

# Chapter Two:

## Homegrown Terrorists: Tim McVeigh and Terry Nichols (1995)

### Chapter Objectives

After reading this chapter and discussing it with you in class, students should be able to:

1. Appreciate that the counter terrorism challenge includes identifying and dealing with domestic, as well as international, terrorists.
2. Understand the concept of “Leaderless Resistance” and the significance of “The Turner Diaries” to the radical right.
3. Provide a coherent narrative of the life of Timothy McVeigh and the forces which caused him to evolve into the mass murdered he became.
4. Articulate the role of McVeigh’s co-conspirators in his plot.
5. Appreciate the logistical difficulties confronting the federal courts in attempting to give McVeigh and Nichols fair trials.

### Audio-Visual Resources

1. WEBSITE: “Famous Trials” is a remarkable resource, developed by Professor Douglas O. Linder of the University of Missouri at Kansas City over more than a decade.  
<http://law2.umkc.edu/faculty/projects/ftrials/ftrials.htm>

I will be pointing you to this website repeatedly in this Manual. For each of the dozens of trials it documents, the site offers original materials and secondary commentaries on each case. I know of no comparable resource on the web or elsewhere. The McVeigh case can be accessed at:

<http://law2.umkc.edu/faculty/projects/ftrials/mcveigh/mcveightrial.html>

2. DOCUMENTARY: Once again, YouTube makes available a documentary film in full-length. The documentary is “Terror from Within: The Untold Story Behind the Oklahoma City Bombing.”  
<http://www.youtube.com/watch?v=Wv4IANK1aNY>

## **Chapter Outline**

1. Prelude: Parallels between the 1993 World Trade Center bombing and the Oklahoma City Bombing
2. Background on the life of Timothy McVeigh
3. “Leaderless Resistance” and “The Turner Diaries”
4. The bombing and McVeigh’s subsequent apprehension
5. McVeigh’s trial
6. The co-conspirators
7. McVeigh’s decision to die

## **Relevant case law and statutory provisions**

### **A. Excerpts from the Appeal of McVeigh’s Conviction and Sentence**

United States Court of Appeals,  
Tenth Circuit.  
UNITED STATES of America, Plaintiff–Appellee,  
v.  
Timothy James McVEIGH, Defendant–Appellant.

153 F.3d 1166

Certiorari denied, 526 U.S. 1007, 119 S.Ct. 1148, 143 L.Ed.2d 215, 67 BNA USLW  
3560 (1999)

Sept. 8, 1998.

Defendant was convicted in the United States District Court for the District of Colorado, [Richard P. Matsch](#), Chief Judge, of conspiracy to use weapon of mass destruction, use of weapon of mass destruction, destruction by explosives, and first-degree murder, and was sentenced to death. Defendant appealed. The Court of Appeals, [Ebel](#), Circuit Judge, held that: (1) defendant was not entitled to relief based on claims of presumed and actual prejudice due to pretrial publicity; (2) allowing juror who allegedly made statement prejudging case to remain seated was not abuse of discretion; (3) evidence of alternative perpetrators was properly excluded; (4) “knowingly” intent standard applied to offenses of use of and conspiracy to use weapon of mass destruction; (5) lesser-included offense

instructions were not warranted; (6) admission of victim testimony during guilt phase of trial was proper; and (7) admission of victim impact testimony during sentencing phase of trial was proper.

Affirmed.

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We find no constitutional error in the admission of the challenged victim impact *\*1219* testimony. The devastating effects that the deaths of the victims had on their families and loved ones is “certainly part and parcel of the circumstances” of the crime properly presented to the jury at the penalty phase of trial. [\*Bonin v. Vasquez\*, 807 F.Supp. 589, 613 \(C.D.Cal.1992\)](#), *aff’d*, [59 F.3d 815 \(9th Cir.1995\)](#).

#### **a. Last Contacts**

[McVeigh criticizes the introduction of testimony about witnesses' last contacts with deceased family members, including Whicher's pre-continuing objection description of her last contacts with her husband and her children's feelings of regret at not hugging their father good-bye that morning, Treanor's pre-continuing objection account of her now deceased daughter's giving “me a real hard kiss on the lips and hugg[ing] me again and ... rubb[ing] noses,” and Gary Campbell's pride in watching his daughter who died in the blast show him her office and talking about her desires to succeed in her career. All of this testimony was properly admitted under *Payne* as relevant to understanding the uniqueness of the life lost and the impact of the death on each victim's family.

#### **b. Efforts to Discover the Fate of Victims**

McVeigh challenges the admission of testimony describing witnesses' often agonizing efforts to find out what happened to their loved ones. For example, McVeigh highlights the following pre-continuing objection testimony: Leonard's searches of various hospitals looking for her husband; Florence's week-long wait to learn the fate of his wife; and Treanor's realization that her in-laws and her young daughter were at the Murrah Building for an appointment at the Social Security office the morning of the explosion. This type of testimony is well within the limits set by *Payne*, as even McVeigh's counsel admitted during the penalty phase.

#### **c. Impact on Learning of Death**

McVeigh contests the following pre-continuing objection testimony: Westberry's description of her grandson's uncontrollable crying on hearing of her husband's death; Whicher's recollection of “screaming out that I wanted to die” and frightening her children; and Treanor's recounting of the recovery and return of her deceased daughter's hand six months after the explosion. McVeigh also takes exception to Gregory Sohn's testimony about breaking down upon learning of his wife's death and Sharon McCullough's account of her son's cries of “I don't want my dad to be dead” as he saw pictures of the remains of the Murrah Building on television and the prayer he offered later when he calmed down. *Payne* explicitly allows for the introduction of this kind of evidence describing the impact of a victim's death on a witness and his or her family. See [Payne](#), [501 U.S. at 827](#), [111 S.Ct. 2597](#); [Gretzler v. Stewart](#), [112 F.3d 992](#), [1009 \(9th](#)

[Cir.1997](#)) (evidence about “the impact of the murder on the victim's family is relevant and admissible at a death penalty sentencing proceeding”), *cert. denied*, [522 U.S. 1081, 118 S.Ct. 865, 139 L.Ed.2d 763 \(1998\)](#).

#### **d. Victim Histories**

Numerous witnesses, both pre- and post-continuing objection, testified about the professional and personal histories of victims who perished in the bombing, including reflections on the admirable qualities of the deceased. McVeigh argues that this testimony impermissibly allowed witnesses to eulogize their loved ones. We disagree. Although victim histories arguably were covered by McVeigh's continuing objection, the unique qualities of a murdered individual and his or her life accomplishments constitute the core impact evidence describing a victim's “uniqueness as an individual human being” allowed by *Payne*. *Payne*, [501 U.S. at 823, 111 S.Ct. 2597](#); *see also Wiley v. Puckett*, [969 F.2d 86, 105 \(5th Cir.1992\)](#) (victim's wife properly testified about places she *\*1220* and her husband had lived and her husband's character).

#### **e. Pure Love and Innocence of Children**

In discussing the suffering of children affected by the bombing, McVeigh contends that the government's witnesses prejudicially described the innocence and unconditional love manifested by children. For example, Don Browning related the story of a little girl from the day care center who had been outside the building when the bomb exploded. The girl approached a police officer and his dog, hugged the dog, and said, “Mr. Police Dog, will you find my friends?” Also, Glenn Seidl recalled his son Clint's counselor telling him that Clint was concerned because “Clint has never seen you cry. He's never seen you scared. He thinks the people that have done this are after you and him ... and this very professional lady gets a tear in her eye and says that ... [Clint] wants to pay” the counselor the \$180 he has saved in his bank account to help his father. Even though covered by McVeigh's continuing objection, we do not see how the admission of this testimony violated *Payne*. If love and innocence are particular qualities of the affected children, then informing the jury of that fact is not improper. *See, e.g., Payne*, [501 U.S. at 814–815, 827, 111 S.Ct. 2597](#) (allowing grandmother's testimony that grandson who lost his mother and his sister “cries for his mom,” “doesn't seem to understand why she doesn't come home,” misses his sister and worries about her); *Washington v. Murray*, [952 F.2d 1472, 1480 \(4th Cir.1991\)](#) (mother's testimony about “the impact of the victim's death on her small children” analogized to evidence properly admitted under *Payne* ).

#### **f. Impact on Families**

Discussions of the impact of the blast on the families of the victims represents the bulk of the testimony challenged by McVeigh. A few examples of this evidence include: Leonard's adult son, who was married some time after the bombing, came to her at 3:00 a.m. one morning “crying very hard. And he said: ‘I want my dad back. I want him to see me graduate from college. I want him to meet my wife and be at my wedding. I want him to see my first child.’ ” One of Whicher's daughters told her:

[S]he has learned to hate, which is a horrible thing to hear coming from your 16–year–old baby.... She wrote a paper for school. The topic was a day that changed her life.... The

paper said that “I never knew such a dark, horrible place existed until I had to go there; and I'm crawling my way out as best I can.”

Todd McCarthy testified, “I am now charged with teaching my son love and compassion when all he sees is hate. And that's a job I don't think anybody would want to have.” Michael Lenz, whose wife and unborn child were killed, nearly committed suicide:

[T]here was a point where I actually stuck a pistol in my mouth. I couldn't pull the trigger, thank God.... [W]hen I reached that low point in my life, there is nothing, nothing more dangerous than a man who has no reason to live. I've been there.

Sohn stated:

I have my wife's coffee cup that the children bought for her that says “No. 1 Mommy.” Inside of that is our marriage license, two rings, and a death certificate. Sitting across the top of the table ... is the cap that they were able to salvage that was her headgear while in uniform.... [I take these items] everywhere I go.

Poignantly, Sharon Coyne described the loss of her fourteen-month-old daughter:

I think that my fears of her dying when she was first born being—confirmed was the very worst thing for me. When we drove home that night, the highway overlooked the Murrah Building; and by that time, it was very dark and it was raining and it was cold. And I truly, truly believed that my daughter was alive. You know, you don't ever think—you don't ever think that your own child is dead. And at this point, I thought that maybe she was in fact still in the building. And I think my biggest fear at that point was that she sat there in this building and she'd been there for 12 hours, she was in a dirty diaper, she didn't have a bottle, she didn't have me to hold her, and she was afraid. And I could picture her just saying “Momma,” and I felt so guilty leaving this place.

*\*1221 Payne* specifically allows witnesses to describe the effects of the crime on their families. See *Payne*, [501 U.S. at 827, 111 S.Ct. 2597](#). All of the evidence challenged by McVeigh served that purpose. Thus, we find no error.

#### **g. Cumulative Impact**

Taken as a whole, this evidence is poignant and emotional. The question before us, then, is whether allowing such a substantial amount of victim impact testimony reflecting the magnitude of such a large-scale crime violates the limits on such testimony set forth in *Payne*. We conclude that it does not.

*Payne* allows the introduction of victim impact evidence in order to allow the jury to understand the consequences of the crime committed. See *Payne*, [501 U.S. at 825–26, 111 S.Ct. 2597](#) (“[T]here is *nothing unfair* about allowing the jury to bear in mind [the specific] harm [caused by the defendant] at the same time as it considers the mitigating evidence introduced by the defendant.”) (emphasis added); see also *Williams v. Chrans*, [945 F.2d 926, 947 \(7th Cir.1991\)](#) (holding that the prosecution “should not be required to

present victim impact evidence that [is] devoid of all passion. Such sterile prosecution of heinous crimes cannot be expected, let alone required.”).

The bombing of the Murrah Building was the deadliest act of domestic terrorism in the history of the United States. The magnitude of the crime cannot be ignored. It would be fundamentally unfair to shield a defendant from testimony describing the full effects of his deeds simply because he committed such an outrageous crime. The sheer number of actual victims and the horrific things done to them necessarily allows for the introduction of a greater amount of victim impact testimony in order for the government to show the “harm” caused by the crime. In addition, the jury could not have been shocked to learn that some victims had exemplary backgrounds and poignant family relationships, nor that they left behind grief-stricken loved ones. As Justice Souter eloquently wrote:

Murder has foreseeable consequences. When it happens, it is always to distinct individuals, and, after it happens, other victims are left behind. Every defendant knows, if endowed with the mental competence for criminal responsibility, that the life he will take by his homicidal behavior is that of a unique person, like himself, and that the person to be killed probably has close associates, “survivors,” who will suffer harms and deprivations from the victim's death. Just as defendants know that they are not faceless human ciphers, they know that their victims are not valueless fungibles.... The fact that the defendant may not know the details of a victim's life and characteristics, or the exact identities and needs of those who may survive, should not in any way obscure the further facts that ... harm to some group of survivors is a consequence of a successful homicidal act so foreseeable as to be virtually inevitable.

*Payne*, [501 U.S. at 838, 111 S.Ct. 2597](#) (Souter, J., concurring).

We also observe that in this case the government deliberately limited the victim impact testimony it chose to present, saying nothing about the vast majority of the 168 people who died in the blast. Nor did the government attempt to introduce any gruesome post-mortem photographs of the deceased. The testimony of the government's witnesses occupied only about two days during the penalty phase of trial. In addition to the government's self-restraint, the district court took a number of steps that significantly minimized the overall impact of the testimony. First, the district court issued a number of rulings prior to the commencement of the penalty phase on various motions in limine to restrict evidence by the government such as photographs and exhibits, a significant portion of which the district court excluded.<sup>FN47</sup> Second, at the conclusion of those rulings, the district court stated that it would allow “objective” evidence describing the “fact” of “the loss of ... people to an agency and ... the loss of a family member ... the \*1222 empty chair, but not the emotional aspect of that, the grieving process, the mourning process.”<sup>FN48</sup> The government followed this instruction, and we have found few instances where the type of non-objective emotional testimony described by the district court was admitted.<sup>FN49</sup> Third, at the close of the penalty phase, the judge instructed the jury not to be swayed by emotion,<sup>FN50</sup> and we presume that the jury honored those instructions. See *United States v. Hatatley*, [130 F.3d 1399, 1405 \(10th Cir.1997\)](#). Finally, the jury deliberated for two days and made specific findings in

McVeigh's favor on a number of mitigating factors. We consider all of these factors persuasive evidence that the jury made a reasoned, moral judgment.

Viewed in its entirety, we are well satisfied that the victim impact testimony did not move the jury to impose a sentence based on passion rather than reason and that the jury based its decision on a reasoned, moral judgment.

### ***CONCLUSION***

For the foregoing reasons, Timothy McVeigh's conviction and sentence are AFFIRMED.

## **B. United States Code, Title 18: Crime and Criminal Procedure**

### **§ 1111. Murder**

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;

Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life.

(c) For purposes of this section--

(1) the term “assault” has the same meaning as given that term in [section 113](#);

(2) the term “child” means a person who has not attained the age of 18 years and is--

(A) under the perpetrator's care or control; or

(B) at least six years younger than the perpetrator;

(3) the term “child abuse” means intentionally or knowingly causing death or serious bodily injury to a child;

(4) the term “pattern or practice of assault or torture” means assault or torture engaged in on at least two occasions;

(5) the term “serious bodily injury” has the meaning set forth in [section 1365](#); and

(6) the term “torture” means conduct, whether or not committed under the color of law, that otherwise satisfies the definition set forth in [section 2340\(1\)](#).

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#### **§ 2332a. Use of weapons of mass destruction**

**(a) Offense against a national of the United States or within the United States.**--A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction--

(1) against a national of the United States while such national is outside of the United States;

(2) against any person or property within the United States, and

(A) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense;

(B) such property is used in interstate or foreign commerce or in an activity that affects interstate or foreign commerce;

(C) any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense; or

(D) the offense, or the results of the offense, affect interstate or foreign commerce, or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce;

(3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States; or

(4) against any property within the United States that is owned, leased, or used by a foreign government,

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.



**(b) Offense by national of the United States outside of the United States.**--Any national of the United States who, without lawful authority, uses, or threatens, attempts, or conspires to use, a weapon of mass destruction outside of the United States shall be imprisoned for any term of years or for life, and if death results, shall be punished by death, or by imprisonment for any term of years or for life.

**(c) Definitions.**--For purposes of this section--

(1) the term “national of the United States” has the meaning given in section 101(a)(22) of the Immigration and Nationality Act ([8 U.S.C. 1101\(a\)\(22\)](#));

(2) the term “weapon of mass destruction” means--

(A) any destructive device as defined in [section 921](#) of this title;

(B) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

(C) any weapon involving a biological agent, toxin, or vector (as those terms are defined in [section 178](#) of this title); or

(D) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life; and

(3) the term “property” includes all real and personal property.

## **Supplementary reading**

### **Is Profiling Worth Considering as a Counter Terrorism Tactic?**

**By James Ottavio Castagnera**

When the police use profiling, it's condemned as racist. When the customs service does it, it's similarly assailed as discriminatory and unconstitutional. Still, it's being done. Travel & Leisure magazine reported in January, “The Transportation Security Administration (TSA) recently began rolling out a new security program, Screening Passengers by Observation Techniques (SPOT), at dozens of airports around the country.” Time magazine explained, “TSA employees will be trained to identify suspicious individuals who raise red flags by exhibiting unusual or anxious behavior, which can be as simple as changes in mannerisms, excessive sweating on a cool day, or changes in the pitch of a person's voice.” Although such techniques invariably arouse the ACLU, should colleges and universities consider adopting them?

Before you answer, consider the case of Dawson College. On September 13, 2006,

Kimveer Gill parked his car in downtown Montreal, removed a cache of weapons from the trunk, forced a passerby to carry his extra ammunition, and walked the short distance to the college's campus. At the main building's back entrance he opened fire on students standing on the steps. His hostage ran off with the extra ammunition as Gill entered the building and walked to the cafeteria, where he shot two students. Ordering the others in the room to lie on the floor, he fired randomly until police arrived. Taking two more hostages, he attempted to escape until, shot in the arm, he took his own life. The toll: one student dead, 19 more wounded.

Police later found Kimveer Gill's profile posted on a website called VampireFreaks.com. In the accompanying photo he wears a black leather trench coat and sports a Beretta Cx4 Storm semi-automatic carbine, one of four guns he took to Dawson College. Visit VampireFreaks.com today and you can purchase "cyber-gothic clothing" on a related link called clothing@F---TheMainstream, and read featured interviews with "Velvet Acid Christ," "Zombie Girl," and "Grendel." Gill's own VampireFreaks screen name was "fatality 666." His last login was at 10:35 AM on the day of the shootings.

In the aftermath of the Dawson College shootings, the so-called "Goth" subculture came under sharp attack in the media. Hardly a high school or a college on the North American continent is without its clique of Goth enthusiasts in their leather, chains, piercings, tattoos and bizarre hairstyles. Operators of Goth shops and websites found themselves defending the lifestyle and adamantly disavowing violence. Some expressed shock at the 55 graphically violent pictures posted on Gill's VampireFreaks web page.

Gill also turned out to be a big fan of the video game "Super Columbine Massacre RPG." Go to the game's web site today and you'll find this statement about the Virginia Tech massacre: "This week, the press is awash with stories about the shooting at Virginia Tech – the deadliest in recent history. Will we remember this tragedy in a week? In a month? In the years to follow? I certainly hope so. I hope we can learn from such sobering events as Virginia Tech, as Dawson College, Erfurt, Columbine and all the other horrific shootings modern society has endured. So often the potential for another shooting is just around the corner should we forget the lessons history has to offer us. This process of reevaluation, introspection, and a search for understanding is the value I believe my video game offers to those who play it." The author, site owner Danny Ledonne is said to have vomited when he learned that Gill was a fan. Presumably Gill wasn't participating for "reevaluation, introspection, and a search for understanding."

VampireFreaks and Super Columbine Massacre persist on the web, despite their appeal to the Kimveer Gills out there. No one has definitively proven a clear cause-effect-relationship (albeit the Alabama Supreme Court last year reinstated a \$600 million lawsuit against the makers of video game "Grand Theft Auto," which the plaintiffs blame for the shooting deaths of two police officers and a dispatcher in 2003).

As Goth enthusiasts and video gamers alike point out, tens of thousands of adherents never commit a violent crime. In the absence of a clear causal connection between violence-glorifying cults and games on one hand and campus shooters on the other,

academic freedom argues against profiling Goths and gamers as potential threats. And yet ... as horrific incidents multiply down the decades, administrators might be forgiven for considering closer scrutiny of students who fall into these categories.

Even administrators who shy away from "profiling" might welcome increased sensitivity among their student bodies. "Snitching" about suspect behavior may not be cool, but it could be crucial. A live-and-let live attitude in residence halls is probably no longer appropriate in our post-VT world ... anymore than a laissez faire attitude at our airports would make any sense in this post-9/11 age of international terror.

### **Classroom Discussion Questions**

1. Why is "Leaderless Resistance" such a difficult tactic against which to take counter terrorism measures?
2. What were the main causes of McVeigh's radicalization?
3. When a weapon of mass destruction can be made from readily available, legal ingredients, is there any way from preventing a determined terrorist from building and using such a bomb?
4. Given the dangers of profiling of our civil liberties, but also taking into account (a) law enforcements challenges in mounting effective counter terrorism efforts against radicals like McVeigh, and the horrific harm that can result from a successful attack, on balance are you pro or con profiling?
5. Was McVeigh unfairly prejudiced by the admission of the victim testimony which the U.S. District Judge permitted U.S. Court of Appeals approved?

## Chapter Three:

# Should Zacarias Moussaoui Die for Osama bin Laden's Sins? (2001 - 2006)

### Chapter Objectives

After reading this chapter and discussing it with you in class, students should be able to:

1. Provide you with a coherent narrative of the events that transpired between the first World Trade Center bombing in 1993 and the attacks of September 11, 2001.
2. Engage in an informed discussion of how Al Qaeda adjusted its organization and tactics and gradually escalated its attacks, until it considered itself capable of mounting the 9/11 assaults.
3. Referencing the Moussaoui grand-jury indictment, describe the planning and logistics that led up to the 9/11 attacks.
4. Discuss the Moussaoui trial in a way which reflects comprehension of the procedures which comprise a major federal-court criminal trial.
5. Discuss and debate the conspiracy theories which have emerged in the dozen years since the 9/11 attacks.

### Audio-Visual Resources

1. WEBSITE: "Famous Trials" – "Trial of Zacarias Moussaoui 2006"
2. MAJOR MOTION PICTURES
  - a. "United 93" (2006)

**By Jim Castagnera**  
**Special to The History Place**  
**5/1/06**

When Phillip Gavin, publisher of The History Place, suggested I review *United 93*, I was disappointed to discover that the only local theater showing it was one my wife and I