

THE COURT: Immediately following the Government's?

MR. TIGAR: We're not going to reserve.

THE COURT: All right.

MR. TIGAR: Your Honor, there are two issues. One is this -- the videotape motion.

THE COURT: Yes.

MR. TIGAR: And a ruling on that would be helpful before opening statement, obviously, because --

THE COURT: The Government -- the videotape that the Government offered.

MR. TIGAR: Yes.

THE COURT: I reviewed that and I reviewed what was just filed this morning by the Government about possible redaction, and I'm going to exclude it in its entirety.

MR. TIGAR: Thank you, your Honor.

And then, your Honor, I would like to know the rules on exhibits in opening statement. We had understood no exhibits in opening statement and didn't bring any for that purpose, but I see that at least somebody thinks that --

THE COURT: Well, does the Government intend some opening statement -- exhibits in opening statement?

MR. RYAN: No, your Honor.

MR. TIGAR: Oh, well -- oh, then perhaps we could at some point move the television out of the way or --

THE COURT: Well, is it in the way?

MR. TIGAR: No. It's not in the way.

THE COURT: Okay.

MR. TIGAR: All right.

THE COURT: Then I think we're ready to proceed.

MR. TIGAR: We are.

THE COURT: Bring in the jury.

(Jury in at 8:47 p.m.)

PRELIMINARY JURY INSTRUCTIONS

THE COURT: Members of the jury, good morning.

Before we begin this penalty phase hearing, I want to give you a general overview of the purpose of this proceeding and what you may expect in the days ahead.

The 12 members of the jury who deliberated in this case found the defendant, Terry Lynn Nichols, guilty on the first count of the indictment, conspiracy. The federal statute found to be violated, which is 18 United States Code Section 2332(a), provides that a person who conspires to use a weapon of mass destruction against persons within the United States and property of the United States may, if death results, be punished by death, imprisonment for life, or for any term of years. The statute also provides that a sentence to death or for life imprisonment without possibility of parole can only be made by the jury.

The jury in this case also decided that Terry Lynn Nichols was not proved guilty beyond a reasonable doubt of the crimes charged in Counts 2 and 3 in the indictment and as to the eight counts of first-degree murder, found him guilty of the lesser included offense of involuntary manslaughter. The sentencing on the guilty verdicts on those eight counts of involuntary manslaughter is a matter to be determined by the Court.

Accordingly, what this hearing will be about is whether for the crime of conspiracy to use a weapon of mass destruction, Terry Lynn Nichols should be sentenced to death, to life imprisonment without any possibility of release, or to a lesser sentence to be determined by the Court.

Even though the jury has found Mr. Nichols guilty of a charge carrying the possibility of a death sentence, the law requires that you approach this sentencing proceeding with open minds and be able to give meaningful consideration to all of the possible sentences which again are death, life in prison without the possibility of ever being released, or any lesser sentence provided by law.

Before deciding on the appropriate punishment, you must consider additional information about the crime and about the uniqueness of the defendant as an individual human being.

The information you may consider includes the evidence presented at the trial. Thus, you may consider the testimony, the exhibits, and the stipulations offered by both sides during the guilt phase. And there will be no need for the parties to reoffer that evidence that is already before you.

The parties will also call witnesses and offer exhibits at this second hearing in an effort to prove aggravating and mitigating circumstances. The Government first will present information about aggravating circumstances which the Government lawyers believe will tend to support imposition of the death penalty. The defendant then will present information about mitigating circumstances, which the defense lawyers believe tend to support imposition of a sentence other than death.

I will instruct you in more detail at the close of this hearing regarding the questions you must answer based on all of the information which you will then have before you. Your initial responsibility will be to decide whether the Government proved beyond a reasonable doubt that the defendant acted with the requisite intention to cause death; that is,

that Terry Nichols intentionally participated in an act, contemplating that lives would be taken or intending that lethal force would be used and that victims died as a -- as a direct result, or that he intentionally and specifically engaged in an act of violence knowing that the act created a grave risk of death to the people in the Murrah Building, and his participation constituted a reckless disregard for human life and that victims died as a direct result of the act.

If you make these findings, you must then consider whether the Government has proved beyond a reasonable doubt additional aggravating factors called "non-statutory aggravating factors" as alleged. In addition to a statutory aggravating factor -- and these will be detailed for you in the instructions that will be given at the end of the hearing, but I'm just now giving you a general overview of the purpose of the hearing, as I've said.

And then, each juror, during deliberations here, individually must consider whether the defendant has proved any mitigating factors by a preponderance of the evidence. Mitigating factors may include relatively minor participation

mitigating factors may include remorse, minor participation in the offense and information about personal traits, character, and background of Mr. Nichols.

The jury must ultimately determine whether the proven aggravating factor or factors sufficiently outweigh any proven mitigating factor or factors to justify a sentence of death. The weighing of aggravating and mitigating factors is not a mechanical process. The jury should not simply count the number of aggravating factors and mitigating factors and decide which number is greater, but instead, must consider the weight and value of each factor. Whatever findings you make with respect to aggravating and mitigating factors, the jury is never required to impose a sentence of death.

The jury's 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 a deserved punishment for a particular crime. The jury's decision must be a reasoned one, free from the influence of passion, prejudice, or any other arbitrary factor.

As in the guilt phase of the trial, there will be four steps in this sentencing hearing:

First, counsel for the Government will make an opening statement. Counsel for the defendant will then make an opening statement.

Second, the parties will present information beginning with the Government, and then the defendant, and finally, the Government again in rebuttal if it wishes.

The third stage or phase will be counsel for the Government and the defendant will make closing arguments, just as they did during the trial, beginning with the Government and then defense counsel and then Government's counsel again in rebuttal.

And fourth and finally, I will instruct you in detail more fully on the controlling law.

Now, once again, just as it was true during the trial and throughout the trial, you must keep open minds and wait until you've heard it all before making any individual decisions and before discussing the question of punishment with any other jurors.

Of course, the jury will be limited to considering what you see and hear in this courtroom. But you won't have now the same type of objections being made by lawyers with respect to certain rules of evidence as, for example, hearsay. Hearsay, within limits, can be considered in this information. It -- and we refer to it now as "information" rather than "evidence" because this is a different type of hearing. We're at a sentencing hearing, and the rules, so to speak, that I will be applying are a bit different. There will be, however, other objections and rulings made with respect to what is appropriate for you to hear and consider.

Of course, the fundamental rule is that the jury must fairly and impartially consider what they have heard, both at trial and during this phase, and follow the law in making a decision.

Now, we're going forward, of course, operating on the assumption, as we have throughout the trial and continue, that

whenever -- if it should happen that a juror does encounter something outside of the evidence and now the information that will be presented, you'll let me know about it; or if you have had any contacts inadvertently or otherwise with anyone in any manner affecting your role as a juror in this case, you'll let me know about that.

As I said, we'll continue during this phase, as we did during the trial, of asking you to simply give me a note -- don't discuss it with other jurors -- but give me a note whenever that should occur. And of course, I remind you if it has occurred, you've been away from the courtroom for a few days -- and any time, you know, if it should occur, that you've had contact with anybody or anybody's attempted to contact you or you've inadvertently come across something relating to the case or the subject matter of it, you let me know about it by giving me a note, as I say, as to what occurred and without discussing it with other jurors.

So, members of the jury, we're prepared now to proceed with this hearing; and as I indicated in this overview that I've just given to you, the first phase or stage is opening statements from both sides in the case. And we'll begin with the Government and Mr. Ryan.

OPENING STATEMENT

MR. RYAN: Thank you, your Honor.

Good morning. I know you each got a late start on the holiday season, but I hope you had a joyous last three or four days.

MR. TIGAR: I object to the greeting, your Honor.

MR. RYAN: May --

THE COURT: Overruled.

MR. RYAN: May it please the Court. Mr. Tigar, Mr. Woods, my colleagues, members of the jury.

The morning of Wednesday, April 19, 1995, in Oklahoma City began just like every other morning. The men, women, and children of the city got up, showered, had breakfast, and said goodbye to their families. 168 of those people said goodbye for the last time.

On April 19, Helena Garrett got up at 6:00 that morning to get ready for work. She had to be at the Journal Record Building by 8:00. She got her son, Tevin, up. Tevin was 16 months old. And he came into the bathroom with her, as he always did; and he pulled on the curlers that she had on the dresser and they tumbled to the floor and they laughed. And she told him to go wake up his sister, Sharonda, who was five. And he went in as he always did, grabbed a plastic vase, and bopped her on the head. She wasn't angry. He did that every morning.

Helena came in, found Tevin, tossed him up in the air.

You know the sort of way that playful parents have with children they love. She was running late and told Sharonda that she might have to take Sharonda to the Murrah day-care center with Tevin. Otherwise, she might be late for work.

Sharonda said no, she had kindergarten practice for their graduation that morning. She had to go to her kindergarten practice.

They left home about 7:15, and Helena dropped Sharonda off at kindergarten and arrived in downtown Oklahoma City at 7:45. Helena decided to park in the two-hour parking space at the Murrah Building so that she wouldn't be late for work. She intended to come back about 9:00 to move her car to her regular parking space and say hello to Tevin. She walked Tevin to the second floor of the Murrah Building, rang the doorbell. Nobody came. Finally, Aaron Coverdale, a five-year-old there at the day care, opened the door, and Helena saw why one of the workers had not come to open the door. Wanda Howell was over with Baylee Almon on a changing table, changing Baylee's diapers, and didn't want to leave Baylee for fear she might fall from the table.

Helena got ready to leave, and Tevin started to cry. You know the way children cry when they get ready to leave their -- their mothers. But Aaron Coverdale and Elijah Coverdale, two brothers, came over and they patted Tevin on the back to comfort him, to console him. Helena felt better, and she left to go to work.

She worked till a little before 9 at the Journal Record building; and at that time, a thunderous explosion ripped through Oklahoma City. She screamed and she called for her friend, Deborah. Deborah came. They clasped hands, and they waited, waited for the deafening roar to stop. Ceiling tiles were falling, debris was falling. They crawled and climbed out of the building. Deborah was worried about her child, Kendra, who was at YMCA day care. They ran to the YMCA building, and they saw a man on the grass in front of the YMCA. They told him it was all right. The children were alive. And Helena turned to Deborah and said, "See Deborah, I told you Kendra would be okay."

And at that moment, Helena Garrett turned, and through the billowing smoke of the Murrah Building, she saw that gaping hole and the whole scene that each of you have seen. And you've heard the rest. You've heard how she ran to the building, she tried to get up into the building, she stopped the rescue workers who were carrying babies from the building and she told them to sweep the sidewalk clean of glass because she didn't want the dead babies to be laid down on broken glass.

The worst fear of any mother became Helena Garrett's reality: Her baby was dead.

This is one story of 168 stories.

I'm the United States Attorney in Oklahoma City where this crime occurred. Together with my fellow prosecutors, it is my privilege to talk to you today, my duty to prepare you to receive the information that you're about to receive over the next few days, information that will be difficult for us to present, information that will be painful for you to hear. But it is our duty to ensure that you're fully informed with respect to the death, the devastation, the destruction that occurred in Oklahoma City following this conspiracy

occurred in Oklahoma City following this conspiracy.

And it is your duty to be fully informed before you make a sentencing decision.

No decision could be more important than the one we ask you to make, and we would not ask you to do that without all of the facts.

At the beginning of this trial, you each took an oath to begin each phase of this trial with an open mind. You've done that with respect to the guilt phase. You've listened to that evidence. You've rendered your verdict.

And by your verdict, you found beyond a reasonable doubt that this defendant, Terry Nichols, one, knowingly and deliberately conspired to use a weapon of mass destruction against the Alfred P. Murrah Building and the persons inside.

Two, you found that the death of persons was a foreseeable result of this conspiracy.

And three, you found that this crime resulted in death.

Each of you, no doubt, felt somewhat differently about the evidence. Some of you may have felt stronger than others with respect to the proof the Government presented in this case. But one thing is clear, each of you agreed, all 12, that Terry Nichols conspired to commit this crime, this act of terrorism.

Now we ask you to once again approach this sentencing phase with an open mind, to not make any decisions about what the punishment should be until you've heard all the facts. That was the pledge you made to Judge Matsch and to the lawyers when you were selected as jurors in this case. You said you would be open in the event a defendant was convicted of a capital crime to both life or death and that you would await making that decision till all the evidence was in.

At the outset, you should understand one important point: We present this evidence to you not to evoke your sympathy. These victims in Oklahoma City have had all the sympathy they can stand for the last two-and-a-half years. We present this evidence so that you will be informed, so you will have the facts necessary to make an appropriate sentencing decision.

On April 19, 1995, this nation stood in shock and disbelief at what had occurred. We had heard of terrorism. It had happened elsewhere in the world. But who could plan an attack on secretaries, on engineers, on bank teller -- credit union tellers and yes, even babies. We know now, you've spoken. Terry Nichols and Tim McVeigh could plan such an attack. And on April 19th, and the five-and-a-half weeks that followed, these facts emerged from Oklahoma City: 168 people died. 19 of those were children. 15 were in the day-care center, and four were visitors of the Murrah Building. 163 of those 168 were people who were inside the Murrah building at the time of the explosion. Two died in the Water Resources Building, Trudy Rigney and Bob Chipman. One died in the Athenian Building almost directly across from the Murrah Building, Anita Hightower. One lady, Kathy Ridley, died as she was walking across the parking lot in front of the Murrah Building. And one nurse died, Rebecca Anderson, who was trying to assist in the recovery of bodies.

351 people were treated in area hospitals. 158

people

were treated by private physicians, and thousands of people sought and received emotional counseling as a result of this tragedy. And the surgeries and the therapy and the treatment goes on as I speak to you this morning.

This act of terrorism killed a cross section of American people. It made no distinctions for race, for sex, or for age. 125 Caucasians died. 34 African-Americans died. Five Hispanic-Americans died. Two Asian-Americans died. One Pacific Islander died. One Native American died. 94 women died. 64 men died, men or boys. And the ages ranged from four months to 73 years. 99 of those who died were federal workers. 69 were not.

In this case, in this sentencing phase, we'll present no post-mortem photographs, no autopsy photographs, no photographs of dead bodies on slabs at medical examiners' offices. We want you to make this sentencing decision based on the cold, hard facts of what happened, on the aggravating factors that we will present to you and the crime that was committed.

There are special circumstances in cases in which the death penalty may be sought. His Honor talked to you about that this morning. At the outset, there is a threshold question you must answer as to the defendant's intent. The Court has spoken to you about that this morning. The first requirement is that the United States prove beyond a reasonable doubt that Terry Nichols entered into this conspiracy to bomb the Murrah Building, the people inside it, with the kind of intent that permits the death penalty to be imposed under our system of justice in the United States.

By your verdict, you have found he knowingly and deliberately participated in this conspiracy to use a weapon of mass destruction against the Murrah Building and the people inside. You have found that death was foreseeable, and you found that death resulted.

The primary focus of this hearing will be on the aggravating factors and the mitigating factors that his Honor spoke to you about just moments ago.

The Court and the law will provide you with a framework, a structure, a format of sorts to help guide you and assist you in reaching a sentencing verdict, and these are these matters and factors in aggravation and mitigation. You will not be left alone in the process. Indeed, the Court will provide you with detailed questions that you must answer at the conclusion of this hearing that you, as a body of 12, must resolve. The Court will provide you instructions with respect to the burdens of proof that apply.

You're not alone.

However, the law does not define to you what weight you should give any particular factor. You may find after you listen to the evidence that some factors deserve little, if any, weight; other factors deserve a great deal of weight, and yet some, tons of weight. That decision is yours. In the end, you'll be asked to balance these aggravating factors and mitigating factors and return a sentencing verdict as the moral

conscience of the community.

American citizens like you should make this decision, for only you can be the moral conscience of a community.

I'm going to spend the remainder of my time with you this morning talking about seven aggravating factors that the United States will urge require a sentence of death.

Many months before this trial began, the United States provided a list of these factors to defense counsel, factors the United States would rely upon in the event that you, the jury, returned a verdict of guilty as to one or more death penalty counts.

The first factor is that this conspiracy, this act of terrorism, involved substantial planning and premeditation.

The second factor is that the deaths or injuries to the people in the Murrah Building occurred as the result of the interstate transportation of explosives in interstate commerce and that that was part of the conspiracy.

The third factor is that the defendant committed the offenses against one or more public servants who were law enforcement officers because of their status as law enforcement officers.

The fourth aggravating factor is that the defendant, in conspiring to bomb the Murrah Building, used a weapon of mass destruction, creating a grave risk of death to others, to people in addition to the 168 people who died.

The fifth aggravating factor is that this conspiracy caused serious physical and permanent emotional and physical injuries, including maiming, disfigurement, and permanent disability to a number of people.

The sixth factor is that this conspiracy resulted in the deaths of 168 people.

The seventh factor is what we call "victim impact evidence." This is evidence concerning the effect of this crime upon the many families of the 168 people who died.

We will present this testimony through approximately 60 witnesses and five videotapes. This will take about three days.

For the past seven weeks, you've heard quite a bit of evidence already in this case. Some of it relates to these aggravating factors. But we will not attempt to reprove that evidence. We know you recall it. And you heard his Honor say this morning that you could consider the evidence you've already heard as evidence establishing these factors.

I will start with the first factor of substantial planning and premeditation. Over the past seven weeks, you heard a great deal about planning and premeditation. You've heard it in bits and pieces. But taken together, it tells you something of the fabric of the person who planned this crime. Frequently, crimes are committed with little or no thought, seconds of premeditation, sometimes even in the heat of passion. Not this crime. This crime was the result of months of preparation and thought.

Many aliases, purchases of ammonium nitrate, renting storage sheds in aliases, making phone calls to rent sheds, to -- to purchase nitromethane, to buy ammonium nitrate, to obtain barrels. You've heard it all. For days and days and weeks and weeks and months and months this defendant went down

weeks and weeks and months and months, this defendant went down that road of destruction and chose deliberately to conspire to blow up this building. And you've even heard the date that was selected, April 19, "Liberty Day," the two-year anniversary of the tragedy at Waco.

Terry Nichols made a conscience decision each step of the way, conversation after conversation, purchase after purchase, telephone call after telephone call, even down to the lies he told his wife, Marife, on Easter Sunday, three days before the bombing.

This aggravation factor of substantial planning and premeditation has already been proven.

MR. TIGAR: Your Honor, I object -- I object to that, and I ask to approach the bench, your Honor.

THE COURT: All right. You may approach the bench.

(At the bench:)

(Bench Conference 144B1 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: Members of the jury, let me just say here -- and of course, again, there are going to be disputes and disagreements among counsel about what is appropriate in this proceeding; and in part, these disagreements may relate to the law which I will instruct you on in considerable detail at the end of the hearing, as I've already said.

In part, also, interpretations about what the jury's verdict means. I will instruct you with respect to that, as well, but the 12 persons who decided the verdicts in this case know well what it is that the jury relied upon in the evidence. And when Mr. Ryan is speaking of premeditation here with respect to an aggravating factor relating to the conspiracy count, that must be distinguished from the Court's instructions about premeditation with respect to first-degree murder which was involved as an element of the first-degree murder charge in the eight counts on which this jury found the defendant not guilty of premeditated first-degree murder.

So, you know, during the course of this hearing, there are going to be things said and done where some people may have an interpretation about what your thinking has been. We can't ask you and it would be wholly inappropriate for us to ask you to explain your verdict. Your verdict is your verdict; and as I said when I received your verdict, only you, the 12 jurors

who deliberated in this case, know the details of your collective decision.

So when lawyers in the case refer to what you have found or not found, you are the ones who will tell us in final decision with respect to the questions to be asked of you what you've found, both with respect to your previous verdict and now whatever you may find with respect to the questions that will be put to you at the close of this hearing.

So I just want to emphasize that none of us here -- Mr. Ryan, or the other prosecutors or defense counsel or me -- can interpret your verdict in any way different from your verdict. That's your folks' decision. So when references may be made in the course of argument or opening statement about what you did or didn't find, please understand that these are not efforts to try to talk you into or out of anything that you've already found. Your findings are yours, and we don't ask you to explain them.

MR. RYAN: Thank you, your Honor.

THE COURT: Please proceed.

MR. RYAN: At the conclusion of this phase of the trial, the United States will ask that you find that this conspiracy was a result of substantial planning and premeditation.

The second aggravating factor that I want to talk to you about this morning is that the defendant, in conspiring with Tim McVeigh, also committed the crime under 18 United States Code Section 844(d) of transporting explosives in interstate commerce, and these explosives were later used to make a truck bomb. Again, you heard the evidence. You heard the evidence of the burglary at the Martin Marietta quarry. You heard about transporting those explosives to Kingman, Arizona, where they were stored in a storage shed. You heard about the purchase of nitromethane in Texas. You heard about purchases of ammonium nitrate in Kansas. And you know that those components were used to create a truck bomb. You know what "interstate commerce" means. His Honor will instruct you on it. It simply means crossing state lines with these explosives. We will ask that this second aggravating factor be found by you beyond a reasonable doubt.

The third factor involves the defendant's conspiring against law enforcement officers because of their status as public servants. You know that Tim McVeigh and Terry Nichols were upset about what federal law enforcement officers or what they perceived federal law enforcement officers had done at Waco, Texas. The focus of their conspiracy to bomb the Murrah Building was to avenge the deaths of those at Waco through a terrorist attack on federal law enforcement.

And as you know, there were eight federal law enforcement officers in the Murrah Building, and I know you recall their names because you found that the defendant had committed manslaughter with respect to each of those officers: Cindy Campbell-Brown, Mickey Maroney, Don Leonard, Alan Whicher, Kenny McCullough, Paul Broxterman, Claude Medearis, Paul Ice.

Cindy Campbell-Brown was a new Secret Service agent. She was 27 years old. 40 days before the Murrah Building, she

was married to Ron Brown, a Secret Service agent she had met in her training class. He was stationed in Arizona. Ten days before April 19, she had last seen her dad, Gary Campbell. He had come up from Sherman, Texas, to see her office. She was proud of her office. She was proud of what she was doing, and she was proud of the people she worked with and she expressed that to her father.

When the bomb went off and they saw the images in Arizona and Texas, what had happened in Oklahoma City, they began to wait. Waiting was one thing these families of these law enforcement officers all had in common. They had waited all -- all of them had waited many, many nights because their loved ones were out on dangerous assignments. Some -- one of them had been shot. All of them had been scared. And all of their families had waited. But Ron Brown and Gary Campbell did not have long to wait on Cindy Campbell-Brown, because she was on the ninth floor of the building and she was the very first person to be identified by the state medical examiner's office of the 168 victims.

Rescuers and firemen will come into this court and they will tell you about the recovery of the bodies, about the conditions they worked in, and they will tell you what happened when that building exploded and floors pancaked one on top of the other, crushing these bodies. And you will come to realize why it is that people on the ninth floor were among the first to be identified, because only the roof of the building fell on them.

And that is true for four other law enforcement officers, as well. In total, five of these officers were on the ninth floor.

Mickey Maroney and his wife, Robbie, lived in Oklahoma City. He had gone to school in Arkansas. His wife, Robbie, worked at a medical clinic, McBride Medical Clinic, about a mile from the Murrah Building. When she heard the explosion, she immediately ran towards the smoke, and in arriving at the building, she looked up and she saw the very same picture that you've seen, that north face of the Murrah Building, and she knew there was very little chance her husband would return home alive, and she was right.

Two days later, Secret Service officers came to her home and notified her that Mickey was dead. He was the 14th victim of the 168 to be removed from the building and identified by the medical examiner's office.

The third Secret Service agent that died was Alan Whicher. Alan and his wife, Pam, had recently moved to Oklahoma City. Alan had a distinguished career with Secret Service. He had protected the president, Margaret Thatcher, Prince Charles, even the Pope.

When he went through his Secret Service training class many years before the Oklahoma City bombing, he met a friend, Steve Colo, and they entered into a pact because they knew they were entering upon a dangerous line of work. And their pact was that if anything should happen to one of them, the other would be there for the family.

And at 11:00 on the night of April 19, Steve Colo

showed up on the doorstep of Pam Whicher, and he waited with her and her family as they sought in vain to get information about Alan's whereabouts and what had happened to him.

Alan was recovered and identified on April 21st. He was the 26th victim of the 168 to be identified.

The fourth Secret Service agent was Don Leonard. Don Leonard had had a long career with Secret Service. He had been on protection details for seven different presidents of this nation. His wife, Diane, will come before you and she'll testify in this case and she will tell you about the many, many times that she worried about Don, the assignments that he had overseas sometimes he couldn't talk to her about. She will tell you the one time she never worried about him was when he went to work at the Murrah Building.

She talked to him on the night of April 18th. She was in Tulsa. She worked as a sales representative. She called him that night as she always did when she was out of town.

The next day, on the 19th, she was working. She did not find out about what had happened till 2:00 that afternoon, and the people she was with knew but didn't want to tell her. But they did.

She got in her car and sped to Oklahoma City. She turned on the radio, desperately seeking information. What she heard dealt with the fact that they needed body bags in Oklahoma City.

When she got to Oklahoma City, she immediately went downtown, trying to find her husband. She went to area hospitals. She scanned the list they had posted of the injured, hoping to find Don's name. It wasn't there.

Finally, two days later, the "suits," as her kids called it -- the "suits" walked down her driveway and she knew what news they had brought. Don Leonard was dead.

He was the 30th victim out of 168 to be identified.

The fifth officer was Kenny McCullough, Drug Enforcement agent. He went to Texas A & M. He and his wife and their children lived in Oklahoma City. He had previously worked with the Defense Investigative Service, then gone to work for Drug Enforcement Administration. His wife was teaching school at the time of the bombing. She immediately turned on a television, saw what had happened, realized that her husband probably would not return.

And sure enough, three days later, DEA agents brought his badge and wallet to her. He was the 32d victim to be identified of 168.

The sixth officer was Paul Ice, an officer with U.S. Customs. Paul grew up in a town outside Oklahoma City called Midwest City. He was the middle son of Jack and Neva Ice. After high school, he went into the Marine Corps where he served on active duty and reserves for 20 years, retiring as a lieutenant colonel. He went to work for the United States Customs. He too had been on many dangerous assignments. When his family found out what happened on April 19th, they came to the city, they talked to Priscilla Salyer (sic). Priscilla Salyer was his secretary. And she told them that on the morning of the 19th at 9:00, she was face to face with Paul Ice. And when the explosion erupted, he disappeared and she

100. And when the explosion erupted, he disappeared and she

fell several floors into the rubble where she was buried for hours. She told the family after rescuers had dug her out that she never saw Paul again, never heard his voice, never felt his touch.

Paul Ice's family waited eight days for news of Paul Ice. He was the 94th victim of 164 -- 68 to be identified because he was on the fifth floor.

Claude Medearis was the seventh officer who died. Claude graduated from high school down in Colorado Springs. Like Paul, he went into the military. They worked together in Customs, Paul Ice and Claude Medearis. He worked border patrol for U.S. Customs in Texas. Until the end of Desert Storm when his oldest daughter Kathy's husband died on the last day of Desert Storm, he decided and demanded that he be brought to Oklahoma City with U.S. Customs so he could be close to his daughter to help her through this difficult time.

On the morning of the 19th, Claude Medearis told his family that he had to go to the Murrah Building but only briefly because he had an appointment over in El Reno, Oklahoma, in a federal prison that morning. So when his family heard about the news of the Murrah Building at 9:00, they hoped and they prayed that he had left the building and gotten out on his way to his appointment. He hadn't.

They waited. They waited for ten days for news. Claude Medearis was the 109th victim out of 168 victims to be identified.

The eighth victim was Paul Broxterman with the Inspector General's office with Housing and Urban Development. To search back in time to the first day of this trial when you heard the testimony of Susan Hunt, Susan was that very tall lady who was the office manager for HUD. And she told you that their offices in the Murrah Building were on the 7th and 8th floors with one exception. Paul Broxterman. Because of his job with Inspector General, he was separated from the rest of the offices. He was on the 4th floor. He had been assigned to Oklahoma City for three days. On the morning of the 19th, Susan told you that he was there in the supply room, getting supplies needed for a trial that he had to testify in.

Paul Broxterman's family waited 13 days. Paul Broxterman was the 134th victim of 168 to be identified by the medical examiner's office.

These eight officers are the reason Terry Nichols and Tim McVeigh selected the Murrah Building as the object of their conspiracy, and this object of the conspiracy was met. Those eight people died. 160 other people also died, but the object of the conspiracy was met, and we will ask that you find that aggravating factor has been proven beyond a reasonable doubt.

The fourth aggravating factor is that the defendant, in conspiring with Timothy McVeigh to use a weapon of mass destruction against the Murrah Building and the people inside, created a grave risk of death to others besides these 168 we've been talking about.

Just as Terry Nichols planned, he was safely at home on the morning of April 19th as Tim McVeigh drove his truck east on 5th Street towards the Murrah Building. Another

witness you may remember from the very beginning of the trial was Richard Nichols. Richard Nichols was the maintenance man at the Regency Tower apartments about a block and a half west of the Murrah Building on 5th Street. You may recall that his wife drove her small Ford, red Ford Fiesta to the Murrah Building with her nephew Chad. Chad had a doctor's appointment that morning. And you may recall seeing on the video footage Mrs. Richard Nichols walking into the building and Mr. Richard Nichols coming out of the building.

And as they reached the car, fortunately, their nephew Chad was moving from the front seat to the back seat. As Richard Nichols looked up, and saw this whirling axle coming towards him and his family, it hit dead center on the red Ford Fiesta.

All three of those people were under a grave risk of death. Fortunately, they survived.

You'll recall as the Ryder truck passed by the Water Resources Building, Terry Nichols was home safe in Herington. But you recall who was inside that building. Lou Klaver came and testified before you. She was the lawyer who was taping the meeting of the water rights hearing on the north side of the building. You heard the tape. You heard the frightened voices. People clamoring to get out of the building. All 65 people in that building were exposed to the grave risk of death. Two died. Bob Chipman and Trudy Rigney.

As the truck passed the Athenian Building, Terry Nichols was home in Herington, safe, just the way he planned it. But Anita Hightower was in that building, along with four others. Anita Hightower is the lady you recall who Helena Garrett told you about when she testified, her friend, the one she had run into in front of the Murrah Building and they talked to Tevin Garrett through the glass windows. Anita Hightower was crushed to death when the Athenian Building collapsed. All five people in that building were exposed to the grave risk of death by this conspiracy. One died. Four lived.

When that truck, this weapon of mass destruction, was pulled in front of the Murrah Building, dozens of people were waiting for services of Social Security at 9:00. You remember the list Eric McKisick brought you, showed the list of some of the people who had appointments that morning. Five of them were older, married couples, waiting for their days of retirement. All five of those couples died. The Hurlburts, Jean and Charles; Fritzlars, Mary Anne and Don, Donald; the Treanors, Gean and LaRue -- Luther, I mean. Excuse me. The Lusters, Donna and Robert; and the Battles, Peola and Calvin. They all died. All of these visitors who were on the other side of that glass wall were exposed to the grave risk of death. Most of them died, but not all.

As Mr. McVeigh got out of his truck, the children were playing in the day care; and you know from the testimony of Helena Garrett, their pictures were on the wall, the glass wall. The cribs were against the wall. It could be seen from the street, the very same street that Terry Nichols had driven down three days before. At 9:02, Royia Sims, a lady who worked

in the Journal Record Building, was in her office. Her office faced the window of the Murrah Building, plate glass window. And as the bomb exploded, that plate glass window rocketed to her face in shards and broken pieces. You will witness the results. There were 303 people in that Journal Record Building. All were exposed to the grave risk of death.

Kathy Ridley was walking across the parking lot, that parking lot that the defense spent so much time on with the victims. Terry Nichols did not know that Kathy Ridley would be walking across that parking lot at 9:02 Wednesday morning, but he knew that with 4,000 pounds of ammonium nitrate, a bomb of that size, anyone who was outside that truck bomb would be burned to death by the blast and the fires that crossed the street, and Kathy Ridley was. Everyone on the streets in downtown Oklahoma City, in the vicinity of the Murrah Building were exposed to the grave risk of death.

Directly ahead of the Ryder truck was the YMCA building. It's a building where people were working, exercising, where children were attending day care. You may remember at the beginning of this trial, a video you saw of children. Well, those were the children of the YMCA, frightened, blood-stained. They all lived. But all were exposed to the grave risk of death while Terry Nichols was safe at home in Herington.

Marine Captain Randy Norfleet will testify in this case. He will tell you that he was assigned to the Stillwater, Oklahoma, office. He had been to a prayer breakfast that morning. And he went to the Murrah Building just moments before 9:00, went up to the 6th floor, and there, he saw Sergeant Ben Davis. Sergeant Davis was awaiting on news as to whether he had been accepted to officer's candidate school. He was excited. Captain Norfleet walked away. The bomb erupted.

Sergeant Davis died. Randy Norfleet lived. Blinded in one eye, but he lived.

Matt Cooper, you remember him, the Marine captain who testified in this case. He told you his office faced the north wall of the Murrah Building. That moments before 9:00, he had gotten up to go talk to another Marine in the south part of the building.

Captain Randolph Guzman went and sat in his chair. When the bomb exploded, Captain Cooper lived. Captain Guzman died. Death was random at Oklahoma City on April 19th.

The indictment and the charges in this case listed only 160 people as dying in the Murrah Building. You may be wondering about what I've said. Why did I say 163? At the time this indictment was brought in August of 1995, it was thought that 160 people died in the Murrah Building. But subsequent to that, three people who were thought to have died elsewhere, in fact, died inside the Murrah Building: Raymond Johnson, Kathy Cregan and Charlotte Thomas. There were, however, 361 people in the Murrah Building, as I may have mentioned earlier. 163 died, 198 lived. Sue Mallonee, the state epidemiologist, a person who studies injuries, injury prevention, conducted a study following this bombing. She determined these numbers and she will testify to you in this proceeding by way of videotape.

proceeding by way of videotape.

And at the conclusion of this evidence, we will ask you to find beyond a reasonable doubt that this conspiracy to use a weapon of mass destruction against the Murrah Building and the people inside created a grave risk of death to many, many people; not just 168 who died.

The fifth aggravating factor is that serious and permanent injuries occurred to numerous people in Oklahoma City. Of course, we will not bring you all of the people who were severely injured. We will only bring a few because we want you to have some understanding, some glimpse of what happened to so many, many people.

One of the victims who was so seriously injured was Daina Bradley. Daina Bradley was a young woman who went to Social Security that morning with her mother, with her sister, and with her two children. When the firemen and the rescuers went into the building to find those that had been trapped, they found Daina Bradley in a small cave inside the bowels of the building.

Americans have always been heroic. But never more so or rarely more so than on April 19th. The rescuers called Dr. Andy Sullivan, an orthopedic surgeon in Oklahoma City, to come down to the building. A building that was still smoking, smoldering and shuddering.

And Andy Sullivan will testify in this case and he will tell you what it was like to go into that building. He was scared. They were all scared. He will tell you about crawling into a very small space and lying on top of Daina Bradley because the rescuers couldn't get her out. Thousands and thousands of pounds of concrete had fallen on her leg. He will tell you about laying on top of her because there was not room to do anything else, about sawing her leg off in that building, and about removing her that day.

Her mother died. Both her children died. And her sister was very seriously injured, as, of course, was Daina.

Daina is but one story. There were many men and women panicked and trapped in that building. Some died of suffocation and injuries before the rescuers could get to them, all a result of this conspiracy.

21 children left the safety of their parents' arms that morning to go to day-care. 15 died. Six lived. Chris Nguyen lived. Joe Webber lived. Rebecca Denney lived. Brandon Denney lived. Nekia McCloud lived. P. J. Allen lived. But that's it. We will not bring these children in here. Again, we don't want sympathy.

We'll bring a videotape of these children so that you can see the serious and permanent, long-lasting injuries these children suffered: Brandon Denney, a child who had a ceiling tile pierce his skull and embed deep into his brain; seven brain surgeries. And you will -- you will see him with his therapist, Michelle Kirby, as he tries to do things with his dominant arm that he can't use very well. You'll see how he walks.

You will see a video of P. J. Allen, a young boy who was severely burned, who underwent excruciating skin-grafting. You will see as he attempts to breathe and he rasps through his

tracheostomy.

You will see Nekia McCloud and you will hear the testimony of her physician, Dr. Morris Gessouroun, as he tells you about the profound and permanent and severe brain damage. And you will see her -- you'll see her frustration as she tries to follow the simplest of commands.

When you've heard this evidence, you'll be satisfied that the people of Oklahoma City suffered numerous physical, serious injuries.

The sixth factor is that multiple deaths occurred as a result of the defendants' conspiracy. The death of 168 people. It would be tempting for you to think of this as one mass murder. Don't.

These are 168 people that are all unique. They are all different. They all had families and friends. They are as different as everyone in this courtroom. They went to church. They coached Little League. They designed highways. They watched their children dance. They helped to prevent disease. They played with their kids on the bed. They nursed the sick. They enforced our nation's laws. They had unique smiles and ways of greeting people at the credit union. They knew how to run machines and keep buildings going. They knew how to nurse the sick. They helped people obtain Social Security. They protected presidents. They protected popes. And they all brought enjoyment and love to others.

The evidence will be that these 168 people all died a violent and frightening death. They were mangled. They were crushed. And they were degraded in their death. Many were amputated. Some decapitated. When we've concluded, you will be satisfied that this aggravating factor has been met.

The seventh aggravating and last factor is that the crime, this crime of conspiracy, had a severe impact on many, many people. You will only have a glimpse of the devastation, of the broken dreams, the lost lives. We're not going to bring all the relatives into this courtroom. My gosh, they wouldn't fit in this whole courthouse. We'll bring you some mothers and some fathers, some brothers and sisters and sons and daughters. We'll ask as they testify, please recall and remember while you're listening to this mother, there are many, many other mothers who won't be here.

Diane Leonard will testify. She will tell you about her husband Donald. She'll tell you about his career. She'll tell you about her sons. She'll tell you about the impact of his death on her and her children. The defendant's conspiracy resulted in the death of many husbands.

Greg Sohn will tell you about his wife, Vicky, and the five kids that lived in their house, kids from each of their former marriages. He will tell you about the impact of his wife's death on him. The defendant's conspiracy resulted in the deaths of many wives.

Carl Brown will testify to you about his son -- his grandson, Anthony, one of the children at the day-care center. He will tell you about Anthony, things he enjoyed to do, what he was like, the impact of Anthony's death on him. This conspiracy resulted in the death of many grandchildren.

Glenn Westberry will testify. He will testify about the death of his father, Robert. Robert had many grandchildren, among them greats. And he will testify to you about the fact and the impact of the death of a grandfather on grandchildren. This conspiracy resulted in the deaths of many grandparents.

Lynn Gist's sister, Karen, died. Lynn will come before you. She will testify there were five girls in the family, and Lynn will testify from her perspective about what it's like to lose a sister. This conspiracy resulted in the death of many sisters.

Kay Ice will testify about the death of her brother, Paul, and the impact of that death upon her, how close they were. This conspiracy resulted in the deaths of many brothers.

Mike Lenz's wife, Carrie died. Carrie worked for the DEA. On the morning of the 19th, she was up there on the 9th floor. She was showing the ultrasound film of her pregnancy to her co-workers. Mike will tell you about the impact of that, loss of his wife and the loss of an unborn child. This conspiracy resulted in the death of three unborn children.

Todd McCarthy's father, Jim, died. Jim worked for the Housing and Urban Development. On Easter Sunday, Todd had come from Kansas City to see his dad. His dad was very proud. He had recently been promoted. His dad took Todd down to the Murrah Building that Easter Sunday to show him his office. And Todd was very proud for his father. It was the same Sunday Terry Nichols was in Oklahoma City with Tim McVeigh. Todd will tell you about the impact of losing a father. This conspiracy resulted in the deaths of many fathers.

Clint Seidl's mother died, Kathy. She worked at Secret Service. Everyone at Secret Service died. Clint's dad Glenn, will be here to testify. He will talk to you about the death of Kathy from the standpoint of his son, Clint. This conspiracy resulted in the deaths of many mothers.

Kathleen Treanor's daughter, Ashley, died. Ashley had gone down with her grandparents, the Treanors, to the building that morning. Kathleen will tell you what it's like to lose a daughter and the impact of that upon her. This conspiracy resulted in the deaths of many daughters.

Laura Kennedy will testify. She lost her son, Blake. She will tell you what it's like to lose a son. She will tell you about the impact of that upon her. This conspiracy resulted in the deaths of many sons.

19 of those sons and daughters were under the age of six: Baylee Almon, Danielle Bell, Zachary Chavez, Anthony Cooper, Antonio Cooper, Aaron Coverdale, Elijah Coverdale, Jaci Rae Coyne, Tyler Eaves, Tevin Garrett, Kevin Gottshall, Blake Kennedy, Dominique London, Chase Smith, Colton Smith, Gabreon Bruce, Peachlyn Bradley, Kayla Titsworth, Ashley Eckles.

After you've heard this evidence, you'll be satisfied beyond a reasonable doubt that the victims of this crime were greatly impacted.

Ladies and gentlemen, at the end of this case, after you've heard all the evidence, you and you alone will have to

make a sentencing decision. We ask that you return a verdict of death. The punishment that fits this crime.

Thank you.

THE COURT: Members of the jury, we'll take our morning recess before hearing from counsel for the defense and of course, you're going to hear me again repeat as I did throughout the course of the trial the caution that throughout all of these recesses, you must avoid discussion of the case. Once again, I remind you of your obligation under oath to wait until you've heard it all and to avoid the temptation to discuss what you hear and what now you're being told that you can expect to hear. Wait until you have heard it all, and of course, wait until you've heard what I have to tell you about the manner in which you approach this information and evidence before making a decision because the instructions that will be given here, just as the instructions that will be -- that were given at the end of the trial on the issue of guilt or nonguilt or -- were part of your constructions, so too, will that be now in connection with the decisions to be made here.

And again, of course, you've heard counsel for the Government outline what kinds of testimony you're going to be hearing in the course of this. And necessarily, there will be emotion involved in that the kinds of testimony that will be presented to you involve people who have, you know, experienced emotional responses to this. And what you're going to have to do is separate out the emotion that will be present and that will be present in you as you hear this type of testimony, remembering that at the end, you'll be asked to make a rational, reasoned, and informed decision based on the law and the evidence and the information provided and that a part of your obligation as jurors is to distance yourself in part from the emotive aspects of this and look at it in a rational and reasoned way.

And of course, during the time of this and all recesses, you will again avoid anything at all outside of the evidence and information to be presented to you and that has been presented to you so that you can decide on the basis of what you see and hear in this courtroom and not on anything else. So we're going to excuse you now for our usual 20-minute recess.

(Jury out at 10:09 a.m.)

MR. TIGAR: May we approach, your Honor?

THE COURT: Yes.

(At the bench:)

(Bench Conference 144B2 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: We'll be in recess, 20 minutes.

(Recess at 10:12 a.m.)

(Reconvened at 10:32 a.m.)

THE COURT: Please be seated.

(Jury in at 10:32 a.m.)

THE COURT: Members of the jury, we'll hear now an opening statement from defense.

Mr. Tigar . . .

OPENING STATEMENT

MR. TIGAR: Good morning, members of the jury.

I want to outline the procedure that we expect is going to be followed in this case. And I want to begin by saying that it is my duty as a lawyer to accept your verdict; that is, 30 years ago or however long it was, 32, I guess, I took an oath. And it was that I would accept all results reached by fair process, even if I didn't agree with parts of the result.

And that more than that, of course, it's the law; that is to say, as his Honor has said and we expect will say again, nobody can challenge your verdict. Not only that, but I don't know that there is anybody in the world except you, the 12 who deliberated, who knows exactly the basis of what you decided.

The Judge's instructions gave you a lot of options. The Judge's instructions had different theories on which you might proceed, and all we know is what you stood in court and announced. And as I say, we accept it. We accept all of it. And I hope that nothing that I say will be seen by you as an attempt to get you to go back on it or to take it back or to, you know -- to impose on you some other way of seeing it. We heard the verdict read out.

And I can interpret the guilty on Count 1, not guilty on Count 2, not guilty on Count 3, a finding that there was proof that death resulted, a finding that the death was foreseeable, and then on Counts 4 through 11, a not guilty on first-degree murder, a not guilty on second degree murder and guilties on involuntary manslaughter. I could interpret those. But it's not my job to do it. Other lawyers can interpret those. It's not their job to do it. Indeed, they don't have the right to do it.

And so we start from that verdict and we try to look at a process that's going to go on here for the next few days -- not long; for the next few days. And it's like the old "God grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference."

Well, it's also clear, I think, what we want; that is to say the lawyers at this table: They want 12 of you, all 12 -- it takes 12 -- to sign a paper that says that some morning or afternoon somebody should get Terry Nichols and kill him.

We say that there are lots of reasons why all 12 of you should not sign such a paper.

Everybody who sits here as a juror was asked more questions than I think you were comfortable with about the idea of what would happen if you got to where we are right now; that is to say, what is the role of the possibility of a death sentence, the possibility of a life sentence without possibility of parole, the idea of judge-sentencing within the

guidelines -- you know, what are these -- what are these options and what do they mean to folks?

And everybody took an oath, an oath that said that no matter what we came in here with that we'd accept what the rules are. And the rules are that contrary to what you might believe, no jury that is ever faced with a sentencing decision of the kind that you are is supposed to figure if the punishment fits the crime. Indeed, I thought that was one of the most basic things that we all talked about when we were here asking questions; that is to say, the sentencing decision, whether made by a judge or made by a jury, in our country always, always, always relies on the fact that there is going to be evidence about what happened in the world -- that is to say that a terrible and tragic and horrible thing happened, and then about the defendant's role in that, what it was exactly, what the defendant's mental state was with respect to it, and then beyond that about this person here as an individual human being, over and above everything else that happened, and then finally, where the options are, what they are here; that there would be this conscience of the community, that reasoned moral response which is an extra thing, a set of circumstances that sometimes doesn't arise or at least not quite in the same way when a judge is using some guidelines that are written by administrators based on what Congress did.

So that's what we're going to talk about, and it's larger than the evidence of what happened on April 19, 1995.

The procedure that we're going to follow here is in three stages, and the Judge has alluded to them; and if anything I say is at variance with what the Judge says the instructions are, then, of course, you know who to credit. I'm just going to describe in general what the stages are.

First, the jury will consider what Mr. Nichols' intent was. And unless all 12 believe that the Government has proved beyond a reasonable doubt one of two intents, then the matter goes back to the Judge to sentence in accordance with the guidelines.

Then the jury in its deliberations looks at four statutory aggravating circumstances. Again, the Government must prove these beyond a reasonable doubt, at least one of them. And unless at least one of them is proved to the satisfaction of 12, deliberations are over.

Only if those two hurdles are met by the Government's proof would the jury get into the weighing of aggravating factors; that is, consider additional aggravating factors and then mitigating factors presented by the defense.

And then in that third stage, if you got there, you would do this weighing process, remembering as the Judge said this morning that no matter how you weighed, a sentence of death is never required.

Well, if that's the way that the jury's deliberations are going to be, it's difficult for me to talk about the evidence. And I suggest to you it may be difficult for you all to compartmentalize the evidence as it comes in.

Much of the evidence about the devastation that was wrought, about the harm that was done, about the impact on families, is not evidence that relates to the first two phases.

It would come in, much of it, only if you got to the third phase; and yet you're going to hear it now before you ever start with Phase 1.

Well, I'll share with you what I'm worried about, about that: I think I said in opening statement that we know there is not a joy the world can give like that it takes away. We know that the evidence that's going to come from that witness stand will be the evidence of people who have lost a great deal, and they have feelings of great sadness about that. Some of them have feelings of anger about that. Of course, their anger, if they have it and if you catch it, if you catch hold of it, is not a legitimate concern or something to influence a decision when you get to the end; but we will all be sad and we will all be angered -- angry, perhaps at the end. We'll all see that evidence of devastation. Some of it you've already seen, but I tell you that what you are about to see is to a geometric degree, it's exponentially, it's so much greater in impact than what you've already seen that it is impossible to describe. Only perhaps some of us had life experiences in which we've gone to scenes like this, but I tell you that this evidence is affecting.

For example, Carl Brown who was mentioned: He's the father of Dana Cooper. He's the grandfather of Anthony Christopher Cooper II. Now, both of them were killed in the bombing. Dana was director of the day-care center, and her son Christopher attended the day care. And so that grandfather is going to testify.

You may hear in the Government's case from a medical officer from the Oklahoma Medical Examiner's office talking about the process of recovering the victims and attempting to deal with the -- those who were injured and get them out and getting the victims out and getting them identified.

You may hear from the parents of Lakesha Levy. Ms. Levy was killed in the bombing, and they had to suffer additional trauma because of a problem in the way that the evidence was handled at the scene. Their daughter's body was exhumed and reexamined afterwards. I mean just a horrible set of personal circumstances.

And that's just a couple of examples, three examples of what the evidence is going to be.

As I say, I won't attempt to describe it for you; but it will be affecting.

What are we going to do about that? Well, I've already made one objection this morning. I don't intend, and none of us here, none of the lawyers for Terry Nichols, intend to make a lot of objections or to do behavior that is more appropriate to "L.A. Law" than to a courtroom, but it is a fact that even though the rules of evidence are different at this phase of the proceeding, there are -- there is a lot of difficult case law out there, a lot of difficult legal rules; and where we feel it's appropriate to make a dignified objection, we intend to do it. Why? Because if we didn't make an objection and if for some reason there was a valid legal point, it's our obligation -- we'd be defaulting on our obligation, and I hope you understand that. We'll do that in a dignified way.

Are we going to cross-examine? I don't think so. We

ARE WE GOING TO CROSS EXAMINE: I DON'T THINK SO. WE may have a question or two for this witness or that about something unrelated to the grief that they have or the things that they suffered; but somehow it seems to us that to intrude upon the stories that these folks want to tell you by cross-examining them is inappropriate. It doesn't add anything. It doesn't prove anything. There is nothing that we have extra to bring out. If there should be an exception to that, it may just be a question or two.

We don't want to quarrel with anybody who has lost so much. Certainly our doing that wouldn't help to heal.

We do hope that those that come before you who disagree with your verdict to the extent that that may be relevant in assessing what their feelings are that they're relating to you will say so.

Now, let's look at these phases that I talked about and look at the evidence. The first phase, as I say, deals with this question of intent. The Government must prove to you beyond a reasonable doubt that Mr. Nichols 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 the victims died as a result of it.

Now, I could sit here with the Judge's instructions -- and indeed I spent some of the time over the early part of the holidays doing it -- trying to figure out where does that fit. Well, you'll know.

You can consider, by the way, all evidence that you've heard up to now in reaching any decision that you make. In other words, we're not going to retry that part of the case;

and one reason is well, you already decided. But the Government has to prove that to you beyond a reasonable doubt.

Alternatively, you could -- they would ask you to find that the defendant -- that's Terry Nichols -- 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.

So the Judge will instruct you on these things, but that will be the first thing you'll consider: Did the Government prove that beyond a reasonable doubt? Unless all 12 are in accord, as I say, then it goes back to the Judge.

Then if you get past that hurdle, if the Government has satisfied you, then you get to these evidence that -- these elements Government counsel was talking about. One of the four, beyond a reasonable doubt, the Government has to show it to you:

That Mr. Nichols committed the offense after substantial planning and premeditation to commit an act of terrorism. Well, when we argue this at the end, we're going to argue the evidence of intent in much the same way that we did in arguing at the close of the other phase of the trial. We're going to be looking at this same issue, the mental state.

Then the second one is the Government alleges that the

deaths or injuries resulting in death occurred during the commission of an offense, and the offense is transportation of explosives in interstate commerce. Well, that's an example of where I don't know that there will be any evidence about that in addition to what you already heard, because what's the transportation? The prosecutor said that at least they're going to rely on two instances, one the transportation to Arizona and the other nitromethane.

Well, so you'll hear -- here comes Michael Fortier again, because it's Michael Fortier -- is the one that says that he saw all of that. And we'll be arguing again or talking again about the believability of Michael Fortier and whether that's enough to sustain a Government burden beyond a reasonable doubt.

The alternative is nitromethane. And you'll recall that the person who sold the nitromethane couldn't identify the truck by year or age or anything -- it was just a pickup truck with a camper -- and said that the purchaser certainly was not Terry Nichols but was a man who looked like a possum. We'll be talking about that at the end.

The third one of these is that the defendant committed the offense against one or more federal law enforcement officers because of such victims' status as federal law enforcement officers. You returned verdicts with respect to the eight law enforcement officers. And I'm not going to argue with you about what that did or didn't mean. You considered that question, and now you will look at whether the Government has proved beyond a reasonable doubt some such desire to act against law enforcement officers.

And the final one was that the defendant knowingly created a grave risk of death. Well, the prosecutor talked about the grave risk of death. There is no question that when this bomb went off there was a grave risk of death to a large number of people other than those who actually died.

The knowingly element of the offense is going to be before you to consider.

So that -- that's the second part. They've got to prove one of those beyond a reasonable doubt to you; and as I say, the Judge will instruct you.

Then finally, if you got there, if you got past that, then you would consider the other three aggravating factors: 168 people, causing serious emotional injury, caused injury and loss to -- suffered by the victims' families. That's when that evidence would become relevant; and at that point, then you'd also consider in addition to whether or not the Government had established that beyond a reasonable doubt -- you'd take a look at Terry Nichols, the human being. And in addition to the items that are referred to by Government counsel, there are certain things that the law permits us to bring forward to you and to present evidence about, things about the circumstances of the offense and things about the circumstances of Terry Nichols.

And of course, we'll do that. For example, we will present evidence that Mr. Nichols' participation in the offense was relatively minor -- relative compared to others. That's

something the law looks at in attempting to make sure that sentencing decisions are made in a fair way, in a way that is some kind of distributive justice. That's something that isn't going to take a lot of evidence but certainly it will be there for your consideration.

Then we're going to present evidence that others who were equally culpable will not be punished by death. And you'll look at the circumstances. You'll ask yourself whether other people who had a same or similar degree of involvement are going to receive death penalty. And there, we'll ask you to look at such things as the treatment afforded Michael Fortier or other people that the Government hasn't even bothered to look for.

We're going to ask you to look at Mr. Nichols' mental state, whether or not somebody was attempting to coerce him to act in certain ways. We're going to ask you to look at the fact, of course, of no prior criminal record.

But beyond those things, we want to present to you a picture of a person who -- whose life pattern is inconsistent -- inconsistent with what? Inconsistent with the first decision that you are required to make; that is to say, with respect to an intent actually to take a life -- so that will factor in there, too -- inconsistent with the aggravating factors that the Government has talked about but also inconsistent with the qualities that would say that he is beyond redemption in the sense that you will be required to consider.

It's very interesting: We're not going to relitigate what you've seen before; that is to say, we're not going to go back over all the evidence about what happened in the past and Lana Padilla talked about that, or the evidence that happened in the past about what Mrs. Nichols, Marife Nichols talked about. We're going to focus on examples, events, in Terry Nichols' life that give you a glimpse into who he is.

What happened after he was arrested? It was nearly a year before he was permitted to touch his children; that is to say, there were regulations that said that he had -- there had to be a glass wall. And so how did he keep in touch with his children during that time? How did he reach out to them? What sorts of human characteristics did he display towards them? And you'll see that.

My describing it isn't going to help you understand or see what it is. You'll see it. You'll see the fact that yes, he's been in custody, he was denied bail, which meant that there are certain things that were denied him such as sharp objects like pencils and pens and so how he would fashion cards to send his children using little colored toothpaste to make the designs in the corners and how finally when contact visits, as they're called, were allowed he would welcome his children in and try to meet with them under circumstances that were as normal as possible; the younger children, to work with them with flash cards and to work with them to be as much of a father to them under these circumstances as he could; how he tried to keep in touch with Josh, his son, to talk to him on the phone, to write him letters to provide guidance; how he reached out to his family, to his sister, to his brothers, to

reached out to his family, to his sister, to his brothers, to his mother and father, in all of this how he used his creativity to benefit these people in his family and to bring to them whatever it was that could make up for the fact that he was in the circumstance that he is.

You're going to hear a little more about what I said in opening statement, what we had evidence about before; that is to say, this extraordinary dedication to the well-being of his children. You'll recall that when Mr. Nichols went into the Army, he did so because he had been having marital difficulty with then Mrs. Nichols, now Lana Padilla, and that they had a young son, Josh. And it wasn't very long after he went in that he found that Josh was for all intents and purposes not being taken care of. So he went and got Josh and was raising him as a single parent, hired somebody to take care of him when he was off on the post; and finally at the urging of his superiors in the Army obtained a honorable discharge so that he could continue to care for Josh and that when he returned to Michigan to care for Josh, he found that Lana's sons by a former marriage needed care, also; so he started raising them.

You'll find that in his community, growing up, he reached out to help a number of people and was active in doing things, not just what you'd expect in farm country but well beyond that.

In short, members of the jury, we're going to present a picture of Terry Nichols, the human being. And when you've heard that evidence, we're going to ask you to do a number of things. First is to consider it with respect to that first group of questions that you'll have; that is to say that you may think it unlikely that he would have formed that specific intent to kill. And when you do that, of course, you will reflect on the meaning of the verdict that you've already rendered that we're not going to argue with you about and we trust that nobody else will try to.

Second, we'll ask to you look at that with respect to the intent elements that must be proved with respect to those aggravating factors; that is, the fact that what happened was severe and devastated a lot of people is of course not enough. The Government has this extra burden with respect to intent.

And finally, should you get there, what we'll suggest to you is that the death penalty in this case is not a reasoned moral response to what the evidence shows has occurred here. And I'm not going to try to anticipate the sorts of arguments that we will make at the end. I can promise you this: Nobody can educate you, nobody can try to convince you as to what your morals ought to be. That's not -- that isn't contemplated by the rules. When reasoned moral response is spoken of, it is really a handing over to you to reach very deep inside yourself to a place that you may not have visited before and to ask yourself as the conscience of the community what's required.

We submit that if you get there that it will be appropriate for you -- it will be appropriate for you -- and that's the most I can say -- to choose life.

THE COURT: Members of the jury, you've now heard the opening statements from both sides, and we're ready to proceed to take the testimony and consider the other information to be

offered.

I do want to introduce to you at this time an additional attorney for the Government who will be participating in this presentation, Mr. Randal Sengel, who is here now at the back table, who was not with us during the trial of the evidence in the case but will participate now in the presentation of the Government's information in this phase. Mr. Sengel is an assistant to Mr. Ryan in the Western District of Oklahoma in the United States Attorney's office.

So we're ready, then, for the first witness by the Government.

MR. MACKEY: Thank you, your Honor. We'll begin by calling Ms. Laura Kennedy. Mr. Ryan will present.

THE COURT: All right.

THE COURTROOM DEPUTY: Would you raise your right hand, please.

(Laura Kennedy affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please. Would you state your full name for the record and spell your last name.

THE WITNESS: Laura C. Kennedy, K-E-N-N-E-D-Y.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Ryan.

MR. RYAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. RYAN:

Q. Good morning, Mrs. Kennedy.

A. Good morning.

Q. Tell the jury where you live.

A. I live near Amber, Oklahoma.

Q. And where is Amber?

A. It's about 40 miles from Oklahoma City.

Q. Where were you born and raised?

Laura Kennedy - Direct

A. Verden, Oklahoma.

Q. What size community is Verden?

A. Pretty small.

Q. Are you married?

A. Yes.

Q. When were you married?

A. June 15, 1991.

Q. Do you have children?

A. Yes.

Q. What is your child's name?

A. Blake Ryan Kennedy.

Q. And when was Blake born?

A. October 10, 1993.

Q. He died in the Murrah Building?

A. Yes.

Q. What was his age at the time of his death?

A. He was 18 months old.

Q. Are you currently employed?

A. Yes.

Q. Where do you work?

A. I work for Southern Plains Medical Center in Chickasha, Oklahoma.

Q. What do you do there?

A. I'm a payroll clerk.

Q. And your husband? What is his name?

Laura Kennedy - Direct

A. Steve.

Q. What does Steve do?

A. He is a hired hand for a farmer near Amber.

Q. What is your education?

A. After I finished high school, I went to Southwestern Oklahoma State University, and I graduated with a B.S. in accounting.

Q. Let's talk about April of 1995. Would you tell the jury where you worked at that time.

A. I was working on the 3d floor for the United States Department of Health and Human Services, Office of Inspector General, Office of Audit; and I was an auditor.

Q. 3d floor of the Murrah Building?

A. 3d floor, yes.

Q. And what was Blake doing during the days in April, 1995?

A. He was in the day care on the 2d floor.

Q. And he was attending the day-care center?

A. Yes.

Q. When did he start attending day care?

A. He started attending that day care as soon as I went back to work after having him. He was six weeks old.

Q. So he had been there for approximately how long?

A. From 6 weeks to 18 months.

Q. So 14 1/2 months or so?

A. Yeah.

Laura Kennedy - Direct

Q. Now, tell the jury a little bit about Blake, his personality, what he was like.

A. Blake was a really outgoing, friendly, bubbly personality, really friendly, always saying hi to people and laughing and playing and just a really good kid.

Q. Did people in the Murrah Building know him?

A. Yes.

Q. How is that?

A. Even before Blake was born and I worked in the Murrah Building, everybody in the building just kind of always watched the kids. There was a playground at the back of the building and where my office was, it overlooked the playground; so we kind of watched them out there on the playground. And I know that other people in the building seen him on holidays and just out there on the playground, just different places. Everybody in the building knew a lot of the kids.

MR. RYAN: Okay. Let's see Exhibit 1477, which is

already admitted in evidence.

As I understood, these photographs were agreed to between counsel. I'll let Mr. Mackey speak to that.

THE COURT: I don't think they were formally admitted. That is the point being raised by the clerk.

MR. MACKEY: I should report that we have a foundational agreement with counsel; that photographs depicting those deceased or injured will be offered in this manner.

Laura Kennedy - Direct

THE COURT: I think we can proceed simply to offer them.

MR. TIGAR: Yes, your Honor. We certainly have no objection about foundation. We would like them shown one at a time so that we can keep track.

MR. RYAN: I will offer Exhibit 1477.

MR. TIGAR: And we have no objection.

THE COURT: It is received and may be displayed.

BY MR. RYAN:

Q. If you would, Mrs. Kennedy, tell us about this photograph.

A. That's a picture of my husband, Steve, and myself and Blake.

Q. And how old is Blake at the time of this photograph?

A. At the time of that photo, he was 5 1/2 months.

Q. All right. Now, let's turn to April 19; and if you would, tell us when you got up and what you did that morning before going to the Murrah Building.

A. Okay. We probably got up about 6 or so and got around there. We live near Amber, so it takes us about, with rush hour traffic -- it would take us about an hour to get downtown to the Murrah Building. So, you know, we get up, get dressed, get around. I always tried to get Blake up last thing and just get him up and change his clothes.

They fed him breakfast at the day care, so he didn't eat breakfast with us; so I just tried to get him up last

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unless he woke up on his own.

And we drove to Oklahoma City. Blake was tired that day. We'd had a busy week. Easter had been that Sunday, and we just were busy out there at home on the farm and we were kind of busy that time of year. We were having some baby lambs; and he was tired, so he slept that morning, which was a little unusual. Since he had gotten older, he usually stayed awake during the drive, but he did sleep --

Q. Was Steve with you on the drive?

A. Yes. Steve was driving.

Q. About what time did you arrive downtown?

A. About 8, 8:05.

Q. And was Steve driving?

A. Yes, Steve was driving. He was -- he usually dropped me and Blake off there in front of the building and then he went on to work. He worked at T-40 and Agnew, which was a little

ON TO WORK. HE WORKED AT 1 TO AND AHEAD, WHICH WAS A LITTLE
ways drive. So -- and then he'd come back and get us. It --
just because of our work schedule, it was better if he dropped
us off.

Q. Is that what he did that morning?

A. Yes.

Q. Did he tell Blake good-bye?

A. Yes. Blake woke up when we got there, and we stood there
on the sidewalk and Steve did like he did most mornings. He
said bye to Blake and tried to get Blake to wave and say bye or

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whatever. And he just -- Blake didn't say anything. He just
kind of stared at him.

Q. Now, did you go up to the day-care center at that time?

A. Yes. I went in the front doors and went up the stairs to
the day care on the second floor.

Q. Tell us about that.

A. They had a door there that you had to ring a buzzer so
somebody could come get you and let you in, so I did that.

And Wanda Howell, one of the day-care workers there,
came to the door and let me and Blake in; and as soon as Blake
seen her, he just got to bouncing in my arms, he was so
excited. He always -- as soon as he seen one of those
teachers, he knew that he was going to day care and how much
fun he had there; and she let us in, and we followed her into
the big room there.

I put Blake down on the floor, set him down on the
floor; and I went into another room that was his area and put
up his -- his diaper bag. And I came back through that big
room; and Wanda had put Blake in a highchair, and she was
trying to get him to say bye to me or whatever.

And Colton Smith said something to me -- something to
me; and most of the kids, several of the other kids were there
because it was, you know, most of the time -- most of them were
there at that time and they were all sitting around a big
table. They were getting ready to eat breakfast.

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Q. Is that -- and is that when you left?

A. Yeah. I -- I -- I told Blake I'd see him later and left,
and I signed him -- you had to like sign him in; and I signed
him in on my way out. And there was a clock right there, and
it was 8:05.

Q. Is that the last time you saw Blake?

A. Yes.

Q. All right. You went to work there, I guess, on the 3d
floor that morning?

A. Yes, went up the stairs to the 3d floor.

Q. Tell us about 9:00.

A. I went into our office. We have -- we had a break room,
and then two auditors had offices and the rest of us were out
there and had cubicles out there; and I went into my cubicle

and was sitting down and doing some work, doing some paperwork. I had been back from an audit. I had been out in the field doing an audit a couple weeks before that and was wrapping up some paperwork.

Q. What happened?

A. I was stamping some papers. I was stamping some papers, and that's about the last thing I remember till after the bombing.

Q. What's your next recollection?

A. My next recollection is I opened my eyes and it was blurry. I closed my eyes again and I opened them again, and everything

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was in such a mess. There was stuff scattered everywhere. There was just this white, dusty stuff all over everything. Nothing looked like it did. I -- my desk, my walls around my cubicle -- I mean none of that stuff was there. Nothing looked like it -- like it did before.

And I started trying to kind of stand up, and I had some stuff on top of my legs, and I tried to pull my legs out; and I could tell that I didn't have on one of my shoes, and I was kneeling for it, but I couldn't see it because my legs were under some stuff and I couldn't find my shoe, but I managed to get my legs pulled out.

And my boss, Jim Hargrove -- he seen me and he started yelling at me, asking me if I was okay.

And then --

Q. Could you see to the outside?

A. We could see in three -- I never looked like back into the building, but we could see in three directions sky, blue sky in three directions.

Q. All right.

A. We did have windows to the back of the building, but I could see in three directions sky.

Q. Who else was there?

A. Carol Clear, Ginger Addison, Jamie Radacy, Sam Patterson, and Michael Reyes.

Q. Was Michael Reyes assigned to the 3d floor of the Murrah

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Building?

A. No. I didn't know who he was or where he came from. He was just kind of there with the rest of us. We didn't know who he was or where he came from.

Q. Did you subsequently find out that he had fallen from the 7th floor?

A. Later I found out that he had worked on the 7th floor and apparently had fallen to our floor.

Q. Okay. Were you able to get out of the building?

A. Yes. We all started yelling at each other, and we were all

basically okay. Michael had quite a bit of blood especially on the back of his shirt. But he didn't act like he was in any really great pain. He just seemed to be, I guess, in shock. We were all kind of in shock and didn't know what had happened.

And there at the back of the building, where our office was more towards the back of the building, where our windows were, there is kind of a ledge down. When you go in the back of the building, you were already on the 2d floor, so there is kind of a little ledge from the 3d down there to the plaza, and we basically slid down that ledge to get out.

Q. Were you injured?

A. I -- at the time, I really didn't think I was or know I was; but later on in the day, my back got to hurting really bad and I had a blue spot on my cheekbone that was a slightly cracked cheekbone. And then as we were getting out, I did cut

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my hand on the glass, on the window.

Q. Now, when you got out of the building, what was your first thought?

A. Well, as soon as I opened my eyes that first time, you know, I thought about Blake, you know. Basically with me being on the 3d floor and him being on the 2d floor, I was, you know, kind of above him; and I thought that maybe what I was walking around on up there was our floor, was his ceiling; and I thought maybe stuff hadn't fallen down on him, but I wanted to see him. I mean I was concerned about him; and I said his name, you know, two or three times up there to my co-workers.

Q. What did you do when you got outside about Blake?

A. I got down on the plaza; and I only had one shoe, and it was completely covered in pieces of glass. And I couldn't hardly get around with just one shoe, but I hobbled around; and I was at the back of the building, the back doors, and a woman come up to me and I told her that my son was in the day care and I needed to check on him.

And she asked me if I believed in God.

And I said yes, and so we said a prayer.

And she told me that she thought the kids had already gotten out.

And I saw a couple GSA workers there at the back -- back door; and I thought maybe that they had just gotten the kids out or were fixing to get the kids out, because I know

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that everybody in the building thought the kids were pretty special and that, you know, they would always be first.

Q. So what did you do?

A. A man come up to me and that woman and said that I couldn't stay there, I needed to go down to the sidewalk; that I couldn't stay up there.

And so I didn't -- I argued a little but not a whole lot, and I went down to the sidewalk.

Q. Did you find Steve?

Q. Did you find Steve?

A. Down on the sidewalk, I saw my other co-workers; and we were hugging each other. And there was a lot of people down

there on the sidewalk. There was already policemen down there. It was just so chaotic. There were so many people down there; and as I was standing there with them and basically telling them, you know, I don't know anything about Blake, they won't tell me where Blake is. And I looked across the street and Steve, my husband, was running across the street.

Q. Once you met up with Steve, what did you do?

A. Well, I mean, basically, I told him that I didn't know -- they wouldn't tell me where Blake was, and that's all I kept saying: They won't tell me where Blake is. And we decided to try to ask somebody, try to find out where they were. And we had trouble getting across certain streets. They -- the police had certain streets blocked off. Certain alleyways were blocked off, and we just walked and walked and walked and

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walked down there. And they would say that the kids are over here on this corner; and we'd walk over to that corner, and those were the kids that had come out of the YMCA. And you know, those aren't the day-care kids that were in the Murrah Building. Those are the YMCA kids. And we just walked and walked.

And finally, we walked to a parking lot that we were told was some sort of command center. And there we saw Melva Noakes, who was the day-care director, and I didn't know she wasn't in the building; and she said she wasn't in the building and she didn't know anything about the kids.

And we saw Jim and Claudia Denney, who have two kids in the day care, and they didn't really know anything, either.

And somebody there told us that they were taking the kids to Red Cross.

Q. Let me stop you there for one moment. From the time you left that building until the time you went to the Red Cross, did it ever cross your mind those children were still in the building?

A. No, not really. No.

Q. All right. You went to the Red Cross building?

A. Yes. We were with Jim and Claudia over there in the Red Cross. They had an automobile that was parked in front of the IRS building where Claudia worked, and Steve was parked pretty far away; so we rode with them over there to the Red Cross.

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When we got to Red Cross, there was a line of people to donate blood; and it was a very busy place, Red Cross was. They took some -- we filled out a missing persons report, and then they took us upstairs to the 2d floor, whatever that there were some kids up there; and when we got up there, they were kids from the YMCA that their parents did not find them downtown and they

had brought them there.

And we finally realized that's what we'd been told all day, was people had always told us about the YMCA kids and not the Murrah Building kids. People were confused.

Q. Okay. Did you get information there while you were there at the Red Cross about the day-care kids at the Murrah Building?

A. They started taking some descriptions and taking some pictures. There was quite a few of the family -- families there, quite a few of the other parents were there up in that -- on that 2d floor.

And so somehow they were faxing -- somehow they were getting those descriptions to the hospitals, and the hospitals were faxing lists of people that had been admitted to the emergency rooms, which seems kind of silly because those kids couldn't have gave their names at the hospital; but I mean, if that was all the hope you had at that point, you know, you were going to look at those lists and see.

Q. Did Mr. and Mrs. Denney receive some information while you

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were at the Red Cross?

A. Yes. There was some TVs that were on; and a report came over the TV of a red-headed little girl in surgery, and that was their daughter, Rebecca.

Q. And did they leave?

A. One of -- they were there with one of Jim's sons, and I believe that he stayed and they went, I think, was how it worked.

Q. Who else was there? Was Mrs. Chavez there?

A. Yes, the Chavezes were there, the Gottshalls were there.

Q. Did Mrs. Chavez receive some information while you were at Red Cross?

A. Later on in the day, a TV was on and the TV report come over that some children had died. And then it finally hit me and I started crying, and I said, "It's not Blake, it's not Blake."

And later on in the day, we were just all kind of sitting. A lot of people left, and we were just all kind of sitting there waiting, hoping. And some friend came, some -- he was like a county deputy came by and told Zackary Chavez's mom -- he asked her -- I couldn't see her, but I could hear her. He asked her what specifically Zackary was wearing.

And she described what he was wearing.

And I didn't hear what he told her then, but she started screaming that she wished she was dead; and I knew that

Laura Kennedy - Direct

he had told her that he had found Zackary and that he was dead.

Q. Did you ever receive any information about Blake that evening?

A. No. I stayed there at the Red Cross till very late. A lot

of Steve and my family members had come up there, and they convinced me that they would stay there at the Red Cross and that I should go over to the hospital. My whole cheek was swollen.

Q. Did you go?

A. And I went over to Presbyterian to the emergency room.

Q. And what did you do after Presbyterian?

A. Came back to Red Cross, and then we finally decided to leave. They talked about putting us up in a hotel, but we decided to leave and spend the night with my parents.

Q. All right. Tell us about the next morning briefly, what you did on Thursday, April 20.

A. We got up fairly early and went back up to the city and went to the church where the family members were supposed to go.

Q. This is the church at 36th and Shartel?

A. Yes -- yes.

Q. First Christian Church?

A. Yes, First Christian. Yes.

Q. What did you do there?

A. We basically just sat and wait. At the emergency room,

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they had gave me muscle relaxers and painkillers, so I was kind of pretty numb. We basically just sit there and wait with a lot of our family members.

There were some newspapers, there were some TV reports, and we kind of looked at them a little bit for -- I was kind of interested in to see if I could find anything out about Brenda Daniels. That was one of the workers there at the day-care. That was Blake's teacher, and Brenda had been there since Blake was a baby and Brenda was his favorite; and I was kind of concerned about where she was, what had happened to her.

Q. Did the Medical Examiner's office have any information on Thursday, April 20, that they could share with you about Blake?

A. No. I didn't hear anything Thursday.

Q. Let's turn to Friday, April 21, the following day. What did you do that day?

A. Well, basically, the same thing. On Thursday and Friday both, Steve and I went upstairs and lay down for a little while. Like I said, I was on some medication that kind of made me numb, kind of made me kind of sleepy.

Q. Upstairs in the church?

A. Upstairs in the church, yes.

Q. At some point that day, did the FBI come and talk to you?

A. On Friday afternoon, they decided to bring the family -- the parents of the children in the day care into a little

Laura Kennedy - Direct

chapel they have there.

Some of Steve's family members had brought some more

pictures of Blake, and I gave those. And they told us that they were going to go out to the homes and do some fingerprinting.

Q. And did they do that?

A. Yes, they did.

Q. At your home?

A. Yes, they did.

Q. Did you take pictures to the church that day?

A. We had a picture book that had lots of pictures of Blake, and I had a little piece of paper in there that had I gotten from the hospital when he was born. And it had his footprints on it, and I thought maybe that would help identify him; and I gave that to them.

Q. On Saturday, April 22, were you given some information about Blake?

A. Yes.

Q. Tell us about that.

A. On Saturday morning when we got to the church -- we spent Friday night with my parents again because we didn't want to go home. We didn't feel like we were ready to go home yet. On Saturday morning when we got to the church, some of Steve's family was already there; and when we came in the door, some of the women that we had kind of talked to the last few days

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seemed like they were kind of avoiding us.

And we went back and sat down on the chairs and we went over and got some food, and I come back and sat in the chair. And I was trying to eat the food, but I just started crying.

And -- because I was so tired and it was so -- so -- didn't know what was going on, and it had been such a long two or three days.

And Steve put his arm around me and said, "We'll find something out today."

And right after he said that, they -- some people came

and got us. And you knew when they came and got you where you were going and what it was.

Q. Now it's been over two-and-a-half years since Blake died. Would you tell the jury what the impact of Blake's death has been on you and Steve.

A. Blake meant everything to me, my only child; and he was such a special little boy. And he was such -- such an important part of our family. We have big families, we have close families; and Blake was always the center of attention. And he just -- he gave so much love. He was so special and he was so full of life that when he died, it took a part of me. I have an emptiness inside of me that's there all the time. I'm always thinking about him, and it's hard to get on with your life when somebody that was so important and was such a big

Laura Kennedy - Direct

part of your life is gone.

Everything I did from the day he was born to the day he died was for him. He was always priority. I mean he was basically the reason that, you know -- that I lived. And after he died, it -- it didn't seem to matter what happened.

Q. Do you and Steve have any other children?

A. No.

Q. Have you given some thought to having other children?

A. Maybe in a few months when this is over and things settle down. I would want them to know about Blake's life, but I also have to tell them about his death and to explain why Blake died, why his classmates died, why his teachers died, and why a whole bunch of other people died. Be kind of hard to do when I don't even know why that happened myself. How do I explain it?

Q. Did Blake have his own room?

A. Yes.

Q. What's the status of that room today?

A. It's basically the same as it was before the bombing.

Q. Have you been inside the room?

A. Yes. I was in there not too long ago.

Q. Did you take anything out?

A. A few things but not much.

MR. RYAN: That's all I have, your Honor.

THE COURT: Do you have any questions?

MR. TIGAR: No. No questions, your Honor. Thank you.

THE COURT: All right. You may step down. You're excused.

Next witness, please.

MR. MACKEY: Yes, your Honor. We'll call Jerry Flowers, and Mr. Sengel will present.

THE COURT: Thank you.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Jerry Flowers affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please.

Would you state your full name for the record and spell your last name.

THE WITNESS: Jerry Flowers, F-L-O-W-E-R-S.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Sengel.

MR. SENDEL: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. SENDEL:

Q. Would you tell us where you live, Mr. Flowers.

A. Oklahoma City.

Q. And you're obviously with the Oklahoma City Police Department. Is that right?

A. That's right.

Q. How long have you been a member of the Oklahoma City Police Department?

A. Be 24 years 1st of November.

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Q. If you would please tell us briefly some of the units and

assignments you've had in your 24 years on the Oklahoma City Police Department.

A. Well, I spent my first six years in the Patrol Division, and after that I was promoted to the rank of detective. I've been an investigator in robbery, homicide, white-collar crime, forgery details, vice detail; and I'm currently assigned to the Gang Enforcement Unit, where I'm an investigator on a drive-by shooting team and investigating violent crimes involving street gangs.

Q. In April of 1995, then, if my math is correct, you would have been about 22 years on the force at that time?

A. That's right.

Q. Prior to April of 1995, had you had training in rescue operations?

A. Yes, I had.

Q. Had any training or experience you had prepared you for April 19, 1995?

A. Absolutely no. Nothing.

Q. The morning of April 19, 1995: Where were you when you learned of the bombing?

A. I was at our Police Training Center, which is at 800 block of North Portland, approximately 6 miles from downtown Oklahoma City. And we were there doing a training exercise on our Tactical Response Team. I'm a hostage negotiator for the

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Oklahoma City Police Tac. Team.

Q. How did you become aware of the bombing?

A. We were sitting around a conference table that morning, several of the negotiators, preparing for the day's activities for training. It was just a couple minutes after 9:00 when a devastating blast shook the entire building that we were in. It shook it so hard, the ceiling tiles above us shook loose and dust fell from the ceiling down onto us; and of course, we were all confused. We had no idea what that was. It was a real loud bang.

Q. After feeling the blast, then, what did you do?

A. Several of us ran out into the parking lot. Our first impression -- what we were looking for, we thought maybe it was an airliner had crashed because we are kind of right in the flight line of Will Rogers World Airport. We ran outside to see if that in fact was what it was; but when we ran outside which we could see downtown and the high-rise buildings from where we were at, we could see black smoke billowing out from the downtown area above the city.

Q. What did you do next?

A. We ran back into the building; and one of the division commanders, Major Steve Upchurch, had told us that the federal building had just blown up.

At this point, myself, Sergeant Steve Carson and Sergeant Don Hull, two of the other negotiators with me that

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day -- we ran out to my car which was out in the parking lot, my patrol unit, and we put -- we just had jeans and regular street clothes, but we put on some jackets that identified us as police; and we immediately drove to the downtown area as quick as we could get there.

Q. How close were you able to get to the Murrah Building when you drove downtown?

A. When we drove into downtown, the debris and people started -- it was real thick. It was hard to drive in downtown, but I finally worked my way up to about Dean A. McGee and Harvey, a couple blocks away from the federal building. That's as close as I could get. The closer I got, the more rocks, cement, pieces of rock, cement were laying in the streets; and people started just running everywhere, injured people.

Q. Did you make your way then to the Murrah Building?

A. We did. We got out of the car and we started working our way up there. We ran up to the federal building. And I got right up to the southwest corner of the building, and there was an ambulance setting there; and this ambulance technician was screaming at all the officers -- it was mainly police officers at that point that were there -- and he was screaming at us, kept yelling, "Apply pressure to the wounded to stop the bleeding."

It was when I rolled up to that area, I walked up to

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that area. I remember seeing a young lady, looked -- she was like 25 to 35 years old. She was sitting on the curb not far from where the ambulance was at; and as I looked at this lady in disbelief, basically, I saw she had either a shirt or a sweater or some type of clothing she had pressed up against her head. She was bleeding profusely. But disregarding her own injuries, I noticed that she was trying to console this little eight-year-old girl -- looked to be seven, eight years old. She had her arm around this child, and the child also was bleeding. Her hair was matted up with the -- with blood and the gray dust that was everywhere down there.

And that really touched me.

Q. Could you see the front of the Murrah Building?

A. We were on the southwest corner, and I could see the south side of the building where the plaza is at; but as I looked at that, on the north side of the building, I could see the black smoke just pouring out of the north side of the building and coming up and just -- in droves.

It was at that point my partner and I for some reason took off running around to that side of the building.

Q. When you went around to the north or front side of the Murrah Building, could you see the parking lot across the street?

A. As we -- yes, we could. As we -- we got up to 5th Street on the northwest corner and we both stopped, actually, the --

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what used to be 5th Street was covered with debris. Cars were on fire. That's where the smoke was coming from, were the cars in the parking lot. There was a tree setting out in this parking lot that was on fire with the hood of a car setting in the top of it.

The -- you couldn't just run down 5th Street. There was glass, there was water, there was smoke so thick you couldn't hardly see as you started going up into this thing. But we tried to work our way up to the area as close as we could get.

Q. Could you see a crater in front of the Murrah Building?

A. Yes, I did. As we got up towards the where -- being familiar with it, close to where the drive-through area was, there was a big hole there about the size of a swimming pool that we noticed. And it was about that time is when our attention was caught by one of our robbery detectives, Sergeant Bob Smart that was standing in a hole on the northwest corner of the building screaming at us, "Let's get these people out"; and that's where our attention was directed at that point.

Q. So then you went to the northwest corner of the building?

A. Yes.

Q. And did you enter the building at that point?

A. Yes, I did.

Q. What did you do when you entered the building?

A. Steve Carson and I went up together. Don had gotten

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separated from us somewhere. I don't know where he went. But Steve and I got up to the front of the building. We started to enter into this -- into this hole into the building when we were immediately handed a board stretcher of a gentleman that was laying on the stretcher. We couldn't really tell much about him because he was covered with this gray dust. Everything was gray because the dust was so thick.

But as they handed him to us, you know, the training about, you know, talking to somebody being in shock -- it was my first thing that I wanted to try to do. But as they lowered him down to us -- we had a human chain, if you will, coming out of the building from people behind us, because you couldn't just walk around because the debris and stuff was so thick. But as they handed him to me, I brought him down to tell him that you're going to be okay; but when he did, I noticed that under the dust there was a laceration going across his face, looked 4 or 5 inches deep, and he obviously was dead.

Q. Now, you mentioned the debris in the building. Did you actually walk around in the building?

A. No. It's kind of a misconception. When you got inside the building, you more crawled over and over and under and through. There was still rebar. I can remember that was protruding from the floor, from the ground; and this stuff was 2 and 3 inches in diameter. You're trying to work your way through that. There was electrical lines that were flying around sparking.

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The cement, what used to be floors or used to be ceilings, whatever it was, was all broken and broken into large pieces; and you had to crawl up, step up and crawl over stuff like that.

Q. I'd like to show you, if you'd look in front of you, Mr. Flowers, an exhibit we've marked, a photograph, as 1499. And does that represent the kinds of conditions that you saw in the building as you entered?

A. Yes, it does.

MR. SENDEL: Your Honor, I'm going to offer Exhibit 1499.

MR. TIGAR: No objection your Honor.

THE COURT: It's received, may be displayed.

BY MR. SENDEL:

Q. The building as you mentioned -- as you enter, I take it, all the rescuers had to basically crawl around to get access into the building.

A. That's right.

Q. Could you see very well as you entered the building?

A. When I first got in there, again, the dust was so thick -- and when I say "thick," it was so thick you could wave your hand in front of your face and move this dust. It was very hard to breathe and it was very dark.

And we worked our way into this first room; and it was like a storage room or some type of maintenance room, the best

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we could tell.

That's when there was another one of our police officers by the name of Sergeant Mike Goodspeed that was in there; and as we all three were starting to dig, Mike started screaming at everybody to shut up, everybody be quiet. And as he did that, we started to hear a faint voice, a female's voice. And this voice was asking for help, trying to -- and crying and just kept saying, "Help me, help me."

As we would try to pinpoint where we could hear that, then we would try to go to that area and dig; but as we started to dig, we would cover up that sound. And again we'd have to be quiet and try to find it. And unfortunately, it faded away and we never found her.

Q. After attempting to locate that voice, where did you go next?

A. We stayed in that area just a short time and more people started coming in, so Steve and I decided to try to work our way on back into the building. We kind of went into a southerly direction, and we kind of got into -- the best I can describe like a hallway that went drastically down. As we started to go down, it started getting incredibly dark. You could see some ray of light in parts of the building, but we

were crawling over these cement slabs and through this rebar and through this electrical line sparking. And as I started to go down, the water started coming up; and in fact it got up

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over the top of my boots that I was wearing that day.

We started to get into an area that as we walked in it looked like a cave -- is what I referred to as the pit area. And as we got into this area, I could see --

Q. Mr. Flowers, before you go on, I want to show you, if you would, please, a photograph we've marked as Exhibit 1503 and ask you is this a photograph of the pit area you're referring to?

A. Yes, it is. Now, that is not what it looked like exactly when we were in there because that's uncovered, but that's the pit because there is a hole. It was just a hole in the ground inside there. Yes, that is -- reflects the pit.

MR. SENDEL: Your Honor, I'm going to offer 1503.

MR. TIGAR: No objection, your Honor.

THE COURT: Received, may be shown.

BY MR. SENDEL:

Q. Now, you told us as you entered this area initially, of course, the water was over your boots. Could you see in the pit when you first entered it?

A. When I first got in there, it was incredibly dark; but as I started to get in, there was a ray of light that I was trying to work my way to. And as I got over to that, what it was was a hole, a pretty good-sized hole that you could see from the bottom of the pit up; and as I remember, I stood up and looked up. And as I looked up, I could see about nine floors of what

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used to be floors there that had fallen, and I realized then that they had pancaked right on top of where we were at; that they were underneath all these floors that had landed on top of each other.

Q. When you saw the floors that had fallen on top of each other, were there anyone -- people between the floors?

A. Well, it was about that time that a generator was brought down and I turned the lights onto this generator so we could see. We could hear people screaming, "Help me," and "Get me out of here; don't leave me here to die."

And as I flipped the lights on this generator after being down there for a few minutes -- there was eight or ten of us in this area, and we all stopped in amazement, in disbelief, I guess you could say. The floor above us you could reach up and touch. It was a cement -- cement floors had fallen above us. What used to be a ceiling now was a floor.

These floors, as you looked above your heads, there were circles about anywhere from 2 to 3 foot in diameter of blood, and the blood was coming down through the cracks.

And they were everywhere you looked. And we know

And they were everywhere you looked. And we knew that everywhere we saw that that there was a body that had been crushed between those floors.

MR. TIGAR: Your Honor, may we have a continuing objection to evidence of -- with respect to resulting death?

THE COURT: You may, yes.

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MR. TIGAR: Thank you.

THE COURT: You may proceed.

MR. SENDEL: Thank you, your Honor.

BY MR. SENDEL:

Q. As you were in the pit, did you find anyone who was alive down there?

A. As I was working down there, immediately this voice started screaming, "Get me out of here. Don't leave me here to die." And I turned and I saw a body of -- later it was -- it was a lady that was imprisoned in a wall. She looked to be in a sitting-type position, but all I could see was her back side. I couldn't see her head. I could barely see her back; and as I reached through this rebar and this concrete, I touched her on her back and I told her it was going to be okay.

I told her that we were going to get her out, but there was no way in the world that I could. She kept screaming to me and trying to talk to me, and I said, "Just bear with me. We're going to get you out of this thing."

And it was about the same time another lady started screaming down below me, just a few feet below me, and all I could see was her head above the water. And she was in a well, what looked like a well; and as her head was sticking up, she kept screaming, "Don't let me drown." A firefighter who had come in grabbed her by the head and was holding her head above the water in an attempt to keep her from drowning; and I don't

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know how it happened, but the water stopped and crested just about her chin; and finally, they were able to get her out.

The lady that was in the wall, as I was talking to her, there was absolutely nothing that I had that I could use to get this lady out.

I later learned that the young lady was Terry Shaw that worked in the federal credit union; and fortunately, five-and-a-half, six hours later she was managed to get out of there alive.

Q. When you saw Ms. Shaw down there, did you in fact have to leave her because of a second bomb threat?

A. Yes, I did. What happened was while I was down there working with her, working with the lady trying to keep her from drowning, even another lady that we ran into was handed down this hole that I told you about earlier that we were looking up through. One of the firefighters had this lady on a board stretcher and handed her down to us in this pit to get her out.

Again we had a chain of guys, of police officers and firefighters that we'd lined up to try to get her out. And as I thought, "Finally, I'm going to be able to get somebody out of here alive --" but as she was handed down to me, I looked at her injuries, and she didn't really have any. She was gray, totally gray with the dust, but later even found out she was dead.

It was about that time when one of the fire chiefs

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screamed down that everybody in this pit area to get out, said, "We just found another bomb. This bomb is bigger than the one that blew this place up. You've got to get out of the building now."

As he said that, Ms. Shaw that was in the wall, this lady down here that was drowning, there was another lady even back further under another slab that you could just barely see her, were all screaming and crying, "Don't leave us."

I reached up and I touched Ms. Shaw on the back again and I told her I'm sorry but I had to go; that I would be back. But my partner grabbed me and said, "You've got to go," so we did.

Q. Were you able to reenter the building later?

A. It was about a half hour, 20 minutes to a half hour later we got out of the building and we walked away from the building and it was cleared to come back. And I came back to the building trying to find my way back to where I was at, but I couldn't find my way back to it. It was a puzzle to try to find anything in that building.

Q. But as you told us, you later learned Ms. Shaw was freed from the wall?

A. About five-and-a-half, six hours cutting her out with saws, she finally got out.

Q. When you reentered the building then after the second bomb warning that you reentered, I take it, a different location?

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A. I did. It was at that point I -- Sergeant Carson and I got separated and I ran into my other partner, Sergeant Don Hull. He and I walked up together to what I refer to as the plaza area on the south side of the building.

Q. What did you see as you entered the building from the plaza?

A. When I first got on up to the plaza, it was at that point I ran into my brother, Dennis Flowers, who is a trooper with the highway patrol. His S.W.A.T. team was there doing the rescue efforts as well. And as I ran into him, I remember we were talking about this thing and trying to figure out what to do when we both turned; and on the south sides of the building, about two floors up, we saw a man that was setting -- looked to be setting in some rubble and just looking out over the crowd.

So we both started working our way to him. But as we

got up to him, we could see that in fact that he wasn't just sitting there looking over the crowd. Half of his body was gone, from just below his waist. His legs were gone, and he was dead.

It was at that point that my brother, Dennis, went his way and I turned to go my way; and Don and I started to work our way over to the south side, and Don worked his way up to the building. And as he started to go in, I was held up by some bomb technicians that were there because a slab on top of the building started to slip and they thought it was going to

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fall. And as they held me up, Don turned -- didn't seem like 2 or 3 minutes he was in there -- and he came walking out carrying a blanket with a small baby in this blanket.

As he walked up, Don had this look on his face that was incredible, a real stare, if you will, for lack of better words. But as I saw him walk out, I walked up to Don and asked him if he was okay. And we walked together over to where the children's playground area was, and we opened up the blanket. And it was a small boy, about six years old. He was a little, black boy that when we opened the blanket, I asked Don was he a boy or girl; and he said, "I really don't know." I first looked at him and saw that he had a brown teddy bear on his chest, on his shirt that he was wearing, but his head -- he had been decapitated. His head was gone from his chin to the back of his head.

A nurse came by. She put a tag around the child's foot. Don picked him up, rewrapped him up in the blanket, laid him over into the playground area where the children played.

Q. Did you then go into the area where the day care was?

A. I turned from Don at that point, and I ran back to the area where he had just come out of and wound up on what looked to be like the 2d floor. I walked through. There was a hole. I crawled in. There were several officers and other folks in there that were digging through this rubble. I just picked an area and I started digging. As I started digging through these

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cement blocks -- as best I can describe them, about half as big as this counter is in front of me -- I uncovered a foot. It was a foot of a baby that had on a pink sock.

I screamed out that I found one. Everybody that was around me that could even hear me jumped in this area, and we all started moving this rubble. It seemed like 2, 3 feet of it. As we moved it, there was a little, baby girl; and then the best I can remember is she was wearing a pink dress. And as I pulled off about the last block of her, one of the police officers standing beside me grabbed this baby and pulled her up to his chest and walked out with her.

It was in that area we kept digging, and I saw about

five children removed from this particular area, which later I learned to be the day-care center.

Q. Did you find any adults in the area of the day-care center?

A. When I was digging in this area, we had worked our way back even further into the area. Sometime later in this one area, there was -- what used to be one of the walls was now a mound of rubble and dirt and cement blocks. Still, you name it, it was in there: furniture, baby toys. It was a mound of it from the ground seemed like two or three stories high.

In that area, I was working around a lady that was a white female that was twisted up in this mound of rebar and steel. Her body had been broken in half. I remember that she had beige shoes on and slacks, and her feet and her head were

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laying side by side, as her body had been broken in half.

We couldn't even move her out of there because she was covered up with this steel rebar and these cement blocks that weighed 5- and 600 pounds.

In that area -- we attacked that area because we thought there could have been somebody there.

The best that we found in that area was just a jacket of one of the law enforcement agencies that was in that building; but at that point, I didn't find any other bodies there.

Q. How long were you in the Murrah Building on April 19?

A. Somewhere between 5 and 6 hours.

Q. And when you left that day, did you head home?

A. Yes, I did.

Q. Did you find out whether you knew anyone who had died in the Murrah Building?

A. I knew that there was a lot of people there that I knew and personal friends, but it was on the way home that I found that there was a neighbor that I had lived beside for 19 years. Her name was Oleta Biddy, a dear friend of mine, as well as her husband and her kids that lived right beside me, in the country where I lived.

As I found out that she was in there -- she worked in Social Security -- I felt compelled to stop by and talk to her husband, Henry, on the way home, who lived just down the road

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from me.

I still had my stuff on. I was filthy dirty. I had dust all over me. I -- blood. But nevertheless, I stopped to talk to Henry.

As I got out of the car, Henry and his son and family came out and they met me, and Henry put his arms around me out in the driveway and I apologized. I told him I was sorry that I couldn't find Oleta; that I did everything I could. But I told him, "Henry, I didn't even know she was there."

He cried and he cried and he held me, and he told me

HE SAID AND HE SAID AND HE SAID ME, AND HE SAID ME
it was okay; and then I went home.

Q. And you found out Oleta had died?

A. Oleta was found the last day just before midnight.

MR. SENDEL: I have no further questions, your Honor.

THE COURT: Do you have any questions?

MR. TIGAR: We have no questions, your Honor.

THE COURT: All right. You may step down. You're
excused.

MR. MACKEY: We'll call Mr. Roy Sells.

THE COURT: All right.

THE COURTROOM DEPUTY: Would you raise your right
hand, please.

(Roy Sells affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please.

Would you state your full name for the record and
spell your last name.

THE WITNESS: Roy Sells, S-E-L-L-S.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Mackey.

MR. MACKEY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MACKEY:

Q. Mr. Sells, I'd like to spend a little time this morning
talking about you and about your wife, Lee. Would you share
some information about yourself and your wife?

A. Myself, I was born in Oklahoma City -- well, Oklahoma, in
the western part on a farm.

Q. What was the name of the town you grew up?

A. Granite. It's right down in the southwestern part of the
state.

Q. How many children were in your family?

A. I had eight brothers and sisters.

Q. What did you and those brothers and sisters and family do
for a living?

A. We done sharecropping with my dad.

Q. You attended high school in Granite?

A. Well, I attended high school in a consolidated country
school called Lake Creek, which is about 8 miles from Granite.
That is all consolidated now.

Q. When did you graduate from high school?

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A. 1952.

Q. And I hear that you graduated in the top six in your class?

A. Yes, sir.

Q. Why is that?

A. There was only six in the class.

Q. After high school, you went off to the military shortly
thereafter, did you not?

A. Shortly thereafter, about -- I was -- I worked in
construction for about, oh, six or eight months and then went
into the military.

Q. And what branch did you serve in?

A. Air Force.

Q. How many years were you in the Air Force?

A. Almost -- lacked about a month being nine years.

Q. Did that assignment take you to the great state of Nebraska?

A. I got to see a lot of Texas and Nebraska in those nine years. Eight years was spent in Nebraska.

Q. And while you were serving in the Air Force in Nebraska, did you meet a woman who later became your wife?

A. Yes, I did. In 19 and 57, early 1957, I met my wife.

Q. Mr. Sells, let me show you an exhibit I've marked as No. 1129B.

MR. MACKEY: Your Honor, we'd offer this photograph of Lee Sells.

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MR. TIGAR: No objection.

THE COURT: Received, may be shown.

THE WITNESS: Yes, sir. That's my beautiful wife.

BY MR. MACKEY:

Q. Tell the jury, Mr. Sells, when you and Lee were first married.

A. We were married in -- September 8, 1958, in Seward, Nebraska.

Q. How many total years was Lee Sells your wife before she died?

A. 37 1/2 years.

Q. In the course of that lengthy relationship, Mr. Sells, what's the longest time that you had ever been away from her?

A. 32 days.

Q. When was that?

A. It was in 1970. I had to go to Ogden, Utah, to go to school for F4 aircraft.

Q. Tell the jury where Lee Sells was born.

A. Lee was born in Seward, Nebraska, in 1938.

Q. After graduation from high school, where did she begin work?

A. She got her job right out of high school and worked for the University of Nebraska and was also going to school there.

Q. Now, you're from Oklahoma, she's from Nebraska, and you're living in Nebraska. Do you pick some college sports to follow?

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A. Every college sport that there is: football, basketball, baseball. Everything that you could imagine in college sports, we went to.

Q. When did you leave Nebraska?

A. I got out of the service in 1962, and we moved to Oklahoma City that year.

Q. And until the time of her death on April 19, did you and Lee reside in Oklahoma City?

A. We resided -- except for the first probably six months that we were there while our house was being built, we lived in a

duplex and moved into the house in '63 and have resided there ever since.

Q. Would you take just a moment, Mr. Sells, and tell the jury how it was that you came to meet your wife.

A. It was like an accidental blind date. I guess that's the way you would call it. I had bummed a ride with a friend of mine; and he was late picking up his date, and he asked me if he could go by and pick up Mary Jo first, and I said sure.

And at that time, when his girlfriend came out and was introduced to me, she indicated that her roommate didn't have nothing to do that evening, would I mind going on a double date with them.

Q. And that was the start of your relationship with Lee?

A. Yes. It was a little rocky start, but that was the start of it.

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Q. Tell the members of the jury, Mr. Sells, when you proposed marriage to Lee Sells.

A. I proposed marriage to her on February 14, 1958.

Q. Did that happen to be Valentine's Day?

A. It happened to be Valentine's Day. It also happened to be her birthday.

Q. In the course of your marriage to Lee, Mr. Sells, did the two of you have children?

A. No, we didn't.

Q. She was the only other person in your life?

A. She was the only person in my life, yes.

Q. When you moved back to Oklahoma in the early 60's, Mr. Sells, tell the jury how you made your living.

A. I had submitted applications to the FAA center and also to Tinker Air Force Base, which is an overhaul depot for military aircraft. And that's -- was my love, the love of aircraft and working on them. That's what I wanted to do; and Tinker called me first, and that's where I went to work.

Q. How many total years did you devote yourself to maintenance work on aircraft?

A. Altogether, 34 years.

Q. And in the early years of your marriage to Lee, what did she do for a livelihood?

A. She worked at the University of Nebraska until from '58, from the time -- or really from the time that she got out of

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school until we moved to Oklahoma City in 1962. And she went to work for a plumbing supply company and worked there for not quite a year and then went to work for an oil field supply company, which she worked for for 21 years.

Q. And after that oil company left Oklahoma City, did she take work at the HUD office in downtown Oklahoma City?

A. Yes, she did. She worked for a few months for a dental supply insurance company, which she was just going to work as a

supply insurance company, which she was just going to work as a temporary employee at first. She didn't think she wanted another job after she had left Republic; so she decided to do temporary work. And she worked there for a week, and they hired her on permanent. So she worked there for a few months until she got a call from the HUD office, and then she went to work there.

Q. Was she working then for HUD at the time of her death?

A. Yes, she was.

Q. Mr. Sells, let's tell the jury a little bit about the other part of Lee's life. Was church important to her?

A. You could -- when you first met her, you could tell that God was first in her life. Family was second. She was very dedicated to those roles.

Q. You and Lee had been early members of a church in Oklahoma City; is that correct?

A. We had -- we had joined this church one week after its establishment, so there was not very many members there. And

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we weren't charter members, but we missed it by one week; but we have been in that church ever since and held just about every position that there was to hold in it since there wasn't that many people there.

Q. Tell the jury a few examples of how Lee contributed to the life of that particular church.

A. Well, she -- she started out as a Sunday school teacher. We sing in the choir. Of course, you have to realize that when one of us volunteered for a position, they always had to take two because we were there to help each other out. If she was a Sunday school teacher, I was there to help her out. If I was on a board of education, she was -- she was just another board member.

So that's the way we worked it. We sang in the choir from the day that we joined the church until the day she was killed. So we were very -- we were youth counselors. We -- she was president of the ladies' association, LWML, in that church. She was secretary. We had been treasurers of the church. So we had virtually held probably almost every job in that church except being a minister.

Q. Mr. Sells, tell the jury a little bit about her career with HUD, what assignments did she have and the work that she performed for that agency.

A. I think the first job that she held with the agency was working in the Indian department, and she didn't work there

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long till they moved her up to the front office, to the manager's office. And she stayed there until about four years ago, and she went into the legal office as a legal secretary.

Q. And how many lawyers did Lee support as an Executive Secretary for that division?

A. There was three lawyers and a legal aide and herself, so

there was five of them in that office altogether.

Q. And over time, did you get to meet each of those people that she worked with day by day?

A. I did get to meet all of them personally, one on one, and got to know them really well.

MR. MACKEY: Your Honor, I'd like to offer into evidence a photograph marked 2217.

MR. TIGAR: No objection, your Honor.

THE COURT: 2217 is received, may be shown.

BY MR. MACKEY:

Q. Mr. Sells, the members of the jury are now looking at the same photograph that you can see below you. I want you to take just a moment, if you wouldn't mind, and introduce by name each of the people that appear in that photograph.

A. Okay. Starting on the left, the tall black man was Lee's boss. His name was Clarence Wilson.

And the lady standing next to him was Kimberly Clark. She was the legal aide in the office.

And the blond-headed lady standing next to her is

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Susan Ferrell. She was a lawyer in that office.

And the gentleman with the mustache and the red tie was Mike Weaver. He was a lawyer in the office.

And then, of course, my wife.

Q. Mr. Sells, tell the members of the jury how many of the people shown in that photograph died on April 19.

A. All of them.

Q. Mr. Sells, do you remember where you were on the morning of April 19 and when you last saw your wife?

A. Yes. I remember exactly. The last I saw her, she left about 6:30 to go to work.

Q. What were the last words that you exchanged with your wife?

A. She -- I was sitting in the big chair reading the paper having a cup of coffee; and when her ride came, she come by, give me a kiss, and she said, "See you this evening. Hit 'em straight today; have a good game."

Q. All right. were you at 9:02 on April 19?

A. At 9:02 I was sitting at the Old Orchard Restaurant having breakfast with the people I was going to go play golf with. That day, we had a 10:30 tee time at Surrey Hills.

Q. Tell us how you came to know about the bombing that had taken place in Oklahoma City.

A. We were sitting there, and the waitress had just brought my breakfast, set it down, filled my coffee cup up with coffee; and I thought we had an earthquake. In fact, I looked at Becky

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and said, "Becky, what was that? An earthquake?"

And she said, "No, this is Oklahoma. It can't be an earthquake."

And about 5 minutes later, she come back by and she

said, "Do you know what the noise was?"

And I said, "No, I don't."

And she said, "Well, the Federal Courthouse blew up
in
downtown Oklahoma City."

I said, "You've got to be kidding."

She said, "No, it's on TV in the office."

So a friend of mine and myself got up and walked in
the office and looked; and just as we got there, there was a
news reporter helicopter that flew over and was showing the
picture of it.

And I said, "No, no. That's not the Federal
Courthouse. That's the federal building, and Lee is in there."

Q. What did you do when you understood that?

A. Left the restaurant, headed downtown with Mr. McCraw
driving for me. We went down there to see if I could help get
her out.

Q. How close were you able to get to the building that
morning?

A. We drove, probably, the car within about five or six blocks
of the building; and there was so much glass and debris on the
streets that we couldn't go any further. So we got out and

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started running.

And we got about probably a block and a half when the
police stopped us, told us we couldn't go any further; that we
couldn't go any further.

Q. From the place where you were stopped, were you able to see
the 5th Street side of the building?

A. No, I was not.

Q. Did you have any idea at that point in time what had
happened to your wife?

A. No, I had not.

Q. What did you do after you were stopped?

A. Well, I just -- probably like anyone else did, I tried to
go a different way to get to the building because I was
determined to go there; but the police still stopped us and
wouldn't let us go any further and told us the best thing to do
was to go someplace where my wife knew that she could get a
hold of me when she could get to a telephone.

Q. And what did you do then?

A. I turned around and went back home.

Q. Mr. Sells, tell the members of the jury how long you waited
until you were notified that your wife had died in the bombing.

A. I waited 10 days. 10 of the worst days of my life, I
waited.

Q. Mr. Sells, could you in your own words tell this jury who
Lee Sells was and what was lost with her death.

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A. Well, I think that they could see on the monitor here that

she was a beautiful lady; but her beauty came from inside, from her heart. She was absolutely the most loving, generous,

kind-hearted, thoughtful, loving -- the best friend I ever had.

I don't think there is -- maybe her sister put it better than maybe I could. She -- her sister said she was as -- probably as close to an angel as anyone would ever see here on earth. And I really and truly believe that.

Q. Can you describe to the jury the impact of her death on your life since April 19?

A. Well, when they found her 10 days later, that's when my life ended. It only took a second to kill her; but me, it took 10 days to take my life away. And my life has absolutely come to a halt. I've lived in a vacuum ever since. I've not been able to do anything, go anyplace except concentrate on what was going on here in Denver.

Q. Mr. Sells, today is not the first day that you've been in this courtroom, is it?

A. No, sir.

Q. In fact, have you attended each of the public sessions in both in trial and the trial of Timothy McVeigh?

A. Yes, sir, I have. Every day that the courtroom has been open.

Q. Mr. Sells, would you tell this jury why?

A. There is really two reasons why I was here. One is that I

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made a promise to my wife's family and my family at her grave site that I would follow this trial through and be like the 19th jury (sic) in this courtroom. I wanted to see all of the evidence, and I wanted to hear all the testimony and I wanted to make up my mind whether I thought the people that did this were guilty or not.

The other reason is a question that hasn't been answered; and that is why, why anyone would want to put a bomb that close to a building where children, little babies, infants, men and women, were working, armed with only pencil and paper and typewriters and computers and would set that bomb off and take their lives.

That question hasn't been answered yet.

Q. Will you carry that question, then, Mr. Sells, with you outside this courtroom?

MR. TIGAR: Objection, your Honor.

THE COURT: Sustained.

MR. MACKEY: I have no other questions, Mr. Sells.

Thank you for coming in this morning.

THE COURT: Do you have any questions, Mr. Tigar?

MR. TIGAR: Briefly.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Mr. Sells, we've met before. I'm Michael Tigar.

A. Yes, sir.

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Q. We've met as you've come and gone during this trial, sir.

I just -- I don't want to intrude on what you said, but are you aware that there was a dispute for a time over whether or not people who had lost folks in the bombing would be able to attend this trial?

A. I was here that day when that decision was made, sir.

Q. And do you know what Mr. Nichols wrote to the Court of Appeals about his view about whether people should be able to attend the trial?

A. Yes, I did. I read that.

Q. And you know that he -- it was his view that regardless of what the rules might be about who could and couldn't that everybody should be able to attend even if they were going to be witnesses. You read that?

A. That was what was written in the paper, yes, sir.

Q. And you have been -- you have attended the trial -- I guess -- well, we've seen each other. You've been here every day. Is that right, sir?

A. Yes, sir.

MR. TIGAR: Thank you very much. I have no further questions. Thank you, sir, for coming.

THE COURT: Mr. Sells, you may step down. You're excused.

We'll take the noon recess now, members of the jury. And again, of course, I must caution you to avoid discussion about the case in any respect now. And with respect to the last witness here who testified that he had been present here -- I think he said something like the 19th juror -- you must, of course, not speculate on what that -- Mr. Sells thinks about the case or about your verdict. We're not going to receive in evidence here or in the information, as we call it, that is being presented the opinions or views or conclusions about -- of people who are testifying here with respect to what should be done in this case, what the jury should do or what the jury has done. I emphasize that again. It's not a matter for you to speculate on as to what Mr. Sells or anyone else may think about the verdict that's been reached in this case. The verdict is in; and as has been said here by counsel, we accept it and do not question it.

Now, also, of course, during the time of this recess, I just remind you -- the 12 of you have been deliberating in the case -- that you're not deliberating during these recesses. We're really back to where we were before; and although you selected a foreperson to preside over your deliberations, that person has no role to play now and will not until it is time for you to deliberate again on the questions to be presented to you.

So, you know, all 18 of you are here together now; and in the course of the recesses, we -- one of the reasons to have these recesses is so that you can have some relaxation and be away from this courtroom for a while and have this matter rest. And in addition to not discussing what you're hearing, of course, we'll ask you again, as I did throughout the trial when we were hearing evidence with respect to the events and the

Bonnie Carpenter

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