timothy McVeigh murdered them and destroyed that opportunity.

Haunted houses. Kids love haunted houses. Just imagine Baylee Almon, the little girl that was in the arms of the fireman -- she was dead at the time -- or Jaci Coyne. Her mother, Sharon -- Mr. Jones referred to her as "Janice." It was Sharon Coyne that testified here and talked about how her little daughter was just developing independence. She was just starting to take a step up the stairs. Those two little girls now would be about three years old; and at Halloween maybe three and a half. Can you imagine how those two little girls would squeal at a haunted house. They would love to go through a haunted house. They will never have the opportunity.

And you can figure it: They were only about one year old. They never had the opportunity. Timothy McVeigh had opportunity after opportunity. He set up haunted houses, went to haunted houses. He enjoyed that opportunity as a child. But he took it away from Baylee Almon and little Jaci Coyne.

They will never see a haunted house.

I could go on, of course, with other examples, not just about children. Think of some of the mothers that you met who testified here. Some of the mothers -- think about some of the mothers you didn't meet, some of them that Timothy McVeigh murdered. Wouldn't they get a kick out of seeing their grown children still use Garfield sheets?

Think of some of the fathers that are no longer with us because Timothy McVeigh murdered them and the joy that it would bring some morning to get up and throw some Pop Tarts into the toaster and share them with their children. They will never, ever have that opportunity. Those are the kinds of things that Mr. McVeigh, Timothy McVeigh, enjoyed for most of his 29 years here on earth.

But he's deprived scores and scores of people of those very kind of opportunities.

Some of you, of course, know how important graduation is in our lives. Remember how Timothy McVeigh's grandfather was portrayed in the videotape we saw yesterday, proudly putting his arm around the shoulder of Timothy McVeigh after his high school graduation.

Well, think back to Mrs. Westberry, who testified about her husband. She said the little five-year-old grandson, David, referred to him as "Paw Paw," and he wanted to go to heaven to be with his "Paw Paw." Grandfather's name was Bob Westberry. That was her husband's name. Wouldn't he have loved to see little David graduate from high school, get married -- any of his grandchildren, to see any of them, to experience that pride, to see those grandchildren graduate, get married?

Well, I ask you to do this: When you make your decision about life or death in this case, ask very concrete, specific questions of yourself.

Bob Westberry will never see and never even hear about graduation of any of his grandchildren; but if you do as Mr. Jones suggests, if you give life to Timothy McVeigh so he can live another 40-, 50-plus years in prison, ask yourselves, what will he hear about? Will he hear about his sister Jennifer's graduation when she graduates from college? Will he have an opportunity to experience that joy? Of course, he might not be able to attend the graduation, but he'll surely hear about it. He'll have that opportunity. He'll have the very opportunity that he stole, that he tore from so many, many people. And question whether or not he should continue to have that joy when he took it from so many others.

There are two other points I'd like to make about

this

"he was a good boy" mitigation. The first emphasizes again the past tense; that he was a good boy, but he is no more. Recall that on Monday, neighbors -- the McVeighs' neighbors, who were referred to as "Mr. and Mrs. D," came in and testified and they said that Timothy McVeigh visited them before he went off to the Persian War (sic) and when he predicted that he would come back home in a body bag, they both saw there was a tear in his eye.

Ask yourselves what was the point of that testimony? Why was that brought out in this case?

Well, the point was to soften his image, to make him appear as though he's someone who has feelings. Remember, that happened several years ago. And maybe he had feelings then; but please consider what the nature of those feelings are. Not

a single witness testified at any other time that Timothy McVeigh ever had a tear in his eye except when he was concerned about his own welfare, except when he was concerned and worried about his own death.

You'll recall Michael Fortier testified he was with Timothy McVeigh in downtown Oklahoma City and he said, "What about the innocent people? What about the secretaries in the building?"

And Timothy McVeigh said, "Well, they're like storm troopers. They may be innocent, but they must die as part of an evil empire."

He wasn't shedding any tears then. And you know he wasn't shedding any tears as he fled to the Mercury parked nearby after he detonated or set off the fuse of the bomb. He wasn't shedding tears. He was protecting his own ears, protecting his hearing with the earplugs later found in his pocket.

And that's because while they soften the image, or try to, with that tear in his eye as he was leaving for the Persian Gulf, there is only one person he cares about. He cares nothing about the innocent men, women and children who were killed in Oklahoma City.

My final point about the "good boy" defense relates to the testimony about his enjoyment of the Super Bowl. You heard a couple of his Army buddies talk to us about how they used to kid each other because his favorite team was the Buffalo Bills, and you even heard some good-natured questioning of the witnesses by the attorneys.

And I suppose the point was to portray Timothy McVeigh

as an all-American boy, to make him appear as a sports fan like so many young men in America, faithful to a particular team.

And what it said to me was, gee, this is something he really enjoys, having a favorite team, following the Buffalo Bills, watching the Super Bowl.

Well, remember Laura Kennedy? She was a young woman that came in. They only had one child, she and her husband, Blake. They're having some difficulty dealing with his loss. Remember, she's the woman that said his clothes are still hanging in the closet. They haven't had any other -- any more children since he was killed.

Now, I don't know what Blake Kennedy would have grown up to be. None of us can know. And I don't assume that he ever would have played in the Super Bowl. But who knows? He certainly lost that opportunity. He lost the opportunity not only to play in the Super Bowl, he lost the opportunity to watch the Super Bowl. He lost the opportunity to pick up a football, to wear his jersey for his favorite team, to root for his favorite team for years and years and years to come. Timothy McVeigh took that opportunity from him.

And again, I ask you: Think of your decision in these concrete terms. If he remains in jail, as Mr. Jones has suggested to you, if he stays there for scores of years, 40-plus, 50, maybe, well, maybe he -- Mr. Jones said, you know, how much television can you watch? I don't know if he'll have a television. I don't know what the facilities will be like in prison, and I'm not suggesting you guess. But you know he'll have access to news. You know he can still follow the Buffalo Bills. He can still hear about the Super Bowl.

Should he have that opportunity? I mean, that's really what you're granting him, if you give him life. It's the opportunity to experience those great joys, those great pleasures in life that he deprived so many people of: caring about graduation, following a favorite team, listening or hearing about the Super Bowl.

I said at the beginning you have an opportunity to do justice, really to correct an injustice. And I question whether or not it is justice for Timothy McVeigh to continue to enjoy the Super Bowl, to follow the Buffalo Bills, to hear about family graduations and births of children and things of that sort.

I've only one point to make about this second mitigating factor or category, which is the "good soldier" claim.

My point is, first of all, we don't dispute that he was a good soldier; but how far does that go in terms of mitigation? And I think you can answer that question by considering a hypothetical. Imagine Timothy McVeigh, with all his personal characteristics, with all his abilities as a

his personal characteristics, with all his abilities as a soldier but coming from a foreign country. Imagine that he did not fight for America.

Well, what inherent value would it have that he was a good soldier? What would it make a difference whether he was a good soldier, a good sailor, a good surfer, a good plumber? Being a good soldier in itself doesn't have any inherent value, doesn't mitigate, doesn't reduce his culpability. The implication of all this "good soldier" allegation is that he fought for our country; that somehow he's a patriot that fought for our country; that he supports America.

Well, that may have been in the past tense again. That may have been. But it is no longer, because he changed sides. He didn't fight for America when he drove that bomb into downtown Oklahoma City. He fought against America.

We have a word for people like that, and it's not "good soldier," it's "traitor." He became a traitor.

Just excuse me for one moment.

Oh, yes. In this respect, I urge you to give special consideration to one particular mitigating factor. It's the very first one you'll see. There is a list of mitigating factors. It's the very first one, No. 1; and it reads -- and Mr. Burr suggested that you should find this: "Timothy McVeigh believed deeply in the ideals upon which the United States was founded." And you're asked to insert the number of jurors that so find after that.

"Timothy McVeigh believed deeply in the ideals upon which the United States was founded."

No one who rejects our democratic processes and murders innocent men, women, and children can be said to believe deeply or even shallowly in the ideals on which this great nation was founded. His actions reveal just the opposite.

You'll get this list of mitigating factors. There are certainly some that you'll probably unanimously find. You won't give them much weight, a lot of them, as I've suggested. You won't give them much weight, but you'll find them. We won't dispute some of the factors that are listed.

But that one, one that I'm specifically addressing, please, I urge you: Don't find that this mass murderer, this coward, who killed innocent men, women and children, this man who betrayed the Constitution and turned his hatred against his own government -- don't find, please, any of you, that he believed deeply in the ideals of his founding fathers. I urge each of you put a zero in the spot after Mitigating Factor No. 1. Please.

The third category, of course, is the -- he was

angry

about Waco, which, you know, there are some mitigating factors about it. Mr. Jones just announced to you that he doesn't regard it as justification, he doesn't view it as a defense, and then he went so far as to say that it's not really even mitigation. So I mean, clearly it's not justification. No one

could possibly think that you can commit a homicide and then justify it on the basis of some political concern. I mean, where would you draw the line on that: "I was upset about Vietnam and so I killed innocent Americans"; or "I was upset about desegregation, so I started killing people"? Even asking

the question makes it seem sort of absurd. "I was upset about capital gains taxes, so I started killing people"? It's ridiculous. It's no justification or defense, and the defense lawyers concede that. But it's listed as a mitigating factor, and yet Mr. Jones just told you he doesn't see it as any mitigation. So why are we talking about Waco? What was the point of Waco?

Indeed, I challenge you to try to repeat the argument

that the defense is making here: Timothy McVeigh bombed the Murrah Building because he was angry about Waco and therefore . . . what? Therefore what? Where do we go with that argument? It seems to me that they're not so much arguing

that he should get a lower sentence because of this idealology;

that that mitigates what he did. In fact, they're saying it's not mitigation. What it appears from Mr. Jones' argument this morning is he's really asking you to sort of endorse these beliefs.

Waco is not on trial here. I mean, the Judge has said

that. You understand that we did not have an opportunity to address the facts of Waco. We're not retrying Waco.

So why all the talk this morning about Waco? It sounded to me as though Mr. Jones is suggesting somehow that you endorse McVeigh's -- Timothy McVeigh's beliefs and therefore, what? It could be seen as other than encouragement of such conduct? Again, I beg you: Don't do anything that would encourage this kind of conduct.

We live in a free society. You can plaster bumper stickers all over your car and wear T-shirts that offend people. You can vote and you can do all sorts of things, but you can't engage in violence to achieve a political end.

Mr. Jones is somehow suggesting that that's okay.

You

know, we've had rebellions in this country; and here, yes, we have another one. Save his life because he wanted to start this crazy rebellion? Please, don't give leniency that will encourage this kind of conduct in any others.

The other thing that I thought was odd about this is, well, the one thing that is clear is that you have no

responsibility for Waco. I don't know why Mr. Jones said this; that we all bear some responsibility. The facts of what happened at Waco did not come out. What came out were Timothy McVeigh's beliefs. Don't feel any guilt about what happened at Waco. It is not your responsibility, and I won't address it further. I presume you all know that and shouldn't feel guilty and shouldn't lessen his sentence, shouldn't grant leniency because of what he believed happened at Waco.

Of course, you heard throughout the case that Timothy McVeigh knew full well what his First Amendment rights were and he exercised them repeatedly. But that wasn't enough for him, because the truth is he didn't really want any kind of peaceful change. What he wanted was a violent, bloody insurrection within this country, a revolution. He wanted to see Americans killing other Americans just as in The Turner Diaries, and he wanted to be the hero of the revolution.

Yesterday, we presented a letter in the rebuttal case; and you recall the last paragraph in which he said -- he wrote in a letter to the editor, "Do we have to shed blood to reform the current system? I hope it doesn't come to that! But it might."

And what's the date of the letter? February of '92, a full year -- more than a year before Waco.

This is not a man who was interested in peaceful change. This is a man who was interested in seeing blood flow in the streets and was just sort of waiting for an excuse, and Waco is served up as his final excuse.

Of course, we all have disagreements with the government. We all know how to address those disagreements because we live in a free country, enjoy certain liberties.

Timothy McVeigh seems to think that the political nature of his mass murder somehow mitigates against the evilness of this act.

Again, don't do anything to encourage that mind-set. Don't give him a lower sentence because of Waco. Waco should not be a factor. It was not on trial. Do not let terrorism triumph.

Now, the three nonmitigating factors Mr. Jones addressed -- and again, these are really outside the law. When

you get your verdict form, you're not going to see mitigating factors that talk about the Fortiers, the others unknown, or the "please restore domestic tranquility." Those are not mitigating factors. Those are something outside. But he mentioned them, so I'm going to address them.

I guess what I'm saying is you're going to be asked to have this balance of aggravation against mitigation. These come outside of that balance. They're outside the framework

COME OUTSIDE OF THAT BALANCE. THEY'RE OUTSIDE THE FRAMEWORK.

The first one was the Fortiers; and somehow he is suggesting that because the Fortiers -- because Lori Fortier got immunity that that mitigates or reduces the responsibility and you should be lenient toward Timothy McVeigh. Well, I'm not here to make any excuses for the Fortiers. What they did was reprehensible in not calling law enforcement authorities.

But you've got to appreciate they didn't go out and buy two tons of ammonium nitrate and gallons upon gallons and barrels of nitromethane. They didn't plan this bombing six months in advance, and they didn't drive the truck down to Oklahoma City and detonate it in front of the building. I mean, there are different levels of culpability; and you've got the mastermind before you and a responsibility to see that justice is done to him.

Then the second thing Mr. Jones presented, I thought, was really just a teaser. He said to you, "Dead men don't talk. One man may talk."

Well, what a tease that is. Who is this guy he's talking about? I assume he's talking about his client; that somehow he's going to talk. With all the leverage that's brought on him today -- you have an opportunity to increase the leverage on him, if there is ever any opportunity to talk; but please, don't go back and deliberate and speculate about what may happen in the future and what Timothy McVeigh may decide to do. All indications from what you've seen through this process is we're never going to hear from him. So don't be teased into thinking, oh, gee, maybe we can get some information out of this. Forget about that. It is pure speculation, and it should not be grounds of any decision-making.

And then finally, Mr. Jones has asked somehow that you express leniency, you give him life because that's going to, as he said, go some way to restoring domestic tranquility. Well, that strikes me as tantamount to almost a terrorist threat: Hey, ladies and gentlemen of the jury, don't give him death because other bad things may happen.

That is pure intimidation, and I'm assuming each and every one of you on the jury has the courage to disregard that kind of blatant intimidation.

I need to speak to you individually now, and I can't really do it. You're all sitting there together, and I can't leave the podium and talk to you separately; so it's a little awkward. But for this decision, for this decision on life or death, each of you has enormous power. In order to impose the death penalty, we need a unanimous decision. It has to be all of you. And isn't that the way it should be in this country? I mean, you wouldn't want individuals to make -- or even a simple majority to make this kind of serious decision. It has to be unanimous.

So I urge each and every one of you to listen carefully to your fellow jurors, to be open-minded; and if you find yourself in a minority of one or a small minority, ask yourself: Am I really acting as the conscience of the community? Am I acting as the conscience of the community, or am I acting out of some kind of personal need or interest or fear or concern?

I urge each of you to listen to your others and to reach a unanimous decision.

Now, I appreciate that this is a decision that will take some courage; but I'm sure you know that this is a moment in history for all of us, certainly a moment in history for you. And it's one of those moments that calls for courage.

So those of you who began the deliberation with a sense that justice can be served with the death penalty, I urge you to demonstrate the courage and to seek courage from your fellow jurors.

Each of you has the power in effect to overrule the majority, to stop the majority. Please, do not impose your will on the majority. Listen to each other, reach a consensus, reach a unanimous verdict.

Finally, I'm going to conclude with just a short discussion about an attitude that you might bring to your deliberations; and I'm going to talk about the process of deciding punishment. I don't mean by this to suggest that the punishment that you're going to consider for Timothy McVeigh is in any way comparable to punishments that you might impose in other situations. It's not. It's the ultimate punishment. It's a very serious decision. All I'm talking about is the process of deciding punishment.

There are really three stages in every situation. The first, of course, we've already gone through; and that's the guilt phase. When you collect the facts, you ask, Well, what happened? You decide what happened, and you announce very clearly what the person did wrong. And you've done that. You've announced Timothy McVeigh committed mass murder.

And the second stage is deciding the punishment. You provide an opportunity for the person responsible to plead for mercy. You consider their plea, you consider the various other factors, and you decide and firmly announce the appropriate punishment; and that's what we're about here today and in your deliberations.

And then there is a third stage that is sort of outside the law that applies as part of the punishment process. I don't have a name for it. I can't give it a label, but this is what I refer to when I'm talking about an attitude you might bring. It's that emotional stage that most of you will go through in facing the difficulty of making this serious

decision. It will be emotional. I want you to understand many of you will feel remorse. That's okay. It's okay to feel remorse.

I'm sorry to have to ask you to do this. I'm sorry you have to do it. But you do.

Thank you.

Thank you, your Honor.

JURY INSTRUCTIONS

THE COURT: Members of the jury, Timothy McVeigh has been found guilty of 11 separate crimes. The statutes defining these offenses referred to in the indictment and in the previous instructions given to you provide that the punishment may be death, imprisonment for life without any possibility of being released, or any lesser sentence provided by law and decided upon by the Court. The selection among these three choices must be made by the jury. Even though you have found Mr. McVeigh guilty of charges which carry a possible death sentence, the law requires that you approach this sentencing decision with an open mind, able to give meaningful consideration to all possible sentences. Because the factors to be considered include the circumstances of the offense, it is possible that, even though all of the crimes charged are connected with the bombing of the Murrah Building, the jury may find differences which would justify different sentences on different counts. If you decide that your findings apply to all 11 counts, you will complete and sign only Special Findings Form A. If you find -- if you decide that your findings are different for any or all of the counts, you will use Special Findings Form B and indicate the applicable counts in the space provided, as I will be explaining to you in more detail. Eleven of these B forms have been provided so that you may report findings separately as to each count.

Now, a copy of the indictment and the previous instructions given to you at the close of the trial will also be given to you for your reference in making your findings. You will also, as you did have at the trial stage -- you will have individual copies of these instructions.

As I have told you previously, you must decide whether the appropriate sentence for the defendant is: (1) death; (2) life in prison without possibility of release, or (3) some other lesser sentence to be decided by the Court. Your recommendation that the defendant be sentenced either to death or to life in prison without possibility of release will be binding on the Court and I will sentence the defendant according to your recommendation. In the event you choose the third option and recommend that the defendant receive some lesser sentence, I will impose a sentence other than death as authorized by law.

Before deciding on the appropriate punishment, you must consider additional information about the crimes and about

about

the uniqueness of the defendant as an individual human being. The parties have presented information pertaining to aggravating and mitigating factors at this sentencing hearing. The information you may consider also includes the evidence presented at trial. Thus, you may consider the testimony, exhibits and stipulations offered by both sides during the guilt phase, and the parties were not required to reoffer that evidence.

Based on your consideration of evidence presented at trial and the information presented at this sentencing hearing,

you must make a series of findings to guide you in arriving at a reasoned moral response to the defendant's crimes, background, character and circumstances of the offenses.

These findings are to be entered on the Special Findings Form.

Section I of the Special Findings Form asks you to decide what the evidence and information provided you -- to you at the trial and at the sentencing hearing proved as to the defendant's intentions. The Government has alleged that Timothy James McVeigh committed criminal acts with four types of intent:

(1) That the defendant intentionally killed the victims;

(2) That the defendant intentionally inflicted serious bodily injury that resulted in the death of the victims;

(3) That the defendant intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used against a person, and that the victims died as a result of that act;

(4) That the defendant intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than a participant in the offense, such that participation in the act constituted a reckless disregard for human life and the victims died as a direct result of the act.

There can be no sentence to death or imprisonment for life without release unless all of the jurors agree that the Government has proven at least one of these intentions beyond a reasonable doubt. You will recall that the instructions given at the close of the trial informed you that a reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act in the most important of his or her own affairs. When you have unanimously agreed on your answers to the first four questions, the foreperson will write "Yes" or "No" on the appropriate lines on Section I of the Special Findings Form for each of these four intent elements. If you answer "No" with respect to all four elements, then conclude your deliberations, sign the Certification in Section VI of the form, and advise the Court that you have reached a decision. If you answer "Yes" with respect to one or more of the

elements, then continue your deliberations and proceed to Section II of the form.

Section II of the Special Findings Form asks whether the Government has proved beyond a reasonable doubt four statutory aggravating factors. An "aggravating factor" is some circumstance that tends to support imposition of the death penalty. A statutory aggravating factor is one specifically prescribed by Congress. The Government has alleged four such statutory aggravating factors:

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

(2) That the defendant, in the commission of the offense(s), knowingly created a grave risk of death to one or more persons in addition to the victims of the offense(s);

(3) That the defendant committed the offense(s) after substantial planning and premeditation to cause the death of one or more persons and to commit an act of terrorism;

(4) That the defendant committed the offense(s) against one or more federal law enforcement officers because of their status as law enforcement officers.

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

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

That section, Title 18 United States Code Section 844(d), in pertinent part, provides that: "Whoever transports . . . in interstate . . . commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be guilty" of a federal felony. There are two essential elements to this crime. First, the defendant must knowingly and willfully have transported an explosive from one state to another. Second, the defendant must have done so with the knowledge or intent that the explosive would be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real property.

To act knowingly and willfully, a defendant must have been conscious and aware of his action, must have realized what he was doing, and must not have acted because of ignorance,

mistake or accident. The defendant must also be shown to have acted with a bad purpose or evil intent; that is, he must have transported the explosive with the knowledge or intent that it would be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property.

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

The second statutory aggravating factor alleged is that the defendant, in the commission of the offense(s) in the indictment, knowingly created a grave risk of death to one or more persons in addition to the dead victims of the offense(s).

This aggravating factor requires you to find that the defendant's conduct not only resulted in death but also posed a significant risk of death to other persons who were in close proximity to those who died in terms of time and location. The defendant must have acted knowingly in creating this grave risk of death to other persons, which means that he must have been conscious and aware of the grave risk of death, must have realized what he was doing, and must not have acted because of ignorance, mistake or accident.

The third statutory aggravating factor alleged is that the defendant committed the offense(s) after substantial planning and premeditation to cause the death of one or more persons and to commit an act of terrorism. Substantial means that the planning and premeditation must have been more than the minimum required for the commission of the offense(s). An "act of terrorism" means an activity that involves: (a) a violent act or an act dangerous to human life that violates federal law; and (b) appears to be intended to intimidate or coerce a civilian population or to influence the policy of a government by intimidation or coercion.

The fourth statutory aggravating factor alleged is that the defendant committed the offense(s) against one or more federal law enforcement officers because of their status as law enforcement officers. The Government must -- thus must prove beyond a reasonable doubt that the defendant intended to kill law enforcement officers because of their status as law

enforcement officers. This does not mean that the defendant must have intended to kill the particular law enforcement officers named in Counts Four through Eleven of the indictment.

What the Government must prove is that the defendant intended to kill federal law enforcement officers, and that this intent resulted in the murder of the federal law enforcement officers named in Counts Four through Eleven of the indictment, because of their status as law enforcement officers.

The Government must prove at least one of these statutory aggravating factors beyond a reasonable doubt. You should write "Yes" or "No" on the appropriate lines on Section II of the Special Findings Form to indicate your unanimous answers to the question of whether the Government proved the existence of each particular factor beyond a reasonable doubt. If you answer "No" with respect to all four factors, then conclude your deliberations, sign the Certification in Section VI of the form, and advise the Court that you've reached a decision. If you answer "Yes" with respect to one or more of these four factors, then continue your deliberations and proceed to Section III of the form.

Section III of the Special Findings Form asks you to find whether the Government has proved beyond a reasonable doubt three additional aggravating factors, called non-statutory aggravating factors, it has alleged. Again, an "aggravating factor" is some circumstance that tends to support imposition of the death penalty. A non-statutory aggravating factor is one that Congress has not specifically prescribed. The three non-statutory aggravating factors alleged are:

(1) That the offense(s) committed by the defendant resulted in the deaths of 168 persons;

(2) That, in committing the offense(s), the defendant caused serious physical and emotional injury, including maiming, disfigurement, and permanent disability, to numerous individuals;

(3) That, by committing the offense(s), the defendant caused severe injuries and losses suffered by the victims' families.

These non-statutory factors are self-explanatory and do not require further instruction. You should write "Yes" or "No" on the appropriate lines of Section III of the Special Findings Form for each of these three non-statutory aggravating factors, to indicate whether you unanimously find that the Government proved each factor beyond a reasonable doubt. Regardless of your findings as to any non-statutory aggravating factors, you should consider your -- continue your deliberations and proceed to Section IV.

Now, Section IV of the Special Findings Form asks you to find whether the defendant has proved any mitigating factors by a preponderance of the evidence. Mitigating factors are

by a preponderance of the evidence. Mitigating factors are not limited by statute. The law permits you to consider any relevant mitigating information presented by the defendant. "Relevant mitigating information" includes anything in the defendant's background, record, or character, or any circumstances of the offense, which suggests to you that a sentence other than death should be imposed. The defendant must prove the existence of mitigating factors by a preponderance of the evidence or information.

A "preponderance of the evidence" or information means an amount of evidence or information sufficient to persuade you that a contention is more likely true than not true or that a factor is more likely present than not present.

Not only is the burden of persuasion different for aggravating and mitigating factors, the unanimity requirement that exists for aggravating factors does not exist with respect to mitigating factors. Any one or more jurors may find the existence of a mitigating factor and may then consider that factor in weighing the aggravating and mitigating factors even though other jurors may not agree that the particular mitigating factor has been established. This weighing decision must be made by each juror giving individual consideration to the aggravating factors unanimously found by all of the jurors and such mitigating factors as may be found by each juror.

The defense has presented information about views and opinions that some people have expressed concerning federal law enforcement activities, including their perception of the events at Waco. You will recall that when that information was received, I said that it was admitted only for the limited purpose of explaining Timothy McVeigh's views, perceptions and beliefs for whatever consideration you may wish to give them with respect to the circumstances of the offense(s). You and you alone will determine whether that information has any relevance as mitigating factors to the -- to be considered in the weighing process. You are not here to determine what actually happened at Waco or to make your own evaluation of the Government's conduct in that or any other law enforcement activities.

After completing your findings as to the existence or absence of any aggravating or mitigating factors, you will then engage in a weighing process. In determining whether a sentence of death is appropriate, all of you must weigh any aggravating factors, statutory and non-statutory, that you unanimously found to exist and each of you must weigh any mitigating factors that you individually found to exist. The jury must determine if the proven aggravating factor or

factors

sufficiently outweigh any proven mitigating factor or factors to justify a sentence of death.

The process of weighing aggravating and mitigating factors is not a mechanical process. You should not simply count the number of aggravating and mitigating factors and decide which number is greater, but instead you should consider

the weight and value of each factor. Whatever findings you make with respect to aggravating and mitigating factors, a jury is never required to impose a death sentence.

Your role in this proceeding is to be the conscience of the community in making a moral judgment about the worth of a specific life balanced against the societal value of what the

Government contends to be -- or is the deserved punishment for these particular crimes. Your decision must be a reasoned one free from the influence of passion, prejudice or any other arbitrary factor.

After engaging in the process described above, the jury must record its moral judgment as to the appropriate sentence. The place for recording the sentence is Section V of the Special Findings Form. The jury must write in on the line one of three possible sentences: (1) "Death"; (2) "Life Imprisonment Without Possibility of Release"; or (3) "Some Other Lesser Sentence." Each member of the jury then should sign his or her name at the bottom of Section V.

The jury, in considering whether a sentence of death is justified, shall not consider the race, color, religious beliefs, national origin, or sex of the defendant or of any victim and the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime no matter what the race, color, religious beliefs, national origin, or sex of the defendant or of any victim may be. Section VI of the Special Findings Form contains the certification to this effect that must be signed by each juror.

Now, as I said, you will have the Special Findings Forms available to you; and of course, you will use them. And again, I'm providing a draft or a work copy form that may be used as you go through this process, so that you don't have the possibility of making a mistake in recording something and then having to scratch it out or something. So you have a work form.

Also, I mentioned to you in the instructions that you have two forms to work with. Special Findings Form A would be applicable if your findings apply to all 11 counts, so it says that. Special findings Form A: These findings apply to all 11 counts, if that be your decision. Then you simply use this form and go through and make the findings in accordance with

the instructions. And I believe that the questions are very clear here and do not require my repeating them again as I have in the instructions.

On the other hand, you have certainly the possibility that your findings will be separate according to different counts. And it is for that reason that you're being provided 11 Special Findings Forms B, so that with the possibility that your findings would be different as to each count, you may record them 11 times to the 11 counts.

And then for your convenience, it says, "These findings apply to the following counts," and repeats the counts of the indictment, Count One . . . and again reminding you what each count is. And of course, as I've already indicated, you will have a copy of the indictment as you did when you deliberated with respect to the guilt or innocence of each count, so that you can refer back to them. And again, a work copy has been provided for you.

Now, I must ask whether the people seated in the first 12 chairs who are also the people who decided -- deliberated and decided with respect to each of the counts of the indictment are now able to go forward and proceed to make the findings necessary to determine the sentence in this case.

Are there any among you who are unable to do that?

All right. Now, if you'll pardon me for just a moment, I'm going for ask counsel to approach the bench to take up a matter just very briefly with them before coming back to address you.

(At the bench:)

(Bench Conference 148B1 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: Let me just add one additional instruction, of course; and it's the same that I gave you when I instructed you with respect to the guilt or innocence decisions that you made before you deliberated; and that is counsel have commented in their closing arguments in this

sentencing phase with respect to the law. And what I would instruct you, if there appears to you to be any difference between any of the statements of counsel with respect to the law and that which I give you in these instructions, including these Special Findings Forms, you will be guided, of course, by my instructions and these forms.

Now, the 12 persons who deliberated in this case and who have indicated that they are ready, willing, and able to proceed to make the necessary findings here will do so.

The six of you who are alternates are now excused. And we're not going to have you stand by as we did the last time, because the deliberations now will be made by these 12 people.

I want to, before excusing you, of course, on behalf of all of us, thank you for your service; and I'm sure you had mixed emotions with respect to this and your participation in it. You have been with the deliberating jurors both before their decision and, of course, after, standing by, ready to be able to participate in this decision.

Under the law, the decision will be made by 12 people, and they are the 12 originally selected.

So once again, on behalf of all of us, I thank you for your participation in this case, ask you now to go to the jury room and pick up whatever you have there, and we'll take you to a different room, also provide you lunch, and ask of you that until these 12 people have reached their findings and made their decision, please continue to follow the cautions that I've given the jurors, all of you, at every recess. You can talk about the case among yourselves -- that changes -- but not with anybody else, until these findings are returned.

So our alternate jurors are now excused from the courtroom.

(Alternate jurors out at 12:13 p.m.)

THE COURT: Members of the jury, I didn't repeat this in the instructions; but I'm sure you understand that now, just

as when I instructed you before, you -- your deliberations are among the 12 of you. You're not to communicate with anyone, even to the Court, the status of your deliberations until you have answered the questions in accordance with the instructions and signed off on the form or forms.

And if you feel it necessary to communicate with the Court, again, you may do so in the same fashion as before. Do so by the submission of a written note which will be given to me and then which I will respond to. And, of course, with respect to any other needs that the jury may have, you can do as before the method of communication so that we can provide what you need.

Once again, do not indicate to anyone the status of your deliberations until they are completed.

Members of the jury, you will now retire to consider the questions before you in accordance with these instructions.

(Jury out at 12:14 p.m.)

THE COURT: As before, we will be -- ask counsel to be available no more than 10 minutes away; and also, if you haven't heard from us before 10 minutes before 5, be here at 10 minutes before 5.

With that, the Court will be in recess subject to call.

(Recess at 12:15 p.m.)

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REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 12th day of June, 1997.

Paul Zuckerman

Kara Spitler