

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

ff

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 10 REPORTER'S TRANSCRIPT
 (Trial to Jury: Volume 2)

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12 Proceedings before the HONORABLE RICHARD P.
 MATSCH,
 13 Judge, United States District Court for the District of
 14 Colorado, commencing at 1:45 p.m., on September 29,
 1997, in
 15 Courtroom C-204, United States Courthouse, Denver,
 Colorado.

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24
Transcription
Street,
629-9285

Proceeding Recorded by Mechanical Stenography,
Produced via Computer by Paul Zuckerman, 1929 Stout
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3 District of Oklahoma, and RANDAL SENDEL, Assistant U.S.
4 Attorney for the Western District of Oklahoma, 210 West
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6 for the plaintiff.
7 LARRY MACKEY, SEAN CONNELLY, BETH WILKINSON,
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9 to the U.S. Attorney General, 1961 Stout Street, Suite
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10 Denver, Colorado, 80294, appearing for the plaintiff.
11 MICHAEL TIGAR, RONALD WOODS, and ADAM
THURSCHELL,
12 Attorneys at Law, 1120 Lincoln Street, Suite 1308,

Denver,

13 Colorado, 80203, appearing for Defendant Nichols.

14 * * * * *

15 PROCEEDINGS

16 (In open court at 1:45 p.m.)

17 THE COURT: Please be seated. We have juror
number --

18 yes, Mr. Tigar.

19 MR. TIGAR: Your Honor, we will have a
challenge for

20 cause with respect to one of the jurors this morning,
and we

21 wanted to know your Honor's pleasure with respect to
that and

22 if necessary, to be heard on the proposal about how the
23 challenges will be handled.

24 THE COURT: Well, we're going to reserve
challenges

25 for cause until later, not do them as we go along.

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1 MR. TIGAR: Well, shall we file a proposal
about that,

2 your Honor?

3 THE COURT: If you wish. Yes.

4 MR. TIGAR: We'll file something.

5 THE COURT: All right. No. 18. If you will

please

6 raise your right hand and take the oath from the clerk.

7 (Juror No. 18 affirmed.)

8 THE COURT: Please be seated.

9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q. You understand that you've been called in here
through a

12 chance selection process where your name came up
through a

13 computer program as a person who may be called upon to
serve in

14 the trial of the United States against Terry Lynn
Nichols as a

15 juror.

16 A. Yes, I do.

17 Q. And you'll recall that a summons was sent out to
you

18 notifying you of that and asking of you to return a
little

19 questionnaire.

20 A. I do.

21 Q. All right. And you did that?

22 A. Yes. I did.

23 Q. All right. And then you, in that questionnaire --
and I

24 think you have that one there, too, as well as a longer
one

25 that we'll get to in a moment. Do you have the
original one

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1 there?

2 A. Yes.

3 Q. Okay. And you'll recall you suggested there that
you may
4 have a problem with serving because of a back
condition.

5 A. Yes.

6 Q. That you have a bad back that affects your ability
to sit
7 or stand for long periods of time. And also, a matter
of your
8 right arm --

9 A. Yes.

10 Q. -- and a tendinitis. And then you did come down to
11 Jefferson County Fairgrounds on September the 17th with
other
12 members of the panel; in fact, quite a few other
members of the

13 panel. You recall that, do you?

14 A. I was driven down by my son.

15 Q. Oh, all right. Well, however you got there, you
were
16 there?

17 A. I got there.

18 Q. And at that time, you met with other jurors,

prospective

19 jurors, there and you were introduced to some people
who were

20 there, lawyers for the Government and for the defense
and

21 Mr. Nichols.

22 A. Yes.

23 Q. Now, we have some additional people here, and I
want to

24 introduce you now before we go any further so you know
who is

25 here. At this first table are Government lawyers, Mr.
Lawrence

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1 Mackey -- you recall that he was there.

2 A. Yes.

3 Q. -- and Ms. Beth Wilkinson next to him. Not present
at that

4 time but present now is Mr. Patrick Ryan, who is seated
next to

5 Ms. Wilkinson, Mr. James Orenstein, who's next to Mr.
Ryan.

6 You did meet the gentlemen at the other table, Mr.
Michael

7 Tigar and Mr. Ronald Woods, who are attorneys for Mr.
Terry

8 Nichols, who is the defendant in the case.

9 And there are other people in the room here

within

They 10 your view, but we're not going to introduce everybody.

11 are people here to assist the lawyers in the case.

questionnaire 12 Now, we did ask you to complete a long

too. 13 and you did that and you've got that in front of you,

14 Right?

15 A. Yes.

please 16 Q. I want to get right to, if you don't mind -- and

you. I 17 don't take offense at any of the questions that we ask

or wrong 18 hope you understand that, you know, there are no right

things 19 answers and that all we ask of you is that you tell us
20 truthfully and honestly your situation and some of the

first 21 about your opinions and beliefs. But we want to talk

chair 22 about your back, your health. You're seated now in a

jury 23 like the -- and you see you're in a jury box where the

trial of the 24 would be seated during the trial of the case. And

rest 25 case would be from essentially 9 to 5 every day with

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minutes' 1 periods in the morning and in the afternoon, 20
Now, 2 duration, and also an hour and a half or so for lunch.
3 with your back condition, will you be able to do that?
4 A. I would have to say probably not.
5 Q. And do you take medication for your back?
off with 6 A. No, I don't. The reason is because I was signed
arm is -- 7 a -- an MMI. In other words, I was told as far as my
as it's 8 my problems in the arm and the back, it's about as good
because 9 going to get. So they don't have me on any painkillers
sleep, 10 it doesn't really do anything except -- well, put me to
11 which wouldn't help anything; right?
12 Q. Wouldn't help serving on the jury, that's true.
13 A. So it's kind --
14 Q. We have other ways to put jurors to sleep.
when it 15 A. So the only -- the only thing I've been told is
know, have 16 gets really bad, I have to kind of lie down and, you
17 my legs elevated and --
18 Q. And you do that?
19 A. Yeah.

20 Q. Do you at home?

21 A. I'll have to, yes.

22 Q. Well, you -- in your original questionnaire, you
indicated

23 that you're on Social Security?

24 A. They have me on Social Security Disability, yes.

25 Q. For your back and your arm?

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1 A. And my arm.

2 Q. And how long have you been on Social Security
Disability?

3 A. Well, it started back in 1993.

4 Q. Well, I mean, you applied for it then?

5 A. Yes.

6 Q. And you went through a process where you were
evaluated and

7 all that sort of thing?

8 A. Yes.

9 Q. And how about the driving? You indicated here that
you

10 don't drive.

11 A. I don't drive mainly because just the movement is
very bad

12 on the arm. So I'm -- I am -- I have -- I am able to
drive. I

13 just shouldn't do it because --

14 Q. I take it --

15 A. -- of the tendinitis.

16 Q. I take it it's not safe for you to drive; is what
you've
17 been told? Is that --

18 A. Probably not. I don't think I'd manage a vehicle
too well.

19 Q. Yeah.

20 A. So --

21 Q. So how did you -- did you drive down today?

22 A. Today, I had to because the person that was
supposed to

23 bring me down was not able to get off work.

24 Q. I see.

25 A. And so I had to bring myself down today.

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1 Q. And were you able to do that?

2 A. Well --

3 Q. I mean, obviously, you were or you wouldn't be
here, but --

4 A. Yeah.

5 Q. -- what I meant to say is was that painful and --
and

6 difficult?

7 A. It's -- well, it makes the muscles flare pretty

bad, but,

8 you know, it's not something I do all the time, so --

9 Q. All right.

10 A. I'll -- I'll live.

11 Q. Well, we hope so.

12 A. I hope so, too.

13 Q. Have you had a job -- when's the last time you had
a job?

14 A. The last time I worked was in 1993. I -- I was a
15 pharmacist technician.

16 Q. Yeah.

17 A. And that's where I got -- where the whole problem
started.

18 Q. You were eligible for Social Security because you
had a
19 work history for the amount of time necessary and so
forth?

20 A. Well, actually, it was there that I developed these
21 problems when I was worked at the hospital. And
eventually,

22 they had to terminate me because the problem was too
bad and --

23 Q. Did you get hurt? Did you get your back hurt
lifting a

24 patient or something like that?

25 A. No. I -- I hurt my back because I -- I had the flu
and I

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1 was just running a high fever and I fainted at work,
and it's

2 how I fainted that I -- I messed up my back. I have
two

3 slipped disks. And the tendinitis was also at work.

4 Q. Okay.

5 A. So . . .

6 Q. Well, what I hear you telling us is that assessing
your own

7 situation, which you are the best one to be able to do,
your

8 assessment is that you wouldn't be able to sit here
with us day

9 in and day out? Is that what you're telling us?

10 A. I do not think I would be able to, no.

11 THE COURT: Okay. Do counsel have any
questions of

12 this lady?

13 MS. WILKINSON: No, your Honor.

14 MR. TIGAR: May we have a moment, your Honor?

15 THE COURT: Yes, of course.

16 MR. TIGAR: No questions, your Honor.

17 THE COURT: Are we in agreement?

18 MR. TIGAR: Yes, sir.

19 THE COURT: With respect to the medical
impairment.

20 MR. TIGAR: Yes, your Honor. We also
discussed that

21 with Mr. Nichols.
22 THE COURT: Thank you. We're going to excuse
you.
23 We're, of course, sympathetic to your back problems,
and we
24 know that you would do your best here if you had to,
but we're
25 not going to force you to be in pain. So you're
excused from

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1 this jury, and we appreciate the efforts that you have
made to
2 come down here and be with us.

3 JUROR: Thank you.

4 THE COURT: You're now excused.

5 And we'll call 653.

6 THE COURTROOM DEPUTY: It'll be just a minute.

7 THE COURT: If you'll just please raise your
right
8 hand there and take the oath from the clerk who is over
here.

9 (Juror No. 653 affirmed.)

10 THE COURTROOM DEPUTY: Thank you.

11 THE COURT: Please be seated.

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. You recall that you were served with a summons as a
15 possible juror in this trial, which is the trial of
charges
16 made by the Government against Terry Lynn Nichols.

17 A. Yes.

18 Q. And as a result of that -- and it's a chance
process where
19 your name came up -- you were also asked to come out to
the
20 Jefferson County Fairgrounds on the 17th of this month
and you
21 did, along with a number of other people.

22 A. Yes.

23 Q. And at that time, I met with you and -- and the
others and
24 also introduced to you some lawyers from the case and
also
25 Mr. Nichols.

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1 A. Yes.

2 Q. Now, we have some additional people here that --
this
3 afternoon, and I want to reintroduce some people and
also
4 introduce some additional. You recall that you met
5 Mr. Lawrence Mackey, who is seated here at the first
table, and

6 Ms. Beth Wilkinson. Also with them as attorneys for
the
7 Government now is Mr. Patrick Ryan seated next, and Mr.
James
8 Orenstein, who is there.

9 You'll recall meeting Mr. Tigar and -- Mr.
Michael
10 Tigar, Mr. Ronald Woods as attorneys for Terry Lynn
Nichols,
11 and Mr. Nichols over there.

12 There are other people here, too, within your
range of
13 vision, but we're not going to introduce everybody.
These
14 other people are here because they're going to be
assisting the
15 lawyers in -- in the case.

16 You also remember that you completed a long
17 questionnaire.

18 A. Yes.

19 Q. And there it is in front of you now. We're going
to be
20 asking you yet, if you can believe it, some more
questions,
21 some of which will be follow-up on some of the things
-- we're
22 not going to go over the whole questionnaire, but some
23 follow-up on some of the things that you've told us and
then
24 perhaps a few additional matters.

gave a 25 You remember that when we did meet before, I

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1 kind of general introduction, talked about the
background of
2 the case, the charges that are in the indictment to be
tried in
3 this case; that I told you at that time that the
Government
4 charges here that there was a conspiracy involving
Terry Lynn
5 Nichols and also Timothy James McVeigh and other
persons not
6 named in the indictment to use a truck bomb to destroy
a
7 federal office building in Oklahoma City, killing and
injuring
8 people in it.

9 A. Yes.

10 Q. Do you remember that generally?

11 And that I did advise that an explosion did
indeed
12 occur on April the 19th, 1995, in Oklahoma City; that
13 Mr. Nichols entered pleas of not guilty to all of these
charges
14 in this case, thereby putting into issue, into dispute
all of
15 the allegations made by the Government, and of course,
what is

16 now to be done is a trial to decide whether the
Government can
17 prove what it's charged. And what we're doing here is
getting
18 information from people to select a jury to hear and
decide
19 this case.
20 I mean, you understand all that; right?
21 A. Yes.
22 Q. Now, the questionnaire, you understood, I'm sure,
but I
23 want to repeat, is not a test. There's no right or
wrong
24 answer to any of these questions, but what we're
searching from
25 you is simply honest and truthful answers which include
some

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1 things about your opinions and beliefs, and we know
that this
2 is quite an invasion of your privacy. We're sorry to
be
3 required to do that, but I'm sure you appreciate and
understand
4 the need for it.
5 A. Yes.
6 Q. We'll protect your privacy in all ways that we can,

7 including, of course, not using your name. These
questionnaire
8 answers don't go out anywhere. Your answers here, of
course,
9 are public, but you're known to us here publicly only
as No.
10 653 and we'll proceed accordingly.
11 A. Okay.
12 Q. Now, I want you also to understand that you're free
to
13 change any of the answers because you were hit with a
lot of
14 questions covering a very wide range of subjects and
it's only
15 human nature that what you first answered, you might,
on
16 reflection, thinking about it a little more, answer
17 differently. If that happens, I mean, if there's
anything like
18 that in the questionnaire that you would like to
change, don't
19 hesitate to tell us. You're free to change. Also,
while we're
20 going to go over a few of these things with you, once
again,
21 you don't have to answer in the same way or you can
give an
22 explanation for anything that's in there.
23 Now, you also, I'm sure, remember that before
you left
24 the fairgrounds' auditorium that day, I gave you some
25 instructions about assuming that you're going to have

the

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1 responsibility to decide the case, be careful about
publicity,

2 lots of things that are on radio, television,
newspapers, and

3 in discussion with others so that you can avoid
anything that

4 could or might influence you if you end up on the jury
and have

5 to decide the case. We know that isn't easy to do in
matters

6 that receive a lot of public notice and public
attention. And

7 certainly, there's always the possibility that no
matter how a

8 person tries, she may come across something
inadvertently or

9 somebody may speak to her.

10 Has anything like that happened since we were
together

11 last?

12 A. No.

13 Q. And have you been able to be careful, then, in
watching the

14 news and television and that sort of thing --

15 A. Yes.

16 Q. -- and talking with others?

17 A. Yes.

18 Q. And as I understand it now, you're a -- you're
divorced and

19 you're a single parent?

20 A. Yes.

21 Q. And you may have discussed this with family
members,

22 however -- "this" being that you've been called for
jury

23 service. Have you done that?

24 A. Not exactly. I just told my son that I was going
to be

25 gone today.

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1 Q. Okay. And you are employed there by the school
district?

2 A. Yes.

3 Q. Drive a bus for the school?

4 A. Yes.

5 Q. What age -- or is it different ages?

6 A. From preschool to high school.

7 Q. Okay. So the whole case -- one through twelve, I
guess?

8 A. Yes.

9 Q. And have you talked about -- with your supervisor
there or

10 whoever you're reporting to about the possibility of
being on
11 this jury?
12 A. Yes.
13 Q. And of course, they would have to get somebody else
to
14 drive.
15 A. Yeah.
16 Q. And has anybody there talked with you in terms
like, Well,
17 you don't want to do that and here's how you get out of
that,
18 you just tell them you've got your mind made up or --
19 A. Yes.
20 Q. -- something like that? Have they suggested that
to you?
21 A. Yes.
22 Q. And what -- how have you responded to such
suggestions?
23 A. I haven't.
24 Q. You have not responded?
25 A. I just let it go and just went on.

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1 Q. Okay. Has there been anybody tell you, Well, if
you do get
2 on this jury, this is how you ought to decide it?

3 A. No.

4 Q. Okay. So mostly, it's how you can get off?

5 A. Yes.

6 Q. And you also are a part-time -- you do part-time
work with
7 this pharmacy?

8 A. Yes.

9 Q. And have you talked with them, as well?

10 A. Just to tell my boss that I have to work later in
the
11 evening or something.

12 Q. Well, what have you suggested there?

13 A. I usually work nights there so it doesn't -- and
it's only
14 part-time so it's whenever I could work. They work
around my
15 schedule as it is.

16 Q. Yeah. Would you be intending to work nights there
and be
17 on the jury, too, in the daytime if you were on the
jury?

18 A. No. Mostly on Saturdays.

19 Q. I see. We wouldn't want you to overextend so that
you were
20 exhausted when you came here in the morning or --

21 A. No.

22 Q. Okay. Now, as I have it, you live now in the
Brighton
23 area?

24 A. Yes.

25 Q. You were born and raised in Nebraska, apparently?

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1 A. Yes.

Grand

2 Q. Started out in Kearney and then spent some time in

3 Island?

4 A. Uh-huh.

ever live

5 Q. And your parents were raised on farms. Did you

6 on a farm?

7 A. No.

told you

8 Q. So what you know about farming is what they have

9 and what you've seen in the --

10 A. Yes.

11 Q. -- area.

Kearney and

12 I mean, there are a lot of farms around

13 Grand Island?

14 A. Yes.

farm?

15 Q. Farming area. Well, have you ever worked on a

16 A. No.

17 Q. Then you've, in Colorado, lived in Wiggins and --

and Fort

18 Morgan?

19 A. Uh-huh. Yes.

20 Q. Yes? Now, how long ago were you divorced?

21 A. Two years ago.

22 Q. Two. And you were married then how many years?

23 A. 21 years.

24 Q. Raised or -- or are raising still but -- four
children?

25 A. Yes.

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1 Q. And one of them just joined the Army?

2 A. Yes.

3 Q. And has he gone on to Army duty? I mean --

4 A. No. He's still home.

5 Q. He's still home?

6 A. He's in boot camp.

7 Q. What?

8 A. He's in boot camp.

9 Q. Oh, okay. So where is he assigned?

10 A. South Carolina.

11 Q. And I don't want to, you know, ask you in a way to

12 embarrass you, but do I understand that you have a 25-
year-old

13 son who you don't know where he is?

14 A. That's right. He was with -- he wasn't from my --
my

15 husband. He's from a previous marriage, so I don't
know where

16 he's at.

17 Q. A previous marriage of yours?

18 A. Yes.

19 Q. So this was your second marriage?

20 A. Yes.

21 Q. Was the first one also ended with divorce?

22 A. Yes.

23 Q. Now, what kind of work did your -- taking this
second

24 marriage first, what kind of work did your husband do
while you

25 were married?

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1 A. He's a mechanic.

2 Q. Automobiles?

3 A. Auto mechanic, yes.

4 Q. And how about the first one? What kind of work did
he do?

5 A. He did fiberglass work.

6 Q. In a factory or --

7 A. Yeah.

8 Q. Okay. You had a -- I'm looking through the
questionnaire

9 again here -- a -- well, take a look at page 15. If
you'll

10 turn to page 15 and Question 68, item A. What is that
CCSEA?

11 What organization is that?

12 A. That's a classified association where -- Classified
Council

13 Association. It's for the school district. It's like
for

14 classified people in the school district.

15 Q. "Classified" meaning the categories of employee?

16 A. Uh-huh.

17 Q. Okay. And so it's a professional organization that
18 functions something like a union, does it?

19 A. Yes.

20 Q. For dealing with conditions of work and pay and so
forth?

21 A. Yes.

22 Q. Have you ever been in a leadership position there?

23 A. No.

24 Q. Also, while we're on the questionnaire, if you will
turn to

25 page 22, if you please. And Question 101. Your --
your

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1 statement there, I think, is clear enough in and of
itself, but

2 was your daughter living at home at the time?

3 A. Yes.

4 Q. And so the break-in was in connection with her?

5 A. Yes.

6 Q. Was there any violence in connection with that?

7 A. No.

8 Q. You did call the police?

9 A. Yes.

10 Q. And did this break-in occur when nobody was home?
Is that

11 that kind of thing?

12 A. We were in bed, sleeping.

13 Q. And what happened?

14 A. He just -- he -- he was angry with her and broke --
wanted

15 to see her so he broke into the house.

16 Q. And did he see her?

17 A. No. Because we heard him before she did and we
called the

18 police and he ran off.

19 Q. And was he arrested?

20 A. I don't know. They -- he wasn't arrested that
night.

21 Q. But this is the same incident that resulted in the

answers

22 that you have to Question 102, the next question?

23 A. Uh-huh.

24 Q. That's the same incident?

25 A. Yes.

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with how 1 Q. Okay. And generally speaking, you are satisfied
2 the authorities handled that whole matter, are you?

3 A. Pretty much so, yeah.

4 Q. And about how long ago was that?

5 A. About four years ago.

6 Q. Okay. And then over on the next page, there was an
7 incident involving, apparently, someone operating a
motor 8 vehicle under the influence of alcohol. And this is
something 9 that you witnessed?

10 A. Yes.

11 Q. Was it in connection with an accident or --

12 A. It was an accident.

13 Q. Were you directly involved in the accident?

happened, I 14 A. Well, yes and no. I was -- when the accident

15 was behind it and hit another vehicle with someone in

it that I

16 knew, and my vehicle ended up being involved in the
accident,

17 but --

18 Q. Okay. And you -- you were a witness, made your
reports to

19 the police and then -- was there a trial?

20 A. Per se, the young man that got hurt, they -- they
sued the

21 people that were -- of the drunk driver, so we were a
witness

22 to that.

23 Q. So you attended at a trial?

24 A. Yes.

25 Q. As a witness?

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1 A. Yes.

2 Q. And was there a jury there?

3 A. No. It was just a judge.

4 Q. Okay. Now, have you ever attended a trial with a
jury?

5 A. No.

6 Q. We want to talk a little about what's involved
there. I

7 mentioned some of these things when I talked generally
to the

8 people who were gathered at the fairgrounds. But you
9 understand under our system of justice, there are some
basic or
10 fundamental principles that apply in every case,
regardless of
11 who the defendant is or what kind of crime is charged.

Agreed?

12 A. Yes.

13 Q. And one of those principles is that the person
accused is
14 presumed to be not guilty of whatever is charged. And
that
15 presumption carries throughout a trial and entitles him
to a
16 verdict of not guilty unless the prosecution, whatever
17 government that is, be it local, state, or federal,
satisfies
18 the jury with evidence beyond a reasonable doubt. Do
you
19 understand that --

20 A. Yes.

21 Q. -- principle?

22 And so do you understand and accept that these
various
23 charges that have been made against Terry Lynn Nichols
--
24 Mr. Nichols sits here with us this afternoon presumed
to be not
25 guilty of them? Do you accept that?

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1 A. Yes.

2 Q. And he does not have any duty or any burden of any
kind to

3 prove himself to be not guilty or to explain anything
in

4 connection with this. It is the Government who's
brought these

5 charges and it is up to the lawyers for the Government
to try

6 to prove it, calling in the witnesses to testify,
introducing

7 exhibits and so forth, all of which is subject to
objection

8 under rules of evidence that govern us in trials and
limit what

9 a jury can hear and consider. And it is not required
of

10 Mr. Nichols, just as it is not required of any
defendant, to

11 produce any witnesses himself, call any to testify, or
to

12 testify himself. No person accused of any crime in the
United

13 States is required to be a witness against himself.
You

14 understand these principles?

15 A. Yes.

16 Q. And indeed, the law is strong and says that if an
-- if in

17 a trial a defendant does not testify, the jurors may

not

18 consider that in any way in discussing the evidence in
the

19 case. You understand that?

20 A. Yes.

21 Q. There's no implied admission or anything like that.
You

22 just can't consider the fact, if it be a fact, that a
defendant

23 doesn't testify. You understand that?

24 A. Yes.

25 Q. Now, as I said, the pleas of not guilty put on the

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1 Government its burden to come in and prove what they
say. And

2 a defendant may simply challenge that through cross-
3 examination, objections, and the like without having to
produce

4 evidence of his own. And the burden of proof, as we
call it,

5 is that the Government must prove the charges by
evidence that

6 convinces jurors beyond a reasonable doubt. First of
all, all

7 jurors must be in agreement, there must be a unanimous
verdict;

8 and secondly, what they must agree on is that what they
heard

9 and saw as evidence following the law and the Court's
10 instructions about what they have to prove for each
particular
11 crime charged, the jurors are satisfied that yes, the
evidence
12 shows guilt beyond a reasonable doubt. If not, then
it's their
13 plain duty to find the defendant not guilty. In other
words,
14 after considering all of the evidence and the arguments
and the
15 instructions on the law, if the jury has a reasonable
doubt
16 about the defendant's guilt, they have a responsibility
to find
17 him not guilty. Do you agree with that?
18 A. Yes.
19 Q. And do you have any hesitation about following that
and
20 being bound by that principle in the event you were
selected as
21 a juror for this trial?
22 A. No.
23 Q. Now, we asked you some questions on this
questionnaire
24 regarding penalties, and that's on page 28. If you'll
turn to
25 page 28, please. Do you have it?

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1 A. Yes.

2 Q. Do you have it? And do you remember confronting
these
3 questions or being confronted by them?

4 A. Yep.

5 Q. And of course, there's a long -- rather lengthy
explanation
6 in the beginning there before the questions are put to
you,
7 explaining why these questions are being asked and that
you
8 should not assume or draw any inference from the fact
that
9 we're asking you these questions that somehow, we're
suggesting
10 that the defendant is guilty. It is simply the fact
that in
11 the event of a conviction in this case, because of the
nature
12 of the crimes charged, there would be a penalty hearing
with
13 the jury, and I'll talk about that in a minute. But
before we
14 get to that, we need to have a little information about
what
15 you think about punishment. That's why these
questions.

16 And let me ask you this first: Before you
started to
17 answer these questions, had you given much thought to
the death

18 penalty and our criminal justice system?

19 A. No. Not a whole lot.

20 Q. So would it be fair to say this is the first time
that you

21 really focused on that question in your own mind?

22 A. Yes.

23 Q. And of course, you know, I can read your answers
here and

24 with the crossouts and things, you had some trouble
with it.

25 A. Yes.

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1 Q. Fair?

2 A. Yes.

3 Q. Fair to say so?

4 just, I Now, that's not said in criticism. That's

5 you hope, a recognition that these are hard questions and

6 asking you treated them very seriously. And of course, we were

7 for what these things without regard for what the law is, just

8 your you think coming in, as it were. And the way I read

9 them. Is answers, first of all, you're not sure about any of

10 that right?

11 A. Right.

12 Q. Okay. And secondly, with respect to a penalty of
life in
question

13 prison without the possibility of release ever or the

14 of death, you're saying it largely depends on the

15 circumstances.

16 A. Yes.

17 Q. Now, I want to talk just a little -- and the
circumstances

18 including the crime?

19 A. Yes.

20 Q. And the person found guilty? Are those
circumstances to be

21 considered, also?

22 A. Yes.

23 Q. Okay. Let me put this now into the context of the
24 procedure that we would be applying here in this case.
First

25 of all, as we've just talked about, what's involved in
the

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1 trial and the jury's deciding whether the evidence
shows guilt

2 beyond a reasonable doubt, in that phase of any trial,

the jury

3 is not to consider possible punishment at all. In
fact, in 4 cases that do not involve the possibility of a death
penalty, 5 which is most of the criminal trials, the jury is
specifically 6 instructed not to consider punishment because the jury
doesn't 7 have any role to play in punishment. You understand
about 8 that?

9 A. Yes.

10 Q. And in the cases of that type, what happens is the
trial is 11 presented, evidence is presented, instructions on the
law, 12 arguments of the lawyers and the jury is asked to
decide, all 13 right, does the evidence show guilt beyond a reasonable
doubt.

14 If the answer is no, then the verdict's not guilty,
that's the 15 end of it. If the answer is yes, without considering
16 punishment, then the jury returns a verdict of guilty
and 17 that's the end of it as far as the jury is concerned.

18 Understand?

19 A. Yes.

20 Q. Because the punishment is left to the court, the
judge.

21 And in those cases, before a judge can make a decision
like
22 that, serious as it is, more needs to be known. So
additional
23 information is gathered, not only about the
circumstances of
24 the particular crime, but also circumstances and
information
25 about the defendant himself or herself. And that
includes

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1 things about this person's background, his family
history, his
2 employment history, all of those things that go up to
make a
3 life and that makes each one of us unique as individual
human
4 beings. And then there's a hearing at which that
information
5 is presented to the court, along with arguments from
the
6 lawyers on both sides, and then the judge makes a
decision and
7 that's the sentence. You understand that's the normal
process?
8 A. Yes.
9 Q. It's different now in federal courts when there is
the
10 possibility of death as a punishment. The jury does
have a

11 role to play. Indeed, the jury has the role to play,
the
12 decision-making role with respect to life or death.
And I want
13 you to follow me here for a moment about what that
procedure
14 is. First of all, there's the trial to determine
whether guilt
15 has been proved. And that -- this matter of punishment
can't
16 be considered, just as in any other case. You follow
me on
17 that?
18 A. Yes.
19 Q. But then if there is a finding of guilty by verdict
20 unanimously of the jury, then we go ahead and present
21 additional information. It's in a second trial,
really, and we
22 call it a penalty phase hearing or trial. And what
happens
23 there is a good deal of additional information comes in
about
24 the offense, what happened in the offense, people
affected by
25 it, and also a good deal of information about the
defendant of

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1 the type that I'm talking about, background,

circumstances of

2 his upbringing and all of those things just like I
talked about

3 with respect to a judge's hearing. And the jury is
required to

4 consider all that. The prosecutors present information
that

5 tend to -- that will tend to support the severe penalty
of

6 death, and we talk about that as aggravating factors.
The

7 defense presents and argues in favor of what are called

8 mitigating factors, which are things that suggest that
death is

9 not a justified result for this defendant. And then in
the

10 end, the matter is turned over to the jury to decide.

11 Now, instructions are given about how the jury
must

12 analyze the information provided and consider
aggravating and

13 mitigating factors. But in the end, it comes to a
moral

14 decision, a judgment as to whether a particular person
should

15 live or die. And that is a matter that has to be
decided

16 individually by each juror as a moral judgment, the
jury coming

17 together as the conscience of the community as we
sometimes

18 say.

19 So in this case, if Mr. Nichols is found
guilty, the
20 jurors will be asked, after hearing all of these other
matters
21 and being required to consider them, whether he should
live or
22 die. You understand that?
23 A. Yes.
24 Q. Now, that's why we have to put these questions to
you here
25 well in advance. My question to you is whether you, if
you

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1 were to serve on this jury, would be able to make that
kind of
2 a judgment, given the guidance that I'll provide with
respect
3 to the law and the factors that you must consider.
4 A. I would hope I would be able to.
5 Q. Tell us why you reserve, you know -- have this
6 qualification in your answer.
7 A. I think I'm pretty open-minded, but I've never
dealt with
8 that before, so . . .
9 Q. Sure. Well, let me ask it a different way. Is
there
10 anything in your religion or in your view of life in
general,

system 11 any -- or your view of crime and the criminal justice

12 that would in any way interfere with your making an

evidence? 13 open-minded, fair decision based on the law and the

14 A. I don't think so, but . . .

15 Q. Okay.

16 A. I don't think so.

courtroom 17 Q. Yeah. I -- you know, how can we here in the
say

18 will you do it when you don't know what's going to be
heard?

19 And neither do I. Because all of that depends on, you
know,

20 what happens. But all we can ask of you is whether, as
you sit

21 here now, you believe that you could do it.

22 A. Yes. I'm open-minded, hopefully, yes.

23 THE COURT: Okay. Well, thank you for all of
these

24 answers. Now we'll just ask you to be patient and
listen to

25 some additional questions from the lawyers for each
side

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1 because it's only fair they have an opportunity to ask

2 questions of you, as well.

3 Mr. Mackey . . .

4 MR. MACKEY: Thank you, your Honor.

5 VOIR DIRE EXAMINATION

6 BY MR. MACKEY:

7 Q. Good afternoon.

8 A. Hi.

9 Q. Am I right that long-time school bus drivers have
nerves of
10 steel and nothing makes them nervous?

11 A. No.

12 Q. Not even coming downtown and meeting strangers and
asking
13 questions?

14 A. No.

15 Q. I need a little bit more of your time, if you don't
mind.
16 I have just a few other questions I'd like to follow up
on his
17 Honor's. I went through your questionnaire and I
understand

18 you grew up in Nebraska and you have been here in
Colorado for
19 some 17 years.

20 A. Yes.

21 Q. All right. Tell me a little bit about your youth
in
22 Nebraska. What did you do as a kid?

23 A. Just -- hometown kid. I -- go to school, visit

24 grandparents, you know. Nothing -- nothing out of the
25 ordinary.

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1 Q. What did your parents do for a living?

2 A. My dad's a -- was a -- is a retired plumber, and my
mom
3 works for a college back home.

4 Q. Do you get a chance to see them much still?

5 A. At least a couple times a year.

6 Q. You have -- well, at least now, you're working two
jobs?

7 A. Yes.

8 Q. And how long in your adult career or adult life
have you

9 been working two jobs at the same time?

10 A. Just the last couple of years.

11 Q. Is that largely because of financial needs?

12 A. Yes.

13 Q. All right. I notice that at some point in time,
you had

14 done some training for bookkeeping?

15 A. Yes.

16 Q. Did you go to school for that?

17 A. Yes.

18 Q. And have you had a chance to put any of those

skills to

19 work?

20 A. Some.

21 Q. Tell me about that.

22 A. I -- actually, I do book work at the school
district. I do

23 their mileage cards and things like that for them,
so . . .

24 Q. Give me an idea of your duties at the school. What
--

25 A. I drive a school bus and then I also do their -- at
the end

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1 of the month, we have to turn in mileage cards and --
for the

2 state, and I do the mileage cards, make sure they are
right and

3 put them in the computer for the school district.

4 Q. How many --

5 THE COURT: Would you like a glass of water?

6 JUROR: Yep.

7 THE COURT: You seemed to be fading out a
little.

8 BY MR. MACKEY:

9 Q. So how many hours of the day are you in a bus?

10 A. About -- approximately six hours.

you're 11 Q. All right. And the balance of the time, then,
12 spending doing paperwork and the sort?

13 A. Yes.

group of 14 Q. Do you know when you go to work every day which
15 kids you're going to be driving?

16 A. Yes. I have a set route.

to drive 17 Q. So this is the hardest question. Would you prefer
18 preschoolers or high schoolers?

make a 19 A. I like them all, so it doesn't -- it don't really
20 difference.

he go 21 Q. Does your son go to -- the one who is at home, does
22 to the school that you drive to?

23 A. Yes. He goes to the high school.

24 Q. Does he ride on your bus?

25 A. No.

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point for 1 Q. All right. You also had gone to school at some
2 food service management?

3 A. Yes.

4 Q. Tell me about that.

do some 5 A. I worked for a -- a care facility and I wanted to
about doing 6 advancement and so I -- my boss -- and I asked her
up. 7 that for advancing, so I went to the class to advance

8 Q. You graduated?

9 A. Yes.

facility? 10 Q. And did you stay at work there at that same

up, they 11 A. They -- when it came for -- that position opened

jobs at 12 hired somebody with more experience, and I switched

13 that time.

that 14 Q. Were these largely nursing homes or institutions of

15 sort?

16 A. Yes.

17 Q. And you were in the food service --

18 A. Yes.

19 Q. -- end of it?

20 Did you enjoy those years?

21 A. Yes, I liked working for them.

which one 22 Q. When you compare that job with your current job,

23 do you prefer?

better 24 A. I like driving the school bus. I like it, I guess,

25 than working in the kitchen, so . . .

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1 Q. I noticed that you've grown up in the Catholic
faith but
2 have since moved to another denomination; is that
correct?

3 A. Uh-huh.

4 Q. Would you mind telling me a little bit about that.

5 A. I just -- I was looking for something more
personal, more

6 one-on-one. And the church I belong to now, it's a
small one

7 and it's more -- more personal.

8 Q. And is that largely the collection of your friends?
Is

9 that who you see mainly on a social basis?

10 A. No. It's just -- well, it's something I was
looking for

11 different and it's just a new group of people that I
know,

12 so . . .

13 Q. Do you know whether that denomination or that
church has a

14 view one way or the other on the death penalty?

15 A. No.

16 Q. It's not been a subject of discussion?

17 A. No.

18 Q. Of sermons or anything of the like?

19 A. No.

20 Q. When you got the summons in this case and it told
you it

21 had to do with the Oklahoma City bombing case, can you
tell me

22 what image of that case first came to mind?

23 A. I don't think I really had an image. I just was
surprised

24 I got one.

25 Q. Setting aside the surprise and all that, when you
began to

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1 think about the Oklahoma City bombing case, was there
any

2 picture in your mind of what that case was, what did it
mean to

3 you?

4 A. Not really, no.

5 Q. I take it it's not something, then, that you
followed

6 through the news?

7 A. No.

8 Q. Made a point of watching a lot of TV or reading on
that?

9 A. No.

of your 10 Q. Part of the reason I ask that, of course, is part
and 11 responsibility as a potential juror would be to come in
witness 12 listen to the evidence for the first time from the
you set 13 stand and if there's been any exposure to media, that
14 that aside. I take it you could do that?

15 A. Yes.

16 Q. You've been to a gun show.

17 A. Yes.

18 Q. And tell me when and where.

just -- my 19 A. It's been a couple -- quite a few years ago. I

so he 20 husband was -- they -- he started hunting and stuff and

because 21 wanted to go look for different guns, and we just went

guess. 22 that's where he wanted to go look for guns then, I

23 Q. His interest, not yours?

24 A. Yeah. Not mine.

know, what 25 Q. Okay. Do you remember anything about it? You

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1 it was like, what you saw there, what was going on?

things 2 A. There were a lot of guns and a lot of different
3 going on, so -- nothing --
4 Q. I take it it's not ever been an interest of yours
--
5 A. No.
6 Q. -- to study or own guns or use them?
7 A. No.
Question 8 Q. If -- if I can, take a look, please, at page 3 and
9 No. 11. You marked yes on that particular box?
10 A. Uh-huh.
11 Q. Did that involve you?
12 A. Did it involve me?
13 Q. Yes.
14 A. No.
15 Q. All right. Is this somebody you know, then?
16 A. Yes.
that 17 Q. All right. Is there anything about that experience
18 you think we should know more about?
19 A. No.
it'll 20 Q. All right. Let me spend the rest of my time -- and
the death 21 just be a little bit of time -- talking further about
our only 22 penalty, and his Honor has emphasized to you this is
23 opportunity to hear you tell us what it is you think

about it.

for 24 The questionnaire is a starting point. It's a trigger
filled 25 people to at least begin to think about it. Since you

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terms about 1 the questionnaire out, have you thought in further

expand on 2 the death penalty? Is there anything that you would

3 or further describe about your views?

I'm not 4 A. No. I've really not tried to think about it. I --

5 a great death person, but I guess, like I said, I'm

with it, 6 open-minded, so -- you know, I've never had to deal

7 so . . .

juror in 8 Q. And with the responsibility of being a potential

9 this case, because that risk of punishment exists, you

to 10 understand that might be a decision that you would have

11 face?

12 A. Yes.

cases, 13 Q. All right. Let me talk a little bit about capital

case. And 14 federal capital cases, and I'm not referring to this

the 15 I don't want to talk about what little you know about
16 facts, Mr. Nichols, or the evidence. We haven't heard
describe a 17 anything, as his Honor told you about. I want to
by 18 little more about the process. And as I do so, help me
19 answering, if you will, if there's anything about the
process 20 that you would find difficult to follow.

21 All right. One of your answers in the
questionnaire,
22 of course, to his Honor's question was would you follow
the 23 Court's instructions, and you said yes?

24 A. Yes.
25 Q. By that, I understand you mean if the Court lays
down the

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1 law, says, Madam Juror, this is the law, it is your
to 2 inclination, in fact, your duty, as you understand it,
3 follow that law?

4 A. Yes.
5 Q. All right. In a capital case in a federal court,
no one 6 ever gets to the penalty phase until and unless, as his

Honor

7 has described, there's a conviction; that the jury's
first been

8 satisfied that guilt has been established or that the

9 Government has met its burden of proof beyond a
reasonable

10 doubt. Do you understand that?

11 A. Yes.

12 Q. All right. But in the penalty phase, things are a
little

13 bit different in that they get -- that is, the jury
gets yet

14 more information, not just what they heard about in
deciding

15 guilt or innocence, but more now on a different level,
more

16 about the crime, more about the defendant.

17 All right. It would be your responsibility in
that

18 hearing to be entirely open-minded even though you have
passed

19 on the evidence. When you went to the penalty phase,
you had

20 to promise to be entirely open-minded. You'd listen to
the

21 Government's evidence and the arguments about why death
was

22 appropriate. You would listen to the defendant's
arguments and

23 evidence as to why it was inappropriate. And you would
not

24 begin the process of making a choice until you had

considered

25 all of that evidence. Do you understand that?

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1 A. Yes.

makes

2 Q. Is that a process that fits for you -- that is,

3 sense -- and that you in your heart can follow?

4 A. Yes. I think so.

process, it

5 Q. As his Honor has told you, the law prescribes a

that

6 helps the jury evaluate or know how to evaluate that --

result.

7 evidence, but in the end, the law doesn't prescribe a

Do you

8 It's an individual decision of each member of the jury.

9 understand that?

10 A. Yes.

choice, it

11 Q. And as his Honor has talked about, it's a moral

heart that

12 becomes a moral choice, that you believe in your own

punishment.

13 a particular punishment is the just and appropriate

14 Do you understand that?

15 A. Yes.

16 Q. Is that a process, knowing that that would fall to

you

17 ultimately individually to make that kind of decision,
that you

18 can live with?

19 A. Yes.

20 Q. That you can be a part of?

21 A. Yes. I think so.

22 Q. And as applied, it may come down to having to make
that

23 moral choice to end the life of someone else. Can you
make

24 that kind of choice?

25 MR. TIGAR: Objection, if the Court please.

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1 THE COURT: Overruled.

2 JUROR: Yes. I think I could. I hope so.

3 BY MR. MACKEY:

4 Q. In your questionnaire, you told the Court and the
parties

5 that you don't have any preconceived opinion about Mr.
Nichols

6 one way or the other; that you know of no reason on
reflection

7 why you can't be fair and impartial to both sides to
give each

8 party a fair trial. As you set here now, having
listened to

9 his Honor, having thought more about this
questionnaire, would

10 you change those answers?

11 A. No.

12 MR. MACKEY: Thank you so much.

13 THE COURT: Mr. Tigar.

14 VOIR DIRE EXAMINATION

15 BY MR. TIGAR:

16 Q. Good afternoon.

17 A. Hi.

18 Q. Well, before we turn to some of these heavier
things, you

19 said you liked to go to the movies. What -- what
movies have

20 you seen recently that you can remember?

21 A. "Grumpy Old Men, 2," I guess.

22 Q. Pardon?

23 A. "Grumpier Old Men, 2."

24 Q. Oh; is that right? Oh. Well --

25 THE COURT: Did you think of that when you
were

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1 looking at me?

2 BY MR. TIGAR:

3 Q. And did you enjoy that?

4 A. Yes.

5 Q. That -- is that -- that's that Walter Matthau/Jack
Lemmon

6 combination?

7 A. Yes.

8 Q. And you also like bike riding?

9 A. Yes.

10 Q. Do you ride those -- the bike trails around Denver?

11 A. No. I just kind of ride around town.

12 Q. And the -- when it talks about TV, it looked like
the

13 programs you watch are all doctor programs.

14 A. I'm usually -- because of my hours I work, I
usually don't

15 get home till after 9:00 so they are the ones that are
on TV

16 about that time.

17 Q. That's what there are. What is it that fascinates
you

18 about them?

19 A. Just there's not a lot of -- of hard-core stuff in
it so

20 it's not -- some of it can be make-believe and some
true, so

21 it's pretty easy to intake. Nothing that will scare me
during

22 the night or whatever.

23 Q. Now, you said that you liked driving the bus better
than

24 being in the kitchen in a nursing home facility. When
you were
25 working on getting a -- a food service supervisor, that
would

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1 have been more a people job, wouldn't it?

2 A. Yes.

3 Q. You were -- you like people jobs?

4 A. Yes.

5 Q. How do you think that the students on the school
bus that
6 you drive would describe you? What would they say
about you?

7 A. I don't know. Some would have different opinions
of me.
8 Some would say I'm probably okay. Some would say I'm

9 loud sometimes. Strict.

10 Q. With a bus full of school kids, you kind of have to
have
11 rules, don't you?

12 A. Yes.

13 Q. So they would say that you're a person that makes
sure they
14 all toe the line?

15 A. Pretty much so.

16 Q. But the little kids that get on, they are looking
to you as

17 a sort of a support source, aren't they?

18 A. I don't know. They -- someone to look up to
sometimes, I

19 guess.

20 Q. Well, I wanted to talk then -- oh, I know. There's
one

21 more thing about -- you mentioned in Question 142 that
you had

22 a friend that used to use explosives to set off a
homemade

23 cannon?

24 A. Yes.

25 Q. When was that?

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1 A. About four years ago.

2 Q. And what kind of things did they use to set it off?

3 A. I'm not for sure. Gunpowder, I know. That's -- he
never

4 was much to letting everybody know what he puts in it.
He

5 just -- some gunpowder and some silver stuff, so --

6 Q. Made a big noise?

7 A. Yeah.

8 Q. Did -- did everybody enjoy that?

loud. 9 A. Well, yeah. I guess so. Sometimes it was pretty

fellow 10 Q. Well, you wouldn't jump to the conclusion that some

4th of 11 that wanted to set off things that made a noise on the

12 July was a bomber, would you?

13 A. No.

14 Q. Wouldn't be logical?

15 A. No.

questions 16 Q. Let me -- let me then talk about some of these

discussed with 17 about the case, some of which you -- you already

first 18 the Government counsel and with the Court. What's the

19 thing that you can remember hearing or seeing about the

20 Oklahoma City bombing?

lot of 21 A. I guess I don't -- there was a bombing and that a

were some 22 people got hurt and the pictures on TV and that there

whatever, so -- 23 suspects but they didn't know who they were or

24 I didn't pay a lot of attention, you know.

killed in the 25 Q. Did you hear about any children being hurt or

1 bombing?

2 A. Yes.

3 Q. And what did you feel when you heard that?

4 A. Sad.

5 Q. Did it make you angry?

6 A. More -- mostly sad.

7 Q. And within the days after, what's the first thing
that you

8 can remember seeing or hearing in the press about Terry
9 Nichols?

10 A. That maybe he was a possible second person. That
was quite

11 a long time afterwards, but -- that's about it.

12 Q. And have you -- have you talked about the case with
13 friends?

14 A. No.

15 Q. Now, you said that since you got your summons,
people have

16 said, Gee, you ought to try to get out of that, and so
on, and

17 you just let that go by; right?

18 A. Yeah.

19 Q. As you sit there today, do you have any opinion
about who

20 did it or what their involvement was?

21 A. No.

22 Q. Do you remember reading in the paper about the
trial of

23 Timothy McVeigh?

24 A. No, I don't.

25 Q. Or seeing it on television?

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1 A. I don't read the newspaper very much, so -- I seen
some

2 things about it, but not a whole lot.

3 Q. And you're aware that this is a separate case;
right?

4 A. Yes.

5 Q. With different lawyers and different evidence;
right?

6 A. Yes.

7 Q. Well, the Judge talked a little bit about some of
these

8 principles in the -- that are part of the justice
system. Do

9 you feel that you would be able to -- if for some
reason

10 Mr. Nichols didn't take the stand and testify, would
you be

11 able to decide the case and disregard that and not hold
it

12 against him?

13 A. Yes. I think so.

14 Q. Well, when -- when you say, "I think so," can you
think of

15 good reasons why an innocent person might not testify?
16 A. Well, yeah. They -- maybe it's best that they
don't
17 testify. It might look worse for them if they did, I
guess.
18 Q. Well, when you say, "I think so," that you could
disregard
19 it, this is not some sort of 20 questions, or test, or
20 whatever. You're telling me when you say, "I think so"
that if
21 the judge told you this is what the law is, that you
could
22 follow that?
23 A. Yes.
24 Q. And when government counsel, the Judge, asks you
about a
25 penalty part of the trial, you know that, as the Judge

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1 explained, but probably different words, that we start
out
2 here, Terry Nichols says, "I plead innocent," and so we
would
3 never get to considering penalty unless and until the
4 Government proved its case beyond a reasonable doubt.
You're
5 on board with that?
6 A. Yes.

7 Q. And then if we ever did get there, it would be the
8 Government's burden to convince you that some penalty
other
9 than life was appropriate.

10 A. I understand that.

11 Q. You can see -- you can deal with that?

12 A. Yes.

13 Q. Well, talk to me then about your -- your views
about
14 capital punishment, the death penalty. Have you --
have you
15 followed the debate about the death penalty up there in
Adams
16 County?

17 A. No.

18 Q. You haven't followed the views of your district
attorney up
19 there on the subject?

20 A. No.

21 Q. Well, good. Let me put a hypothetical case to you.
22 Somebody is found guilty of premeditated murder; that
is, they
23 did it, they thought about it, they wanted to do it.
Are there
24 circumstances where you could -- if somebody was
convicted of
25 that, considering all of the evidence about the crime
and about

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1 the individual defendant and that person's
circumstances, him

2 or her, come back and say that life in prison was an
3 appropriate punishment?

4 A. I -- yes. Depend -- yes -- on the circumstances,
5 probable -- you know, it depends on the circumstances
of that

6 person, I guess -- I could come back that way, yes.

7 Q. And when you say, "the circumstances," just as you
sit

8 there -- and I know you're awful nervous, and I promise
we're

9 not going to go on very much longer -- what kinds of
10 circumstances?

11 A. Things leading up to it or -- dealing with that --
things

12 leading up, involving that person.

13 Q. It's your view that every human being, including
someone

14 you found guilty of a terrible crime, if you were a
juror of

15 some case and did that, is a unique human being
entitled to

16 have their individual characteristics looked at?

17 A. Yes.

18 Q. Is that fair?

19 A. Yes.

20 Q. Now, you did say that in looking at eyewitness
testimony --
21 that's Question 114; that's page 25 -- they would need
to be
22 clear on what they saw or heard and have not changed
the story
23 several times. What were you thinking of there?
24 A. I guess if people change their story -- keep
changing their
25 story, maybe they either aren't -- maybe they are
possibly not

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1 telling the truth or just not have it right, you know.
Just
2 don't have it right.
3 Q. So you're comfortable with the fact that in order
to make a
4 decision as to whether a witness has it right or not,
maybe
5 they are mistaken, maybe not telling the truth, maybe
they are
6 not telling the truth on purpose, all those sorts of
things,
7 you're comfortable with being able to look at all of
the
8 evidence and use all those clues to decide what's right
and
9 what's not?

10 A. Yes.

11 Q. When -- when you have an important decision in your
own
12 life to make, something that's really important to you,
like
13 are you going to change and go from one church to
another, are
14 you going to change some other situation in your life,
how do
15 you do it?

16 A. Sometimes I talk it over with my -- my mother or my
oldest
17 sister or -- or just think it over in my -- by myself
and make
18 up that decision or even talk it over with my son,
since he
19 lives at home with me.

20 Q. And you think that's -- you'd have other -- of
course, if
21 you're on a jury, there are 11 other people to talk it
over
22 with. That's the way you'd approach this decision?

23 A. I think so.

24 MR. TIGAR: Would you excuse me, please.

25 BY MR. TIGAR:

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1 Q. One last question. I know this is tough, this
whole

and say, 2 question process. Can you today look at Terry Nichols

3 Terry Nichols, I can give you a fair trial?

4 A. Yes.

5 MR. TIGAR: Thank you.

6 THE COURT: Well, that completes all these questions

7 for you. Unfortunately, we're going to have to leave you in a

8 position of uncertainty for a while because, as you know, we

9 have a number of people with whom we're going to visit and ask

10 these questions, not necessarily everybody who is at the

11 fairgrounds. It's a chance process by which you come in for

12 this part of it, but we're not going to be able to tell you for

13 a while whether you're going to be on this jury or not.

14 What I'm directing you to do is assume that you will

15 be on the jury and you will have the responsibility for a fair

16 trial and a fair decision in the case. So that means you've

17 got to continue to be very careful about the things that you

18 read, see, and hear, avoiding anything that could deal with

19 this case. And also, be very careful in conversations with

20 others to avoid being influenced by their views,
recognizing
21 that if we call you back in here in a while and say
take the
22 oath as a juror in this case, you'll be able to do it,
just as
23 you say you're able to do it now. So let nothing
happen to
24 that, please.

25 JUROR: Okay.

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1 THE COURT: We'll be in touch with you and
you're
2 excused now and you can expect to hear from us later.

3 JUROR: Okay.

4 THE COURT: But I can't tell you when.

5 JUROR: Okay.

6 THE COURT: All right. Thank you.

7 143.

8 If you'll just raise your right hand there and
take
9 the prescribed oath from the clerk.

10 (Juror No. 143 affirmed.)

11 THE COURTROOM DEPUTY: Thank you.

12 THE COURT: Please be seated there.

VOIR DIRE EXAMINATION

13

14 BY THE COURT:

15 Q. Now, you understand that through a chance selection
16 process, your name has come up as a person who may be
called
17 upon to serve as a juror in the trial of the case of
United
18 States against Terry Lynn Nichols.

19 A. Yes.

20 Q. And you got served with a summons in the mail,
telling you

21 about that, and then a notice to appear at the
Jefferson County

22 Fairgrounds. And you did on September the 17th come
out there

23 and met with some of us who were involved in this case.
Do you

24 recall that day?

25 A. Yes.

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1 Q. And I introduced myself to you at that time and
also

2 introduced some of the lawyers in the case, government
lawyers,

3 defense lawyers, and also Mr. Nichols. So we have a
little

4 addition here today. I want to reintroduce these
people and a

5 couple of additional people.

6 Here at this first table, nearest to you, are
7 Mr. Lawrence Mackey. You met him before. And Ms. Beth
8 Wilkinson, you met her before. And now we have Mr.
Patrick
9 Ryan, who is next there, and Mr. James Orenstein, who
is next.

10 You'll remember meeting Mr. Michael Tigar, an
attorney
11 for the defense, and Mr. Ronald Woods and, of course,
Terry
12 Lynn Nichols, the defendant in the case. All were
there.

13 There are other people in the courtroom here.
We're
14 not going to take the time to introduce everybody, but
there
15 are others here who are going to be assisting in the
trial of
16 the case.

17 We asked you to fill out a lengthy
questionnaire, and
18 you did. And you should have it there in front of you
now.

19 And I want to give you the reassurance that we know we
asked
20 you a lot of things, some of the things that you may
not have
21 thought about in advance. Some of the things, I'm
sure, may
22 have been surprising to you that we asked you. As I
told you

23 then, don't read into anything -- anything into these
24 questions.

25 I did explain before asking you to complete
the

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1 questionnaire something about the case, if you'll
remember,
2 telling you the charges in the case by an indictment
that the
3 government charged; that Terry Lynn Nichols, Timothy
James
4 McVeigh, and other people not named in the indictment
were
5 accused of using a truck bomb to destroy -- conspiring
to use a
6 truck bomb to destroy a building in Oklahoma City and
that --
7 then to kill and injure people in it and that on April
the 19th
8 of 1995, there was an explosion that did destroy a
building and
9 killed and injured a number of people. You recall
that?

10 A. Yes.

11 Q. And also that I told you that Mr. Nichols entered
his pleas
12 of guilt -- not guilty to each of these charges and
thereby

13 disputing them and putting them all into issue and
resulting in

14 the need for a trial and a decision by a jury on
evidence to be

15 produced.

16 You understand that I also mentioned at that
time that

17 Timothy James McVeigh has previously been tried, a jury
did

18 find him guilty and sentenced him to death, but that
that does

19 not in any way control this case. This is a separate
case

20 involving different people and a different defendant,
different

21 evidence may be introduced, so that we start over with
this

22 case. And you understand that?

23 A. Correct.

24 Q. And you're prepared to do so?

25 A. Yes.

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1 Q. Now, I'm not going to go through all of these
questions.

2 Don't worry about that. We're not going to do that,
but we do

3 need to ask you about some of them. And also, if
anything in

certainly 4 here -- if you want to change anything in here, you

confronted with 5 should feel free to do it. We know that being

think 6 all these things -- as I say, you answer them, then you

differently, 7 about, well, maybe I should have answered it

8 something like that. You're free to do that.

9 A. Okay.

answer is 10 Q. And then anything that we ask you here, if your

say that. 11 different from what's in writing here, you're free to

others, 12 And I did -- when you left out there, you and

in the 13 I cautioned you to be careful about avoiding publicity

anything that 14 case, be careful about reading, seeing, hearing

about 15 could relate to the case and also avoiding conversation

case and 16 it. We know there has been more publicity about the

inadvertently, you 17 that no matter how hard you try, sometimes

without 18 come across something. You know, there it is, and

happened since 19 intending to, you did come across it. Has that

20 you left us before?

21 A. Not really. No.

your
the
22 Q. Has any -- of course, you've talked to others about
23 situation here, including your wife, I assume; that is,
24 situation, the possibility of serving on a jury?
25 A. Yeah. I did talk to her about that, yes.

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And I'm
moment,
in your
1 Q. Sure. That's a matter of great importance to you.
2 going to get to this financial matter here in just a
3 because that's a -- something that's really uppermost
4 mind, I suppose, at this point. Right?

5 A. True.

child
6 Q. Because both of you work and you have children in
7 care.

8 A. Correct.

a month
9 Q. And -- and in fact, is it right that you spend \$700
10 on that? Or is that figure --

two
11 A. That's a rough figure. It's 16 -- \$168 a week for
12 kids.

13 Q. Yeah.

14 A. It's not cheap.

15 Q. No. Of course it isn't. And you know, we're not
hiding
16 from that fact, either, because we know financial
hardship is
17 something that's involved in a lengthy trial. And
we're not
18 making light of it at all.

19 Have you talked with your employer about what
would
20 happen in your job with extended jury service?

21 A. As far as the financial part of it?

22 Q. Yeah. Some employers go along with that and pay
their
23 employees and -- and then -- the difference, I mean,
between
24 their regular salaries and the amounts that we pay.

25 A. Yeah.

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1 Q. Some don't.

2 A. Their procedure is they will pay me my average wage
up to
3 four days.

4 Q. Only four days. This trial will be a little longer
than
5 four days.

6 A. I would assume so.

7 Q. Yeah. So did you talk about this particular case;
that is
8 to say, that you'd be in a long trial and this is the
one? I'm
9 not saying there's anything wrong with doing this.
10 A. With my employer?
11 Q. Yeah.
12 A. Yeah. I told him there was a possibility of it
taking, you
13 know, a substantial amount of time, yes.
14 Q. And what were you told in return?
15 A. He said -- well, it was kind of just left it up in
the air
16 to see what would happen.
17 Q. Okay.
18 A. You know, I mean, they are not -- it's not cut and
dry,
19 because this is --
20 Q. But there's a possibility they would help you out?
21 A. Yes. Yeah. I mean, it's not this -- you know --
this
22 isn't your average jury duty type situation, I would --
I
23 wouldn't think.
24 Q. All right. Well, I guess, you know, I started with
this
25 because this is something that I'm sure is in your
mind. It

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of a
job is

1 would be in mine, and I just want to find out how much
2 hardship we're talking about here. And your wife: Her
3 a regular job?
4 A. Yes.
5 Q. So have you talked about whether you can make it?
6 A. Oh, yeah. I mean, you know, my parents just told
me to be
--
7 honest and if it happens, well, they will help me and
8 Q. Okay.
9 A. -- you know --
10 Q. You did talk to your parents?
11 A. Yeah.
12 Q. They can provide some support?
13 A. Yeah. Exactly.
14 Q. Good. We appreciate that. Has there been in these
you, Well,
15 discussions-- has there been anybody suggesting to
you can
16 you want to get out of that, don't do that, here's how
17 get out of it, just say he's guilty?
18 A. People at work, yes. People at work, yeah.
19 Q. They suggested that, I'm sure.
20 A. Yes.

on that 21 Q. And have others also suggested, Well, if you do get
about it 22 jury, this is what you ought to decide? Somebody talk
23 in those terms?
you work 24 A. Well, no. They -- you know -- I mean, people that
stuff. 25 with are different than people that you confide in and

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-- 1 Q. Sure. There's some wiseacres where you work, too
2 A. Exactly. True.
3 Q. -- who make fun of it. We understand.
And I 4 Well, let's talk about some more things here.
right or 5 want to also reassure you that, you know, there are no
This is 6 wrong answers here. This isn't a test like in school.
lot of 7 just a way for us to find out some things about you. A
apologize for 8 these things are pretty private and personal. We
protect your 9 having to ask you about those things. We try to
name 10 privacy as best we can. That's why we don't use your
11 here. These questionnaire answers are not given to

anybody

12 else.

public
of shield

13 You are, of course, in a courtroom. It's a

of shield

14 place. You're answering questions publicly. We sort

regard

15 you here for now so that you can focus on this without

16 to, you know, publicity about your being here.

here by

17 So we are referring to you, then, throughout

avoid

18 number; and in answering these questions, we'll try to

19 having you disclose anything that would identify you.

native, born

20 Now, you told us that you're a Colorado

21 in Denver?

22 A. Correct.

23 Q. Right? And you live in Denver now?

24 A. Yes.

mentioned two

25 Q. You -- let's see. You have -- you already

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area,

1 children in child care. And your parents live in this

2 too, do they?

3 A. Littleton.

4 Q. And your wife's parents, are they here?

5 A. Arvada.

6 Q. Okay. And you got a brother who's a Navy Seal?

7 A. Correct.

8 Q. Is that right? How long has he been in the Navy?

9 A. Six-and-a-half years.

10 Q. And you stay in contact with him? Write him or E-mail or
11 something?

12 A. Mostly the phone.

13 Q. Okay. You went to the Denver Automotive School,
14 and that's where you learned to do the job that you're doing.

15 A. Correct.

16 Q. Worked in a couple of different dealerships before
17 this one.

18 A. Yes.

19 Q. Yes? You're also into soccer and are in a youth
20 soccer program, coach a team?

21 A. Yes.

22 Q. Did you play soccer yourself?

23 A. Yeah.

24 Q. In high school?

25 A. Yeah. High school. Still play a little bit.

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1 Q. Play kind of on an adult team, a coed team?

2 A. Yeah. Indoor soccer.

3 Q. Okay. And your wife works, as we've already said,
4 full-time; and she works in the field of heating, air
5 conditioning equipment.

6 A. True.

7 Q. Supplier -- some supplier to builders, is that --

8 A. Yeah. Mainly.

9 Q. Okay. And as part of your program working with
youth,
10 you've got here -- I'm looking at page 16, Question 76.
You've
11 got a bumper sticker that gives some people some good
advice
12 about sports.

13 A. Yeah. Got that from the Denver Police Department.

14 Q. And in a D.A.R.E. program or one of those programs?

15 A. You -- you give them money and they give you a
bear; give
16 them a donation and they give you a little stuffed bear
and
17 sticker, and you're supposed to give the bear to
somebody.

18 Q. All right. I was thinking that it might be related
to the
19 soccer program, but this is different.

20 A. No. It's not related. It's just a -- I -- I'm
involved in
21 sports, so I thought it was kind of neat.
22 Q. Okay. Your -- you had a -- you had an answer over
here on
23 page 24, Question 105, that I wasn't too clear about
because
24 the two previous questions were answered no. And I'm a
25 little -- just tell me what -- what you're referring to
in the

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1 yes answer on page 10 -- page 24, Question 105, and
your
2 explanation. Do you see what I'm -- where you say
"traffic
3 police"?

4 A. I thought -- 105 pertains to 104? I didn't see
that.

5 But --
6 Q. Well, you know, it doesn't necessarily. It just
asks if

7 you know of anybody who's been treated unfairly or been
the
8 victim of misconduct by some law enforcement people,
and you
9 marked that yes.

10 A. Oh. Well, nobody likes to get speeding tickets. I
mean,

11 I -- they were just kind of -- I don't know if they
were having

12 a bad day or what, but they were kind of rude.

13 Q. Are you talking about to you?

14 A. Yeah.

15 Q. Okay. All right. Now I got it. So you got a
speeding

16 ticket and you didn't think you deserved it.

17 A. Well, I didn't think it required -- it was in -- it
was in

18 Jefferson County, and I was going about 4 miles over
the speed

19 limit. And there was like three police officers in the
car,

20 and they all come up to the car and they pulled me over
for

21 speeding, but I -- my car and me matched -- I don't
know what

22 you would call it -- they were looking for somebody, I
guess.

23 And they all, you know, had their guns drawn and
everything;

24 and I was like, whoa, you know; but --

25 Q. They were thinking something different from 4 miles
over

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1 the speed limit?

2 A. Yeah. They -- they thought -- I guess I matched
the -- you
3 know --
4 Q. Did you say anything to them about that?
5 A. I said I didn't do nothing.
6 Q. Okay.
7 A. Stuck my hands up.
8 Q. Did they go through a search routine and all that?
9 A. They had me open up the trunk of my car, yes.
10 Q. Asking you if you had any drugs or firearms?
11 A. Yeah. They were looking for guns. I had a trunk
load of
12 soccer balls, so -- I was on my way to soccer practice.
13 Q. But they did give you a ticket?
14 A. Yeah. And they apologized.
15 Q. Okay. Now, how long ago was that incident?
16 A. I believe it was in '94. 1994.
17 Q. Were you upset enough to write a letter or make any
kind of
18 a formal protest?
19 A. No. I mean, they made me a little bit late for
soccer
20 practice; but, you know, other than that, I was just
like,
21 well, you know, they are just doing their job just like
anybody
22 else, I guess.
23 Q. Okay. And having a bad day at it, apparently?

perfect, I 24 A. I think -- they got the wrong person. Nobody's
25 guess.

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1 Q. Okay. We want to talk a little about the situation
that
2 may arise here if you serve on the jury and what's
involved in
3 jury service apart from the time involved. What a
trial is all
4 about. Now, you've never been through a trial or
observed a
5 trial, have you?

6 A. No.

7 Q. Never served on a jury?

8 A. Never.

9 Q. Apparently, you didn't pay a lot of attention to
the trial
10 of Timothy McVeigh, the publicity about it. Am I right
about
11 that?

12 A. Don't have much time for that stuff, really.

13 Q. All right.

14 A. Didn't pay much attention to it.

15 Q. Now, let me just explain, there are some
fundamental

16 principles that are involved in all criminal cases. As

I told

17 you in -- in giving an explanation about this matter
when we
18 all met together out there in that large group, the
Court,
19 judge, gives instructions about the law of a trial, but
there
20 are certain things that are fundamental and apply to
any case
21 no matter what the charge is or who the accused person
is. And
22 that includes, of course, the fundamental principle
that
23 everyone charged is presumed to be not guilty, presumed
to be
24 innocent, innocent of those charges. And that
presumption
25 carries throughout the trial and entitles them to an
acquittal,

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1 a verdict of not guilty, unless the jurors are
satisfied that
2 the evidence shows them guilty. You've heard about
that, I'm
3 sure?
4 A. Yes.
5 Q. And that means, of course, that in this case, Mr.
Nichols
6 sits here this afternoon with us presumed to be not

guilty of

7 these charges the Government has made against him. And
he

8 doesn't have any burden or duty of proving anything at
his

9 trial. The Government, having made the charges, has
the burden

10 of coming in with the evidence, the witnesses and the
exhibits

11 and the evidence that the Government lawyers rely on.
And it

12 isn't up to Mr. Nichols then to call any witnesses or
introduce

13 any evidence or to testify. He doesn't have to be a
witness.

14 He doesn't have to explain anything. He can simply
challenge

15 what the Government offers as evidence through his
lawyers'

16 objections and cross-examination and so on. You
understand

17 about that generally, I take it?

18 A. Yes.

19 Q. And indeed, if it be a fact that Mr. Nichols does
not

20 testify or does not call witnesses, that's not
something that

21 can be held against him. The jury would be instructed
they

22 could not consider that in considering the evidence.
The jury

23 would also be instructed that it is the Government that
has the

24 burden of persuasion, the burden of proof, and that
before he
25 or indeed any person can be found guilty of any crime,
the jury

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1 must be satisfied that that evidence that is heard and
received
2 at trial under the instructions about the law that
defines the
3 crime and what has to be proved, that the Government
has
4 persuaded the jurors beyond a reasonable doubt that the
person
5 is guilty of the crime charged. Understand?
6 A. Yes.
7 Q. It has to be a unanimous verdict, everybody has to
agree,
8 and they must individually decide that it's proved
beyond a
9 reasonable doubt. Another way of saying that is after
it's all
10 over, after the trial is all over, if the jury has a
reasonable
11 doubt, then they have to give to the defendant the
benefit of
12 that doubt and decide that he is not guilty. You
understand
13 that?

14 A. Yes.

15 Q. You accept that and agree to follow it as the
principles of

16 law in this case?

17 A. Yes.

18 Q. Now, in most cases that do not involve the
possibility of a

19 sentence of death, capital cases as distinct from other
cases,

20 criminal cases, the jury deals with that, listens to
the

21 evidence, and decides whether the defendant has been
proved

22 guilty or not. If the verdict is not guilty, that, of
course,

23 is the end of it. If the verdict is guilty, that is
still the

24 end of it as far as the jury is concerned because
punishment is

25 not something for the jury's consideration. You
understand

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1 generally about that, do you?

2 A. Yes.

3 Q. And in fact, we tell the jury in the cases that are
not

4 capital, look, you can't consider punishment at all.
That's

5 out of bounds. You don't consider it in deciding
whether the
6 evidence proves guilt beyond a reasonable doubt. Well,
that's
7 going to be true in this case, too, because while we
have to
8 ask you some questions about this personality issue,
that
9 cannot be considered in terms of the trial. And we
kind of
10 refer to the guilt or nonguilt phase and then we talk
about a
11 penalty phase because they are two different things.
Do you
12 follow?

13 A. Yes.

14 Q. But we have to talk about it now because we don't
get a
15 chance to do it again. So if you were to serve on a
jury, we
16 can't after the first trial then say, now, what do you
think
17 about penalties. We've got to deal with it now. And
it's
18 awkward to do so, because we're talking about the
presumption
19 of innocence, as well.

20 Now, on page 28 of this questionnaire, you
told us
21 some things about your views of the possibilities of
penalties
22 of life in prison and the possibility of death as
punishment.

23 If you want to take a moment, just read -- read what
you wrote.

24 All right. Do you have in mind what you
wrote?

25 A. Yeah.

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1 Q. First, I notice you had some crossouts and sort of
start
2 and stop here. And that's understandable because these
are
3 hard questions. What I want to ask you first is, is
this the
4 first time that you individually sat down and thought
very much
5 about death as a criminal punishment?

6 A. No. I mean, you know, me and my wife have
discussed it.

7 Q. From -- under what circumstances? I mean, did you
discuss
8 it when there's a newspaper or news story about a
certain case?

9 A. Yeah. Or like a movie or something that --

10 Q. A movie?

11 A. A movie that -- I forget the name of it, but -- you
know,
12 something like that.

13 Q. You saw a movie in which the death penalty was a --
a major

14 theme of the movie?

15 A. Well, he was the guy that was on death row, yes.

16 Q. About how long ago did you see that movie?

17 A. A couple years ago. I forget when it came out.

18 Q. Was it a movie called "Dead Man Walking"? Is that
one?

19 A. Huh-uh.

20 Q. Something else?

21 A. Something else.

22 Q. Well, I don't have a list of movies in front of me
so I --

23 A. I can't remember it, either.

24 Q. All right. But after the movie, you talked about
it?

25 A. Yeah.

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1 Q. And have you talked about it since you got this
summons?

2 You and your wife?

3 A. We've -- she's been pretty good about the whole
thing, not

4 really prying too much at all.

5 Q. Or trying to influence you?

6 A. Yeah.

7 Q. Do you know if the views that you've expressed are

shared

8 by your wife based on the conversations that you've
had?

9 A. What do you mean? Does she express the same views
that I

10 have about the death penalty?

11 Q. Yeah. When you talk about it.

12 A. Generally, no.

13 Q. She would have a different view expressed to you?

14 A. Yeah. It just depends.

15 Q. It's your views that count here and that's what we
want to

16 explore. What you're saying here, the way I interpret
what

17 you've said here -- and I want you to straighten me out
if I'm

18 wrong -- it depends a lot on the crime, circumstances
of the

19 crime and who the defendant is and the background of
the

20 defendant and why the crime was committed. Is that
about where

21 you are?

22 A. Correct.

23 Q. Okay. Now, the law comes into play here, too, of
course,

24 because juries are required to follow the law as it is
and not

25 as they would have it be if they could change it. And
I've

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1 described about the trial that would determine guilt or
2 nonguilt. If there's a verdict of guilty, we go on
with
3 another trial and it's called a penalty phase. In a
case where
4 the jury is not involved, of course, that is a hearing
that's
5 done by a judge only. No jury. And this is where
there's no
6 possibility of a death sentence. So before a judge can
make a
7 decision about a person's sentence, that judge has to
hear more
8 information about the person, his background,
circumstances,
9 the things that make each one of us unique and some
things
10 about the offense, too, and then decide the punishment.
But in
11 a case like this, where there is this possibility of a
choice
12 among death, life imprisonment without any possibility
of ever
13 being released, or any other lesser penalty, we leave
it to a
14 jury to decide because this is the kind of thing that
involves
15 the conscience of the community. And it's a question
where

16 twelve people are going to make the decision. And
before they
17 can do that, they have to get information about the
18 circumstances of the offense and about the offender,
the person
19 being judged. And that's presented at a hearing that
goes on
20 beyond the evidence at the trial.

21 The prosecution presents information that they
believe
22 supports death as a punishment, and we talk about that
23 generally as aggravating factors. The defendant, his
counsel
24 produces information about him, his background and
25 circumstances, again, these things that I've already
mentioned

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1 that make each one of us unique, our experiences in
life. And
2 then the court gives a sort of -- an instruction that
talks
3 about how the jury may analyze these things, thinking
about
4 aggravating and mitigating as a way to sort of approach
the
5 question. But in the end, the choice is up to the
jury, and
6 each juror must individually consider whether, under
all of

7 these circumstances, considering everything that has
been
8 presented, the defendant should live or die. And that
really
9 is a moral judgment to be made by jurors. Do you
understand
10 that?

11 A. Yes.

12 Q. And are you prepared to do that in this case if
you're
13 called upon to serve on this jury?

14 A. Yes.

15 Q. All right. Well, we're going to have an
opportunity for
16 the lawyers to ask you some additional questions so
we're not
17 quite done. It's only fair that they get a chance to
ask you
18 some questions, as well. But I think we'll take a
recess
19 first, and then we're going to come back in and you'll
have a
20 few questions from counsel for both sides. So we
appreciate
21 your continuing cooperation here. We're going to take
about a
22 20-minute break and then we'll be back in. You can
step out
23 now.

24 A. Thank you.

25 THE COURT: Okay. We'll take a 20-minute

recess.

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1 (Recess at 3:23 p.m.)

2 (Reconvened at 3:43 p.m.)

3 THE COURT: Please be seated.

4 All right. We'll have questions now from
counsel.

5 Mr. Ryan for the Government.

6 MR. RYAN: Thank you, your Honor.

7 VOIR DIRE EXAMINATION

8 BY MR. RYAN:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. You doing okay?

12 A. Yeah.

13 Q. My name is Pat Ryan. I'm the United States
Attorney in

14 Oklahoma City. I'm here with my fellow prosecutors to
present

15 the evidence against Mr. Nichols in this trial. I
wanted to

16 ask you just a few questions about yourself, and then
we'll

17 turn to some of the questions and answers you gave in
the

18 questionnaire.

two 19 I understand that you're married and you have
20 sons.
21 A. Yeah, two sons.
22 Q. And do they play soccer?
23 A. The four-year-old does.
24 Q. The four-year-old does. And are you the coach?
25 A. Yeah.

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1 Q. Have you been a soccer coach before this year?
2 A. Yes.
3 Q. On other teams where your children did not play?
4 A. Yeah.
5 Q. How long have you been doing that?
6 A. About six years.
7 Q. All in the same league?
8 A. No. He plays down in Lakewood, and I used to coach
the 9 team up in Arvada, soccer association.
10 Q. Excuse me for interrupting.
11 for Is the team that you coach -- is it a small --
12 small children?
13 A. Yeah, under five, the one I'm coaching presently.

14 Q. Did you play soccer in high school?

15 A. Yeah.

16 Q. And you play still today on a local club team?

17 A. Yeah.

18 Q. Now, your younger brother is a Navy Seal as I understand

19 that.

20 A. Yes.

21 Q. Has he talked to you much about his training?

22 A. Just, you know, like when he's going to jump school, he'll

23 tell me, Hey, I'm going to jump school, you know, or something

24 like that, and he doesn't really get into great detail. You

25 know, I don't go up and ask him, Hey, you know, been in any

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1 secret missions or anything, you know? But --

2 Q. Did he consult you before making a decision to join the

3 Navy?

4 A. No. He pretty much had his mind made up going in that

5 that's what he wanted to do.

6 Q. Did he talk to you about it and say, Hey, why don't

we do

7 this together?

8 A. No.

9 Q. Did you -- one of the things that's in the
questionnaire

10 asked about whether or not you or any family member had
any

11 knowledge of explosives; and in your answer to that
question

12 you refer to the fact that your brother was a Navy
Seal. Has

13 he spoken to you about his use of explosives?

14 A. I mean -- I mean how much detail? I mean, like
he's never

15 gone into detail like what type of explosives they were
or

16 anything. He, you know, said that they were I guess in

17 underwater demolitions. You learn to blow stuff up,
would be

18 my interpretation.

19 Q. And that's about as deep as you all have gotten
into that

20 topic of conversation?

21 A. Yeah. I mean he, you know -- he'd talk about, you
know,

22 there is land mines and, you know, dynamite, you know.
Other

23 than that -- and plastic explosives.

24 Q. Have you ever been around explosives?

25 A. Firecrackers.

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1 Q. Other than that?

2 A. No.

3 Q. Are you proud of what your brother does?

4 A. Yeah. I mean it's not too many people that, you
know, they

5 choose to do that type of field, you know, as a career.

6 Q. Is he married?

7 A. Just recently got married, yes.

8 Q. I'd like to ask you a couple more questions about
this

9 incident involving the police, and perhaps we're making
a

10 bigger deal out of it than it really was, but do you
know what

11 they were -- what type of person they were looking for?

12 A. No. They never did say.

13 Q. What he -- or he or she had allegedly done?

14 A. No. They just told me, Step out of the car, and
said that

15 I matched -- my car matched the description of the
vehicle that

16 they were looking for, and they had me open up the
trunk and

17 they looked through it and wrote me a ticket for
speeding.

18 Q. Did they ask your permission before they asked you

to open

19 the trunk?

20 A. Yeah.

21 Q. And did you give it to them?

22 A. Yeah.

you

23 Q. And then after they checked the information about

not the

24 against what they had, they determined that you were

25 person that they had been looking for?

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1 A. Correct.

that

2 Q. All right. You also indicated in the questionnaire

3 you had some friends in the sheriff's office.

4 A. Yes.

5 Q. Is that the Denver --

6 A. Denver sheriff, yes.

with, or

7 Q. County sheriff? Are these people you play soccer

8 how do you know them?

two of

9 A. My wife's friends' husband -- husbands -- there is

10 them that do sheriff.

11 Q. Do they ever talk to you about what they do?

-- the
sure.
show?
several

12 A. Alls I really know that they do is they work in the
13 county jail out off of -- I think it's I-70. I'm not
14 Q. You also indicated that you had attended a gun
15 A. Yeah.
16 Q. Do you recall that?
17 A. Yes.
18 Q. Is that just once, or have you ever done that
19 times?
20 A. Just once, went with a friend of mine.
21 Q. What was your interest in going?
22 A. To find a grip for my firearm.
23 Q. You indicate you have a .357 magnum?
24 A. Yes.
25 Q. And you were looking for a new grip?

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around it.
at the

1 A. Yeah, smaller one so my wife could get her hand
2 Q. And this is a gun you own primarily for -- for what
3 purpose?
4 A. Just home-protection-type thing, you know, shoot it
5 gun range every now and then; but other than that, I

don't

6 really use it much.

7 Q. Do you recall what you were doing on April 19,
1995, the

8 day of the Oklahoma City bombing?

9 A. No.

10 Q. Do you recall the day that it happened?

11 A. Yeah. I can't remember what day that was. I was
probably

12 at work more than likely if it was during the week.

13 Q. Did you watch any of the television coverage that
day?

14 A. No. Didn't really have access to a TV. I mean,
you know,

15 when we got home, you know, my wife said the building
blew up

16 or something, you know, didn't really know exactly -- I
don't

17 think anybody knew really exactly what happened at the
point,

18 you know, just saw pictures of the building and the
rescue

19 workers trying to find survivors. Other than that, I
didn't

20 really see a whole lot on it.

21 Q. Did you have a reaction to the bombing, an
emotional

22 reaction to the bombing?

23 A. Well, it was kind of like, wow. It's a lot of
destruction.

24 That was a pretty big building, you know. Part of it

was gone.

They 25 You know -- mostly it was just kind of, wow, you know.

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anything 1 didn't really, you know, get into what had happened or
type of 2 when I watched it, you know. They knew it was some
bomb 3 explosion. I can't really recall if they said it was a
of the 4 or, you know, just some type of explosion, brought part
5 building down.

about the 6 Q. Let me talk to you in the few moments I have left
of the 7 subject of the death penalty. His Honor asked you some
8 questions about that, and I'd like to follow up on some
the death 9 Judge's questions. Do you recall having a view about
10 penalty while you were in high school?

11 A. No.

meetings in 12 Q. Have you ever attended a discussion group for
debated? 13 which the pros and cons of the death penalty were

in 14 A. No, not to my recollection -- not as like -- like

15 school?

16 Q. Well, either in school or since you have been out
of

17 school -- had an occasion to go to a meeting at which
people

18 were talking about the death penalty?

19 A. No. Just mostly, you know, the subject might come
up

20 talking with, you know, your friends or something, you
know.

21 Other than that, you know, not really.

22 Q. Prior to filling out this questionnaire that you
did at the

23 fairgrounds, had the death penalty been a matter that
you had

24 talked about with friends and your wife beforehand?

25 A. True. Yes.

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1 Q. How about to your brothers and sisters? Had you
ever

2 discussed it with them?

3 A. Not really. You know, when we get together, we
don't

4 really talk about, you know, death penalty. It's more
like,

5 Hi, how you doing, what you been up to, type of thing.

6 Q. I understand, but sometimes when people are
together for a

7 period of time, topics vary and sometimes people
discuss the

8 death penalty. Has that been something you've
discussed

9 perhaps with your parents?

10 A. Yeah. You know, I've discussed that with my
parents before

11 and everything.

12 Q. How do they feel about it?

13 A. Well -- well, my dad is for it and my mom is not,
so . . .

14 Q. Is that the way it is at your house?

15 A. Well, it -- for me, it kind of depends on the type
of

16 crime, you know, and the person committing the crime.
My wife,

17 you know, it would have to be a pretty outrageous crime
for her

18 to give the death penalty.

19 Q. Was the movie that you were thinking about called
The

20 Chamber?

21 A. Yeah, it was, as a matter of fact.

22 Q. What was your reaction to that movie?

23 A. That guy was scary, you know. He was definitely
out there.

24 Yeah. But the type of reaction -- people like that, I
mean --

25 that's tough. You know, because he's obviously not
mentally

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1 sound, you know. Do you put him in a mental place
where he can
2 do more harm, or do you sentence him to death? So I
thought
3 the movie was interesting anyways.
4 Q. But you understand after meeting with Judge Matsch
at the
5 fairgrounds and then again this morning that in order
to be a
6 juror true to your oath you have to wait until you've
heard all
7 of the evidence before you make a decision.
8 A. Yes.
9 Q. And that it's not enough just at the end of the
guilt phase
10 to say, Okay, well, I know what I'm going to do on
sentence.
11 You understand that?
12 A. Yes.
13 Q. Because there is a whole other trial, if you will,
as Judge
14 Matsch has mentioned, in which the Government will
bring
15 forward evidence that we believe to be aggravating
factors to
16 make jurors believe that the death penalty is more
appropriate

17 and the defense will bring on factors in mitigation
that they
18 want you to consider in determining the sentence less
than the
19 death penalty and that you can't make a decision until
you
20 listen to all of that information.
21 A. True.
22 Q. Is that square with you?
23 A. Yes.
24 Q. Think that's fair?
25 A. That's -- I think that's fair.

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1 Q. Based on everything that you know, do you see any
reason
2 why you would not be able to give both Terry Nichols
and the
3 United States a fair trial?

4 A. No.

5 MR. RYAN: Thank you.

6 THE COURT: Mr. Woods.

7 MR. WOODS: May it please the Court.

8 VOIR DIRE EXAMINATION

9 BY MR. WOODS:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. My name is Ron Woods. I'm one of the lawyers
appointed to

13 represent Terry Nichols.

14 There were a couple of answers on your
questionnaire

15 that I thought were humorous, and I didn't know if you
were

16 trying to be humorous or if you were just being
literal. If

17 you would look at your questionnaire on page 35, 149.

18 A. I'm sorry. What number?

19 Q. It's on page 35, first question, 149, "Have you
formed any

20 opinions or impressions about any of the following
persons:"

21 "The lawyers representing the Government. "

22 "Nice suits."

23 A. I work on cars for a living, so I -- I only own one
suit,

24 but -- I was just stating I don't really have --
haven't talked

25 with you or been around you enough to form an opinion.

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"nice 1 Q. Right. And the lawyers representing Terry Nichols,

2 suits," too.

3 And then on page 37, Question 159, "Please
summarize 4 what you've seen, read, or heard about Terry Nichols."
5 "He wears glasses."
6 A. That's pretty much all I've seen.
7 Q. Okay. And that, you observed, from there at Jeffco
when he 8 was up on the stage.
9 A. Yeah.
10 Q. Okay. And then 161, "Have you ever had a different
opinion 11 about Mr. Nichols?"
12 "Yes."
13 "If yes, why did you change your opinion?"
14 "He looks smaller in pictures."
15 A. He just -- he looks bigger in person than he does
in 16 pictures.
17 Q. Okay.
18 A. There was one picture that I recall when they were
-- he 19 had the black jacket on, I think it was or something.
20 Q. The flack jacket?
21 A. Is that what it was?
22 Q. The orange suit, the shackles on his arms?
23 A. Yeah.
24 Q. And waist and legs?
25 A. Yeah.

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1 Q. We've all seen that one a number of times.

2 A. Yeah.

3 Q. And you thought he looked small there?

4 A. Yeah. I thought he looked --

5 Q. Of course, next to the two big marshals, he did
look pretty

6 small; right?

7 A. Either that, or he was standing on a stair. That's
just

8 all I've seen, really.

9 Q. Okay. But that was your answer to about -- opinion
about

10 Mr. Nichols; is that correct?

11 A. Yeah.

12 Q. Okay. And you weren't trying to be funny? That
was just

13 what you thought the answer called for?

14 A. True.

15 Q. Okay.

16 A. Yes.

17 Q. I understand.

18 A. Okay.

19 Q. Now, you are friends with the Denver sheriff's
office --

20 two people at the Denver sheriff's office. As I
understand
21 here in Denver, the sheriff's office runs the jail and
the
22 police department go out and do the investigations
around the
23 city. Is that correct?
24 A. Um --
25 Q. Or at least the people that you're friends with are
not

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1 investigators that are out doing police work in and
around the
2 county?
3 A. They work out at the jail, yeah. I don't know if
they --
4 if that's how it works, but . . .
5 Q. Well, I don't, either. I was just asking.
6 Now, you stated about the traffic arrest that
the
7 police had come to some conclusion before they arrested
you or
8 at least some suspicion. Are you aware that sometimes
police
9 jump to conclusions?
10 A. First of all, I wasn't arrested.
11 Q. Right. I'm sorry. You were given a summons, a

ticket.

12 A. Yes.

13 Q. You were stopped by the police.

14 A. Yes.

15 Q. And they suspected that you were involved in something

16 else. Is that correct?

17 A. Yeah.

18 Q. All right.

19 A. I was -- my car and my appearance was, I guess -- resembled

20 somebody they were looking for. I couldn't really tell you.

21 Q. So in that case they had not come to a conclusion that you

22 were involved; is that correct?

23 A. Correct.

24 Q. Okay.

25 A. I would assume that.

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1 Q. Now, on the gun shows that you've attended, how many did

2 you attend? Just one?

3 A. Just one.

4 Q. And you were there specifically to buy some grips for the

5 pistol?

he's a

6 A. Yeah. I was there -- went with a friend who --

7 hunter.

8 Q. Had your friend been to gun shows before?

9 A. Yeah.

10 Q. Which one did you go to? Which gun show?

11 A. The one at Currigan -- I believe it was Currigan
Hall.

12 Q. Okay. And did you walk around the gun show to see
the type

13 of items that were for sale?

14 A. Well, I'm not really, you know, big on guns or
anything,

15 but I was just mainly looking for a smaller type of
grip that

16 my wife could get her hand around in case she did, God
forbid,

17 have to use the thing.

18 Q. Right. Did you notice during the gun show while
you were

19 walking around looking for the pistol grip that there
were

20 military items for sale?

21 A. What do you --

22 Q. Well, did you notice anything that had "U.S. Army"
on it;

23 for example, ammo cans?

24 A. No.

25 Q. Any type of military surplus?

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a lot of 1 A. No. I mean, I've been to Army surplus stores, buy

2 my camping stuff there.

3 Q. Sure.

4 A. But I didn't really notice anything like that.

such as 5 Q. Did you notice anybody selling printed material,

6 books, pamphlets?

7 A. Just mainly gun magazines.

8 Q. All right.

9 A. One, I believe, Ammo, maybe.

ammunition? 10 Q. Right. Did you see people there selling

looking 11 A. Not really. I wasn't, you know -- I wasn't really

12 for ammunition --

13 Q. Okay.

that he 14 A. -- you know. We looked at a few rifles and stuff

know. 15 was interested in. He's a deer and elk hunter, so, you

the 16 Q. You didn't -- I take it you didn't examine any of

or get 17 pamphlets that were for sale by any of the individuals

18 into any conversations with any of the individuals
there; is

19 that correct?

20 A. No. I'm not really knowledgeable at all.

21 Q. Okay.

22 A. Better just to stand there and, you know, look like
you

23 know what you're doing.

24 Q. Look like you're knowledgeable?

25 A. Yeah, you know: What's that guy doing here?

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1 Q. Okay. Mr. Ryan asked you about your reaction on
the day of

2 the bombing, what you saw, read and heard. And you
stated that

3 you didn't have access to a television. Of course, you
were at

4 work that day at the auto dealership, I take it. It
was on a

5 Wednesday.

6 A. Yes.

7 Q. And do you work like Monday through Friday?

8 A. Correct.

9 Q. Okay.

10 A. Every third Saturday.

11 Q. Every third Saturday? What are your hours there?
12 A. Usually supposed to be there from 8 to 5, but
usually I get
13 there a little bit earlier.
14 Q. Okay.
15 A. Clean up a little bit.
16 Q. Now, are you a mechanic?
17 A. Yes.
18 Q. Back there on the line where you take your car in
for
19 service and they usually have them on the line there
and you're
20 working on cars. Is that correct?
21 A. Correct.
22 Q. When I'm in dealerships like that, a lot of times
they have
23 a radio playing.
24 A. We got piped-in music.
25 Q. Piped-in music?

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1 A. Yeah. It's not really a radio station. It's, you
know, it
2 is a bit of mix of music.
3 Q. Like elevator music?
4 A. No.

5 Q. Current music?

6 A. Some currents, some oldies, you know. No real, you
know,

7 heavy metal music or anything like that, you know.

8 Q. Now, is that from a radio station, or is that just
from

9 recordings that they have there at the dealership?

10 A. Not really sure.

11 Q. You ever hear any news broadcast once every hour
during

12 these playings of the music?

13 A. Yeah. I suppose I have. It might be -- I couldn't
tell

14 you what radio station it is, though. It's kind of
hard to

15 hear.

16 Q. Okay. But at least there is a news broadcast, you
think,

17 once an hour over that?

18 A. Probably, yes. I mean I've heard commercials, so
I'm --

19 Q. Sure.

20 A. You know.

21 Q. Do you recall hearing anything that day over the
radio news

22 while you were working about the bombing?

23 A. No. Pretty much the first time I heard about it
was when

24 we were getting ready to leave, when I talked to my
wife. She

I was, 25 said she heard some building blew up or something, and

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1 wow, you know. She didn't really have a whole lot of
details,

2 either.

3 Q. When you were getting ready to leave -- you all car
pool

4 together, or were you talking to her on the phone?

5 A. Call her before I leave, just so we can make sure
who is

6 picking up the kids.

7 Q. Picking up the kids?

8 A. Right.

9 Q. When you got home, the two of you watched it on
television;

10 is that correct?

11 A. Yeah.

12 Q. Okay. What do you remember from what you saw on
the

13 television that day?

14 A. Well, I was kind of -- we looked at each other; and
it was

15 like, wow, you know, what happened, you know, because
there was

16 still -- the pictures that we saw, there was still --
you know,

17 you could see dirt and stuff and, you know, I don't
know if

18 they were live pictures or whatever. Can't really
recall, but,

19 you know, there was a lot of debris.

20 Q. Right.

21 A. People running around and, you know, pretty much
chaos.

22 Q. Do you recall watching television two days later
when

23 Timothy McVeigh was arrested?

24 A. No. I don't normally watch a whole lot of TV, you
know.

25 Q. Do you recall ever seeing this picture of him being
led out

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1 of this building?

2 A. I saw the composites, the drawings of the people
they were

3 looking for.

4 Q. Yeah. That was the next day, on the 20th, when
they were

5 passing those composites around.

6 A. Yeah. I believe I did see Timothy McVeigh in the
-- in the

7 orange suit.

8 Q. Surrounded by people in blue jackets that said FBI
on them?

9 A. Blue, black, something like that, yeah.

10 Q. All right. Do you recall anything about the arrest
of

11 Terry Nichols, when and where that was?

12 A. No. I don't know if it was just that I was too
busy, you

13 know, to really pay attention to it, or if it was just
not as

14 public as, you know, Timothy McVeigh, you know, but I
can't

15 really recall, you know, details about it or anything.

16 Q. Okay. What, if anything, can you remember about
his

17 arrest?

18 A. I knew they had arrested a second person. I didn't
really

19 know it was Terry Nichols at the time or anything. I
just kind

20 of, you know -- along the day, they arrested somebody
else in

21 that bombing, you know.

22 Q. Well, at work I assume that you communicate with
your other

23 friends there that are mechanics that are on the line.
You

24 take lunch breaks. Do you have a lunch room there at
the

25 dealership?

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1 A. Yeah. It's mainly for the --

2 Q. Secretaries?

3 A. Yeah, the office people. We kind of just usually
just kind

4 of -- we get paid on a commission-type thing, so you
kind of

5 squeeze lunch in when you can.

6 Q. Okay.

7 A. You know, but I mean we talked about it a little
bit. You

8 know, nothing great detail or anything like that.

9 Q. You put on your questionnaire that you don't feel
that the

10 press is very accurate and that you get your news from
your

11 family and friends. Is that correct?

12 A. Well, I didn't say it was really not accurate. I
mean, I

13 don't put a whole lot of faith in, you know, stuff I
read or

14 stuff I see. That's one person's opinion of what
happened

15 generally when it comes to news.

16 Q. Right. Exactly. If you would refer to page 17.

17 A. Okay.

18 Q. And first question I would direct your attention to
is 78:

19 "How much do you listen to news on radio or
television?"

20 "Once or twice a week."
21 And then 79, "Which is the most important
source of
22 news for you?"
23 "It's friends and family."
24 And then 80, "What is your opinion of the
accuracy of
25 the news stories reported in those sources?"

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1 "Not very accurate."
2 A. Well, that's kind of -- I wrote "Not very
accurate," but I
3 should have probably --
4 Q. I couldn't agree with you more. I'm not trying to
get you
5 to change your answer.
6 A. I should have -- that doesn't exactly -- I mean a
lot of
7 times it's -- like I said, it -- it's one person's view
of what
8 happened.
9 Q. Right.
10 A. I mean, you know, you take a story that, you know,
it may
11 look like, you know, somebody did this, when -- you
know, like

all 12 the Princess Diana thing. You know, people were saying
till, you 13 kinds of stuff, you know, and they don't really know
14 know, a week or two later when all the facts are in.
15 Q. That's a good example, because there was a lot of
16 contradicted inaccurate reporting the first two days that got
17 later on.

news 18 But back to your answer here that you get your
the 19 from your friends and family, are you speaking of also
time to 20 co-workers that you work with, since you don't have
21 watch television, the news stories?

22 A. Not a whole lot.
23 Q. Were you depending on your co-workers and your
family to 24 give you the news as to this case?

25 A. Well, again, it's kind of a slanted -- you know,
they're

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and, 1 taking what they hear and putting their 2 cents into it
2 and, you know, mostly that's how I find things out that
happen.
3 Q. Through friends and co-workers?

4 A. Yeah.

5 Q. And everybody was putting their spin or their
opinion on

6 it. Is that correct?

7 A. Well, I would assume that. I mean, that's usually
how it

8 works. You know, that thing in school, whispering in
one

9 person's ear. By the time you get to the end of the
row, it's

10 not even the same story.

11 Q. Right. Right.

12 Do you recall the news stories concerning the
verdict

13 and the sentence of Mr. McVeigh?

14 A. Yes.

15 Q. And did you discuss that with your co-workers?

16 A. A little bit. You know, mostly, you hear he was
convicted

17 and, you know, like, oh, hope it was the right person,
you

18 know, because I didn't really follow the case much or,
you

19 know, know what evidence was presented or -- you know,
they

20 talk about strategies of the defense and, you know,
that sort

21 of stuff.

22 Q. What was the general consensus of opinion there at
your

penalty? 23 place of employment as to the sentence, the death
24 What did people say to you about that?
loss of 25 A. Well, if he did it, you know -- there was a lot of

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many people 1 life in that explosion, you know. There wasn't too
know, so 2 saying, you know, boy, I feel sorry for the guy, you
3 it wasn't -- I don't remember anybody that said that.

the death 4 Q. Was the consensus if he did it, then he deserved
5 penalty?

6 A. True. Yes.
7 Q. And what about in discussion with your wife and
your 8 family? Let's start with your wife first. What
discussions

9 did you have with your wife concerning the verdict and
the 10 sentence of death?

11 A. Well, you know, if he was responsible for it, then,
you 12 know, I think that punishment suits that crime.

13 Q. All right.

14 A. I think we both --

15 Q. I'm sorry?
16 A. I think we both agreed on that. You know, it was
hard to
17 say. I wasn't actually, you know, paying attention a
whole
18 lot, you know. Kind of, you know, when you got family
and
19 everything, you kind of -- things get less important
that are
20 not directly involved with your family or work and
stuff like
21 that.

22 Q. Yes. You had stated earlier that when you and your
wife
23 had discussed the death penalty that she did not
believe in it
24 as strongly as you did. Was that accurate in my
stating -- am
25 I stating that accurate?

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1 A. Yes.
2 Q. However, on this case, both of you were in
agreement that
3 the death penalty was the proper sentence?
4 A. Yeah. I mean there was, you know -- I don't know
how many
5 people died, but it must have been 2- or 300 I think,
but, you

6 know, that's a lot of people, you know. A lot of
people, a lot

7 of hurt families.

8 Q. And given a crime like that, you think that the
death

9 penalty is the sentence that should be assessed?

10 A. Yes, I agree with that.

11 Q. Now, I believe you stated that you and your wife
had a

12 discussion on death penalty when you watched The
Chamber. Is

13 that correct?

14 A. Yeah.

15 Q. And that's the one with Gene Hackman?

16 A. Yeah. I believe that was it.

17 Q. Okay. And you stated the guy was scary, he was out
there,

18 obviously not mentally sound, do you put him in a
mental

19 hospital where he can do more harm, or do you put him
to death?

20 That's pretty much the issue as you saw it?

21 A. Yeah. I mean, like when the lady, you know, went
out to

22 question him, you know, he kind of controlled her and
got her

23 to do things, you know. When she needed information
from him,

24 you know, he, you know, manipulated her, kind of, you
know --

25 He was smart but he was kind of, you know -- I don't

really

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1 know what you would call it.

2 Q. Okay. You felt the death penalty was certainly
justified

3 in that case, I take it.

4 A. Yeah. I mean, I believe he was a serial killer or
5 something.

6 Q. And that's the one that prompted the discussion
between you

7 and your wife, where she wasn't quite as strong as you
were but

8 you were strong on believing that the death penalty was
9 appropriate; is that correct?

10 A. Yeah. We went back and forth, you know. She
thought

11 maybe, you know, putting him in a mental institution
would

12 maybe help him; and, you know, a person that's done
that kind

13 of stuff, you know --

14 Q. Prior to getting called on the jury service or even
15 afterwards, had you and your wife discussed the death
penalty

16 in this case?

17 A. No. Just with Timothy -- Timothy McVeigh.

death 18 Q. Okay. And there was mutual agreement that the
19 penalty was the punishment to be assessed in that case?
20 A. Yeah.
21 Q. All right. What about with your parents? You
stated that
22 your dad is for it and your mom is not. You've had
discussions
23 with your parents because they've agreed to come in and
take
24 over that burden of child care for you so that you can
be on
25 this jury?

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know, if 1 A. Well, I mean they'd help me pick them up and, you
2 I needed help.
3 Q. Are they both working themselves?
4 A. My mom does, yes.
5 Q. Is your dad at home?
6 A. He's self-employed, yeah.
7 Q. Okay. What discussions did you have with them
concerning
8 this case?
9 A. When I first found out, you know, I was kind of
worried
10 that this court could take a month or two months or

whatever,

11 you know. And they said, well, we'll get through it,
you know.

12 Just -- you know, if you get picked, you get picked;
and if

13 not, then, you know -- if you do, then we'll help you
out.

14 Q. Sure.

15 A. If you need help, you know --

16 Q. Okay.

17 A. -- picking up the kids --

18 Q. It wasn't that they were going to take over the
child care,

19 they were just going to help in picking up and dropping
off?

20 A. Yeah, and if we needed --

21 Q. -- financial help, they may help?

22 A. Yeah, but I wouldn't impose that burden upon them
unless it

23 was, you know, absolutely necessary.

24 Q. Now, did you discuss the death penalty with your
dad and

25 mom?

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1 A. No.

2 Q. Where you got the -- your statement to us was that
your dad

3 is for it and your mom is not.

4 A. That was prior to me finding out. I mean, I pretty
much
5 know their views on that sort of thing.

6 Q. All right.

7 A. But I never really discussed it with them. I mean,
they're
8 really -- really cool about the whole thing, you know,
just --
9 they don't ask too many questions or --

10 Q. All right.

11 A. -- don't pry too much.

12 Q. Sure. You discussed it with your employer because
you
13 learned that they pay for the first four days. Is that
14 correct?

15 A. Correct.

16 Q. And is there a circumstance where they would pay
for more
17 than four days if you got put on a jury?

18 A. Well, that would -- you know, they just kind of --
I don't
19 know if it's just business or whatever, but, you know,
they
20 kind of just said, Well, let's wait and see what
happens. You

21 know, it's not every day that a, you know, court case
like this
22 comes along.

work 23 Q. Now, the Judge asked you about were there people at
Likewise, were 24 who suggested to you ways to get off the jury.
get on 25 there people at work who suggested that you ought to

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1 this jury?
2 A. No.
on the 3 Q. Not a single person suggested that you ought to get
4 jury?
5 A. No.
ought to 6 Q. Okay. Anybody in your family suggested that you
7 get on the jury?
know. 8 A. No -- well, they said it would be kind of neat, you
our 9 I've never really been on a jury or, you know, seen how
traffic 10 judicial system actually works firsthand, other than in
11 room -- courtroom.
the 12 Q. Did you see any of the press conferences given by
13 jurors after the McVeigh verdict?
14 A. No.

shows, 15 Q. Did you see any of the jurors on the morning talk
16 the "Today" and the "Good Morning, America" and
whatever the 17 other one is, the Monday following the verdict?

18 A. No.

19 Q. Do you watch television in the morning when you get
up and 20 are dressing and getting the kids ready?

21 A. No. I like those last few minutes of sleep, and
then I get 22 up and --

23 Q. Listen to the radio at all while you're getting
ready to go 24 to work?

25 A. No. I get up, rush, rush, rush, rush, rush, get
the kids

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1 ready and got to be out the door by about 7.

2 Q. Okay. Now, I want to go over with you the answers
on the 3 death penalty questions, and they're on page 28. That
first

4 question there was, "What is your view as to whether
the

5 penalty of life in prison without the possibility of
release"

6 would ever -- "should ever be imposed as a punishment

for any

7 crime?"

"For any

8 And I thought your answer was very accurate:

9 crime?" question mark. "That's crazy."

in

10 What type of crimes can you think of that life

11 prison without the possibility of release would be the

12 appropriate punishment?

who

13 A. You know, like repeat offenders, you know, people

14 constantly --

times

15 Q. Habitual offenders, people that are convicted three

16 or more?

don't

17 A. Yeah. You know, keep robbing stores, you know, and

to my

18 actually hurt anybody but, you know, they're a threat

stuff.

19 safety and my kids' safety and, you know, that sort of

release,

20 Q. Okay. And you feel that life in prison without

for

21 possibility of release, is the appropriate punishment

been

22 those. I assume what you're saying, those who have

23 convicted more than one time, or more than two times.

24 A. Well, I'd have to say more than three times.

25 Q. Three times, okay.

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1 A. Give somebody the benefit of the doubt, you know.
Maybe

2 he's a slow learner, you know.

3 Q. All right. The next question was, "What is your
view as to

4 whether the penalty of death should ever be imposed as
a form

5 of punishment for any crime?"

6 And can you give me the type of crimes you
think that

7 the death penalty is appropriate for.

8 A. Mass murder.

9 Q. All right. And that -- we might as well skip on
down to

10 the last, No. D, "What kinds of cases is it
appropriate, if

11 ever, to impose a punishment of death?"

12 And your answer was "Multiple murders and
different

13 types of murder," "multiple murder, mass murder,"
meaning the

14 same, I take it, to you?

15 A. Yeah.

16 Q. What do you mean by mass -- multiple, I assume, is
two or

17 more?

a 18 A. Yeah. You know, like, you know, somebody goes into
19 school and starts shooting people, you know.
20 Q. We've certainly read about those.
21 A. Yeah. You know, that's kind of scary.
for that 22 Q. And the death penalty is the appropriate sentence
23 crime.
24 A. You're talking school kids.
25 Q. Exactly.

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-- can 1 A. That's not right.
death 2 Q. You state also, "Different types of murders." What
3 you give me an idea of what you mean here where the
4 penalty is the appropriate sentence?
they kill 5 A. Well, people that are -- you know, they go in and
6 little, tiny people and then they, you know, hack them up into
7 pieces. That's not a sane person, you know. Takes
quite the 8 character to do something like that, if you ask me.
9 Q. What about a murder, an intentional, premeditated,
10 deliberate murder, where a person is convicted of that?

it were 11 A. I would -- I would have to say that would fall, if
history, his 12 me, again, depending on the person, his criminal
have to 13 background, you know -- I would say it would kind of
you 14 depend on the person and the circumstances behind it,
15 know --
death 16 Q. As to whether it would be life without release or
17 penalty? Is that what you're saying?
18 A. Say it again.
murder, where 19 Q. Yes, sir. I asked you what about murder, one
premeditated, 20 the defendant is convicted and he's convicted of
you feel 21 intentional, deliberate murder of an individual? Do
that 22 that that person should receive the death penalty for
23 crime?
course, the 24 A. I would -- depending on the circumstances, of
25 person, I would have to say no.

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feel 1 Q. Back to the multiple murders, I take it that you do

multiple 2 that the death penalty is the appropriate verdict for

3 murders?

4 A. True.

and soccer 5 Q. All right. Have you ever in your soccer playing

where you 6 league and coaching -- have you ever gone to a game

went 7 felt that the referee was favoring one side before you

8 into it?

9 A. Do you mean before we even started the game?

10 Q. Or during the game.

can't 11 A. Generally, I mean, he's human. He's going to -- he

bad 12 see everything. You know, but generally, if he makes a

known -- 13 call, he'll try and, you know -- the refs that I've

know, 14 you know, the referees I've known, he'll try and, you

game. 15 somewhat even it out, you know, over the course of the

experience 16 Q. All right. So I take it then you haven't had an

17 where you've had a referee that's favored one side?

seems 18 A. I mean, there is times when you get in there and it

getting 19 like everything is going the other -- the other team is

Sure, 20 all the calls, you know, we're not getting any of them.

21 that's happened, yes.
22 Q. Okay. What I'm speaking toward is the same thing
would
23 apply to a jury. If a jury is leaning one way or the
other,
24 you would agree that would be unfair before the
evidence was
25 put on; is that correct?

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1 A. Yes.
2 Q. All right. And that's what concerns me about the
3 punishment stage of this crime. You've stated that you
feel
4 multiple murders should receive the death penalty.
5 A. Again, depending, you know, on the type of crime.
I mean,
6 if the guy falls asleep driving down the street because
he's
7 worked a 16-hour day and accidentally runs into a bus
stop, you
8 know, I don't think that guy intentionally meant to
kill those
9 six people sitting on the bus stop, you know.
10 Q. You say that he did intentionally?
11 A. I said I don't think --
12 Q. No, you're right. And that person hopefully would
not be

murder. 13 convicted of intentional, premeditated, deliberate

14 A. Correct.

that and 15 Q. We're talking about where someone is convicted of

believe 16 it's multiple murders. You've stated to me that you

17 the death penalty is the appropriate verdict.

18 A. Correct.

to take 19 Q. And that's what I'm getting at. What is it going

considered? 20 from us to convince you that both sides should be

21 MR. MACKEY: Judge, I'd like to object.

22 THE COURT: I'll sustain the objection to that
23 question.

24 MR. WOODS: All right.

25 BY MR. WOODS:

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it, 1 Q. In a case where there are multiple murders, I take

your 2 then, that it is your position, your belief, based on

about 3 strong personal beliefs that you have evidently talked

have 4 with your family, your co-workers, your wife, that you

5 definite views and they're strong views on the death
penalty.

6 Is that correct?

7 MR. MACKEY: Judge, objection.

8 THE COURT: Sustained. I believe you've
exhausted the
9 death penalty.

10 MR. WOODS: All right.

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. Now, with the question that I think is appropriate
here,

14 since we're back and forth on that, just tell us
whether --

15 you've already expressed your opinion with respect to
the

16 Timothy McVeigh jury's decision; right?

17 A. Were you asking if I agree?

18 Q. No. I'm asking -- you've told us what you thought
about
19 the jury's verdict and sentence in the Timothy McVeigh
trial.

20 A. Yes.

21 Q. Now, if you were to serve on this jury, are you
open-minded

22 with respect to whether if there were a verdict of
guilty with

23 respect to Mr. Nichols that you would be open to
considering

24 him separately and independently?

25 A. As far as the death penalty vs. life in prison?

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1 Q. Yes.

2 A. Yeah. You know, it --

3 Q. You would be hearing things that related
specifically to

4 Mr. Nichols.

5 A. Right.

6 Q. As an individual human being.

7 A. I mean, the questions that they're asking me are
pretty

8 vague.

9 Q. I know, and they're required to be vague because we
can't

10 deal with what may be in evidence here. We don't know.

I

11 mean, these lawyers may know what to anticipate. You

and I

12 don't, and we don't know what would be presented in a

penalty

13 phase hearing concerning Mr. Nichols, his background,

whatever.

14 And we can't talk about that now because we've got to

start the

15 trial with a clean page and open minds. So all that

we're

16 really searching for -- and it's very awkward to talk

about --

17 is are you going to be open-minded with respect to Mr.
Nichols?

18 A. As far as the sentencing?

19 Q. Both with respect to the evidence concerning
whether he is

20 guilty of any role --

21 A. Yes.

22 Q. -- in connection with this case.

23 A. That, I can keep an open mind to, yes.

24 Q. And then if the verdict is that he is guilty of
something,

25 what ought to be done about his punishment, whether
you're

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1 open-minded about that, too.

2 A. I mean, 200-some-odd people died.

3 Q. Well, that isn't the right number, but there were
multiple

4 deaths.

5 A. You know, but I think that that's a pretty steep
thing to

6 send somebody to jail over, you know. I believe in the
death

7 penalty.

8 Q. And the question, though, is the law is that you
have to

9 consider what role there was.

10 A. Yes.

11 Q. You know, you can be guilty under the law of
killing
case of

12 somebody without pulling the trigger. You mentioned a
13 somebody going in and shooting up a schoolyard.

14 A. Yes.

15 Q. Well, under the law, there could be other people
involved
understand that

16 in that crime who didn't pull the trigger. You
17 possibility?

18 A. Yeah. I understand that. Yes.

19 Q. Okay. And so would you consider those persons or
person

20 differently from the one who pulled the trigger?

21 A. Yes.

22 Q. And that can be involved here, too; do you
understand that?

23 A. Yes.

24 Q. So what we're trying to find out is, you know,
whether

25 you're going to predetermine if there is some guilt
found with

1 respect to Mr. Nichols in connection with all this;
that you're

2 going to be just automatically doing the same as the
jury did

3 with Mr. McVeigh, or are you going to consider this
case for

4 whatever the evidence shows?

5 A. This case is different and, you know, it should be
based

6 solely on the information that's presented during the
trial.

7 Q. And during a penalty phase hearing, if there is
one; is

8 that right?

9 A. Yeah. Then you weigh both sides and, you know,
come to a

10 conclusion.

11 Q. I think you've told us your views.

12 MR. WOODS: May I ask a few more questions,
your

13 Honor?

14 THE COURT: Well, you can try. Proceed.

15 VOIR DIRE EXAMINATION

16 BY MR. WOODS:

17 Q. 12 days ago when we were out at the Jeffco
Fairgrounds and

18 the Court told you what Mr. McVeigh and Mr. Nichols
were

19 charged with -- Do you remember that?

20 A. Yes.

21 Q. You remember he told you that they were both
charged with

22 identically the same thing?

23 A. I --

24 Q. And that is using a truck bomb to blow up a federal
25 building and that a number of people were killed and
further

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1 that both of them were accused of killing eight federal
law

2 enforcement agents. Do you remember him telling you
that?

3 A. Yes.

4 Q. And you understand that if you sit on the jury and
the jury

5 returns a verdict of guilty for any of those 11 counts,
we're

6 going to be into a punishment hearing with respect to
the death

7 penalty or life in prison, is the two options.

8 A. Okay.

9 Q. Now, you cause me some concern because --

10 THE COURT: Well, please don't give your
editorial

11 comments. Just ask the question.

12 MR. WOODS: Yes, your Honor.

13 BY MR. WOODS:

14 Q. You stated to the Court that when there are a
number of
15 deaths involved and the Court advised you that 200 was
not the
16 correct number -- do you recall how many people were
killed in
17 this case?

18 A. No.

19 Q. All right. You stated that when a number of people
are
20 killed, it's a lot of deaths to be putting somebody in
prison
21 for it, as opposed to the death penalty.

22 MR. MACKEY: Judge, same objection. I mean,
this
23 covers the ground that I think the Court covered.

24 THE COURT: I'll permit it.

25 Go ahead, Mr. Woods.

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1 MR. WOODS: Yes, your Honor. He hasn't
answered.

2 JUROR: It's a different case. It's different
3 evidence. I mean, I think somebody that's directly
involved
4 with -- I think this is the question you're trying to
ask me
5 here, so I'm going to go with that.

6 VOIR DIRE EXAMINATION

7 BY MR. WOODS:

8 Q. All right.

9 A. You know, if the guy sold a person a gun, okay, and
he goes

10 in and kills a bunch of people, I don't think the guy
that sold

11 him the gun should be -- have the same penalty as the
guy that

12 went in and shot all the people.

13 Q. Hopefully he wouldn't even be charged --

14 THE COURT: Please, Mr. Woods, avoid your
comments on

15 his answers.

16 MR. WOODS: Yes, your Honor.

17 JUROR: I'm just trying to answer the question
I think

18 you're trying to ask me here.

19 BY MR. WOODS:

20 Q. All right. And the question is if you found Mr.
Nichols

21 guilty of the same offense as Mr. McVeigh has been
convicted

22 of -- the Judge told you they were both charged with
the same

23 crime. If you found him guilty of one of those 11
charges,

24 we're going to be in a punishment hearing, where the
decision

25 is the death penalty or life without parole.

Juror No. 143 - Voir Dire

1 A. Again, we would have to weigh both sides and, you
know -- I
2 don't know his background. I don't know, you know, if
he's
3 been, you know -- works for charities, or whatever, you
know.
4 I have no idea; and that, again, makes a difference on
what,
5 you know, I would determine as a legitimate, you know,
6 sentence.

7 Q. All right. And the fact that you believe that the
death
8 penalty is appropriate when there are multiple murders:
That
9 would not control your decision? Is that what you're
telling
10 me?

11 A. Well, it depends if the person is directly involved
or
12 indirectly involved, you know. That has a bearing on
it, yes.

13 Q. Sure. And if he were directly involved --

14 THE COURT: I think we've exhausted the
subject,
15 Mr. Woods.

16 MR. WOODS: Well, I believe that --

17 THE COURT: We've exhausted the subject is
what my
18 ruling is.
19 MR. WOODS: Yes, your Honor.
20 THE COURT: So I'm going to excuse this juror
at this
21 time for the day. But we can't tell you whether you're
going
22 to be on this jury or not. I'd like to be able to say
that so
23 that you could plan with your wife and family and so
forth, but
24 I can't. You know that we're going to be talking to a
lot of
25 people here, not necessarily everybody who came out to

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Juror No. 143 - Voir Dire

1 Jefferson County, because you're in here as a result of
another
2 sort of random chance thing. The number of people
we'll talk
3 to and the amount of time we'll take to talk to them is
an
4 uncertainty, or our uncertainty. So we have to sort of
leave
5 you hanging out on a limb, so to speak, until you hear
from us.
6 The important thing is continue to follow the
cautions
7 that were given you out there and that are very

important,

8 because you may be on this jury. You'll have to assume
that
9 you will be and that these things that we've talked
about in
10 generalities would become very specific and you'd have
the
11 responsibility for a fair trial and, if there is a
conviction,
12 a fair penalty. So that means be careful now in
conversations
13 with all persons, including your own wife. And be
careful to
14 avoid things in newspapers, magazines, radio,
television, that
15 could relate to this case and influence you which would
be
16 improper, of course, as you understand.

17 JUROR: Yes.

18 THE COURT: Will you do that with us?

19 JUROR: Yes.

20 THE COURT: We'll be back to you, but I can't
tell you
21 when. There will be a decision. So you're excused for
now.

22 JUROR: Thank you.

23 THE COURT: Thank you.

24 We'll call 583. Would you raise your hand and
take
25 the oath from the clerk, please.

Juror No. 583 - Voir Dire

1 (Juror No. 583 affirmed.)

2 THE COURT: Please be seated there.

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q. And I would -- it's been a long day for you.
You've been

6 waiting all this time. We're sorry to make you wait.
And we

7 probably won't finish by 5:00, so you'll be back
tomorrow. I

8 hope you can make arrangements to do that without any
extreme

9 inconvenience. But we want to get started here and use
the

10 time available yet to us this day.

11 You, of course, are aware that you're here
because

12 we're selecting a jury for the trial of United States
vs. Terry

13 Lynn Nichols.

14 A. Yes.

15 Q. And you got a summons for that trial, filled out a
16 questionnaire, sent it back to us. Then you got a
notice to

17 appear in Jefferson County at the fairgrounds'
auditorium

18 building on September 17; and indeed you did appear

then with

19 other persons.

20 A. Yes, I did.

21 Q. And at that time, I was there and introduced myself
to you

22 and the other members of the panel and introduced the
lawyers

23 for the Government and the defendant and Mr. Nichols
himself.

24 And we have them here again today in court. But we
have some

25 additional people, too, and I want you to know who is
here.

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Juror No. 583 – Voir Dire

1 At this first table, lawyers for the
Government, which

2 include, of course, Mr. Mackey, Lawrence Mackey, who
you met

3 before; Ms. Beth Wilkinson. You met her before. And

4 Mr. Patrick Ryan now is with us. He was not there
before, and

5 Mr. James Orenstein also is counsel for the Government.

6 Over here, you recall meeting Mr. Michael
Tigar and

7 Mr. Ronald Woods, attorneys for Terry Lynn Nichols; and
here's

8 Mr. Nichols, whom you also met on that occasion.

9 Thank you.

10 There are other people who will be
participating in
11 one way or another as assistants to the lawyers you've
been
12 introduced to, but we're not going to take the time to
13 introduce everybody here.

14 Also, when you were out there, we asked you to
answer
15 a very lengthy questionnaire, and we appreciate the
fact that
16 you did it. And a lot of the things that are in that
17 questionnaire, the questions that were asked, are quite
18 personal. You know, we know that it's something of an
invasion
19 of your privacy, but I hope you know the reason that we
need to
20 get information like this. We'll try to protect your
privacy
21 as much as we can. That's why the copies of this
questionnaire
22 have not been given to anybody but the lawyers here and
will
23 not be made public.

24 Your name is not going to be made public.
It's --
25 You're here by number right now and will be referred to
that

jury 1 way. And we sort of shield you a little bit with this
are 2 box; but of course, this is public and your answers now
3 public, as I'm sure you recognize.

auditorium 4 Also, when you were out there at the
5 building, I explained the background of the case, what
the 6 charges are in this case, you will recall; and that
included in 7 those charges -- I mentioned that there is an
indictment here

a man 8 in which the Government accuses Mr. Nichols, along with
named, 9 named Timothy James McVeigh and also other persons not
office 10 of participating in a conspiracy to bomb a federal
that? 11 building in Oklahoma City, Oklahoma. Do you recall

12 A. Yeah, I do.

included 13 Q. Yeah. And I also mentioned that the charges
agencies 14 counts of murder of people who were in law enforcement
the case, 15 of the government; and I explained the background of
fact that 16 how it got moved from Oklahoma City to Denver and the
Nichols 17 separate trials were ordered for Mr. McVeigh and Mr.

18 because of differences in the cases. And of course,
you're
19 aware that the case as to Timothy James McVeigh was
tried and
20 the outcome of that trial, are you?
21 A. Right.
22 Q. As I explained there and do explain again now,
we're
23 talking about a different person, a different jury,
different
24 circumstances, different evidence. And I hope you
appreciate
25 that. You do?

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Juror No. 583 - Voir Dire

1 A. Yes, I do.
2 Q. Did you follow along in the publicity about the
trial of
3 Mr. McVeigh?
4 A. No, I did not. Just briefly.
5 Q. Okay.
6 A. Experts from the news, but not any details.
7 Q. When you say "expert in the news," what do you
mean?
8 A. You know, I just heard maybe the verdict and that's
about
9 it.
10 Q. Did you hear --

11 A. I didn't hear any details, specific details.
12 Q. Or any of the people who are lawyers talking about
what
13 they thought about the trial and that sort of thing?
14 A. No, I didn't pay attention to that.
15 Q. Okay. Well, I want to go to something that I think
is
16 probably uppermost in your mind right now, because
that's what
17 I gather from what you said on page 38 of this
questionnaire.
18 And you do have your questionnaire in front of you, do
you?
19 A. Yes, I do.
20 Q. And I want you to know that you're not, you know,
strictly
21 bound by your answers, because you got asked a lot of
things in
22 a hurry, so to speak. And upon reflection, you may
have some
23 differences in the answers that you would give. And if
that's
24 true, you just tell us. We'll accept that.
25 Also as we go through this questioning, your
answers

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Juror No. 583 - Voir Dire

1 to something that I or some of these lawyers may ask
you may be

worry 2 somewhat different from what you wrote here, and don't
that's what 3 about that. If your honest answers are different,
these 4 we want. And there is no right and wrong to any of
mind. 5 answers. It's a matter of telling us what's in your

concern 6 Why I go to page 38 is that you've expressed
time 7 there about being on jury duty in an extended amount of
told you 8 because of, I guess, what somebody at your company has
9 about their pay policy.

10 A. Correct.
11 Q. You also, I think, have your original questionnaire
there, 12 the little one, do you?

13 It's the little three-page or so -- I guess
the three 14 pages you sent in first. If it's not there, that's all
right.

15 A. I don't think it's here.
16 Q. Okay. Well, in that one, you didn't mention this.
17 A. Correct. I didn't know at the time.
18 Q. Because you hadn't talked to your --
19 A. Right.
20 Q. -- your employer. But when it got closer in the
sense that

was an 21 you were asked to come out to the fairgrounds, then it
22 occasion to find out what the policy was.
23 A. Right.
24 Q. Is that it?
25 A. Correct.

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Juror No. 583 – Voir Dire

you 1 Q. And when you talked to whoever it was there, where
2 work, did you talk about this particular case?
3 A. Yes, I did.
reaction to 4 Q. And apart, now, from the policy, was there a
5 that from this person or persons in terms of, oh, you
don't 6 want to do that and you can get out of that pretty
easily by 7 the way in which you answer the questions? Anything
along that 8 line?
9 A. No.
you for 10 Q. Or something along the line of, well, we can't lose
11 that amount of time, so make sure you don't get on the
jury? 12 A. Well, there was some comments in regards to losing
me for

13 that period of time for the trial.

14 Q. Yeah. Which would be to their disadvantage,
obviously.

15 A. Correct, yeah.

16 Q. Because I'm sure you're a valued worker where you
are and

17 they don't want to lose you; but on the other hand, you
know,

18 we need people like you to serve on juries as well.

19 And then it ended up with their telling you
they'd

20 only pay for ten days.

21 A. Correct. I went to the -- to my HR department and
asked --

22 you know, told them that I had been summoned for the
Terry

23 Nichols trial and asked if the policy in the handbook
which

24 said they only paid for ten days -- if that applied to
this

25 trial.

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Juror No. 583 - Voir Dire

1 And they did some research and said that is
our

2 company policy.

3 Q. Okay. Now, that causes you concern about making
your

4 monthly payments.

5 A. Correct.

6 Q. And in particular, your housing situation --

7 A. Correct.

8 Q. -- is involved with that. Is that right?

9 A. Yeah. I'm pretty much the only one that owns -- I
have a

10 condo and I'm the only one who lives there, so it's
only my

11 payments or my salary that pays for the mortgages.

12 Q. Do you have family here in the area, parents --

13 A. Yes, I do.

14 Q. Have you talked with them about this financial
problem?

15 A. Briefly.

16 Q. And has there been any offers to assist you there?

17 A. They said they would help. I mean as much as they
possibly

18 could.

19 Q. Are they employed, your parents?

20 A. Yeah.

21 Q. Would it be fair to say they're supportive of you
in this

22 circumstance, where you may, you know, have a shortage
of

23 income, to put it plainly?

24 A. Well, they're very supportive. I mean, they want
me to do

25 the right thing, you know, uphold my civic duty; but, I
mean,

Juror No. 583 - Voir Dire

1 this is -- I don't want to put my whole family in
financial
2 distress.
3 Q. Sure.
4 A. I don't know how much it would, but --
5 Q. Yeah. Well, that's of concern to you.
6 A. Yes, it is.
7 Q. Has that concern -- and you probably had that
concern in
8 your mind when you went through the questionnaire.
9 A. Yes, I did.
10 Q. Sure. And has it affected any of the other answers
here?
11 A. Possibly.
12 Q. Okay.
13 A. Maybe mildly.
14 Q. Yeah. I would understand that; that all things
considered,
15 you'd rather not have to be on the jury.
16 A. Well, yeah.
17 Q. I mean --
18 A. I mean, I want to do what's best. I mean, you
know, if I'm
19 chosen as a juror, I mean, I will accept that

responsibility.

20 Q. And work it out?

21 A. Right.

22 Q. Okay.

23 A. But in some respects, I'd rather not.

24 Q. You know, what I'm thinking about is sometimes
things like

25 this influence us and sort of cause us to shade the
answer a

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Juror No. 583 - Voir Dire

1 little on the side of, I wouldn't be a very good juror.

2 A. In some respects.

3 Q. Okay. It's human nature. I've seen it before.
That's why

4 I ask the question; so don't feel that these questions
are in

5 any sense accusatory of you or suggesting anything
wrong with

6 your approach.

7 A. Okay.

8 Q. I do want to talk with you about some of these
answers, and

9 we're not going to repeat everything that you've
already told

10 us; but there are some things in here that I think are

11 important to get a little more information from you
about them.

12 Now, you were born here in Colorado.

13 A. Yes, I was.

14 Q. Right? In the Denver area?

15 A. Yes, I was.

16 Q. And, of course, live in a suburb of Denver now.

17 A. Correct.

18 Q. You went to high school in a suburb of Denver?

19 A. Yes.

20 Q. And then you went to Colorado State University and
to the

21 University of Colorado at Denver?

22 A. Yes, I did.

23 Q. And you've given us the time periods there on page
7 of

24 your questionnaire.

25 Now, as I understand it, you then earned a
bachelor's

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Juror No. 583 - Voir Dire

1 of science degree in computer science?

2 A. Correct.

3 Q. As -- and then you've also earned a master's of
business

4 administration and another master's of information
systems?

5 A. Correct.

6 Q. So there are two separate degrees?

7 A. Correct.

8 Q. The master of business administration is the
ordinary one?

9 A. Right, the M.B.A.

10 Q. And then the master's of information systems, I
assume, has

11 something to do with computers?

12 A. Correct.

13 Q. And indeed, you work in that field now --

14 A. Right.

15 Q. -- with the company at which you are presently
employed.

16 A. Yes, I do.

17 Q. And you've worked there how long?

18 A. Just a little over a year.

19 Q. And you're responsible for the internal computer
system,

20 are you?

21 A. I'm responsible for the internal decision support
system as

22 well as the -- I guess interface with the agents out in
the

23 field.

24 Q. Now, does that support system include things like
the

25 application of underwriting policies and that sort of
thing in

Juror No. 583 - Voir Dire

1 evaluating insurable risks and so forth?

2 A. No, it doesn't.

3 Q. Okay.

that's

4 A. No. They have a different underwriting system

5 separate.

6 Q. And you're not in that one.

7 A. No.

8 Q. So what are you involved with?

and

9 A. I'm involved in the policies, the current policies

10 renewal policies, both commercial and personal lines.

for

11 Q. Keeping track of those policies, when they come up

and so

12 renewal, contacting the agents to contact the customer,

13 forth?

as -- as

14 A. Correct. Both new policies and old ones, as long

15 well as claims' data, also.

16 Q. Yeah. And does that include some program design?

17 A. Correct.

program so

18 Q. So that as a new need develops, you design a

accommodate

19 that they can use the machines and the software to

20 that need? Is that --

the
21 A. Yeah. I do most of the database design and some of
22 program design.

23 Q. Okay. Now, you also teach?

24 A. Yes, I do.

25 Q. At UCD -- University of Colorado at Denver?

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Juror No. 583 - Voir Dire

1 A. Yes, I do.

2 Q. What do you teach?

class
3 A. I teach undergraduate beginning information systems
4 for business majors. It's for the managers.

5 Q. So is that beginning computers?

technical
6 A. It's sort of. It's not in detail. It's not very
7 oriented.

8 Q. Is it hands-on use?

It's
9 A. In some respects. It's more at a management level.

available
10 more to teach future managers the technology that is

their
11 that's out there and how to best utilize it maybe in

at a high
12 companies, not necessarily at the technical level but

13 level.

14 Q. What's available, what kinds of problems can be
solved by

15 the technology and how generally it does it; is that --

16 A. Correct.

17 Q. Okay. And your -- the two master's, I take it, are
from

18 UCD.

19 A. Correct.

20 Q. How often do you teach?

21 A. I teach one night a week.

22 Q. What are the hours?

23 A. 6:55 to 9:35.

24 Q. Okay. So that's something you could still do on a
jury

25 that sits from 9 to 5?

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Juror No. 583 - Voir Dire

1 A. Yes.

2 Q. Now, you've worked and you've told us your other
jobs on

3 page 9 so that this -- apparently you worked as a
programmer

4 while you were going to school earning your graduate
degree?

5 A. Yeah. I went to school at night while I was
working

6 full-time during the day.

7 Q. And these other jobs, of course, are jobs to get
eating and

8 stay-alive money while you were going to school?

9 A. Right, my undergraduate degree.

10 Q. Right. You are single?

11 A. Correct.

12 Q. And you have a brother who is a consultant. Is
that also

13 in computer work?

14 A. Yes, it is.

15 Q. Okay. You also tell us here on page 15 that you're
a

16 soccer player and a player coach, I guess.

17 A. Correct.

18 Q. And that's an adult team. Did you also play soccer
in high

19 school?

20 A. Yes, I did.

21 Q. So that's where you got your basic skills, and you
enjoy

22 the game and continue it?

23 A. Yes. I started out when I was about 10 years old
playing

24 soccer.

25 Q. All right. And other sports appeal to you as well,
as you

Juror No. 583 - Voir Dire

1 show us here.

2 A. Correct.

3 Q. I'm about to get into areas that we're not going to
be able

4 to deal with so quickly, so I think we'll recess at
this point.

5 It's about 5:00, so we'll ask you to be back at 9 in
the

6 morning.

7 A. Okay.

8 Q. I'll ask you not to discuss this with anybody, of
course,

9 in between, obviously. I don't need to tell you that,
I'm

10 sure, but I do for the record, as we say. And we'll be
talking

11 with you some more tomorrow morning at 9:00.

12 A. Okay.

13 THE COURT: You're excused until then. Thank
you.

14 (Juror out at 5:00 p.m.)

15 DISCUSSION RE JUROR 928

16 THE COURT: Before we recess, there are a
couple of

17 matters. One is with respect to the Juror 928, we --
that was

18 one that we had some discussion about based on the
earlier

19 information dealing with medical condition. A letter
from a
20 physician has arrived. I think you've been given
copies.

21 MR. TIGAR: Yes, your Honor. We have been
given a
22 copy of that, and we consent to the excusal of that
juror.

23 THE COURT: And the Government as well?

24 MR. MACKEY: Our position is the same.

25 THE COURT: All right. So we'll notify 928
that it

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1 won't be necessary to come in.

2 Then also -- and I don't want to get into the
merits
3 of this, but there has been a brief filed with respect
to
4 another juror and the question of statutory
disqualification.

5 MR. TIGAR: Yes, your Honor. We're prepared
to
6 address that now orally without making reference to
anything
7 that would compromise the privacy of that juror.

8 THE COURT: All right. That person is -- is
scheduled
9 to be called in --

10 MR. TIGAR: Yes, I knew that.

11 THE COURT: -- tomorrow or the next day, so we
need to
12 determine whether we're going to ask that person to
come in.

13 MR. TIGAR: Yes, your Honor.

14 THE COURT: You want to address the issue?

15 MR. TIGAR: Shall I do it from here, or
approach the
16 lectern?

17 THE COURT: I don't know. It's sort of a
sidewinder
18 there, the position.

19 MR. TIGAR: I've often been called that, your
Honor.

20 THE COURT: I'm not calling you that, I'm only
talking
21 about the lectern's position.

22 Whatever.

23 DEFENDANT'S ARGUMENT RE STATUTORY
DISQUALIFICATION

24 MR. TIGAR: The issue, your Honor, is what it
means to
25 have one's civil rights restored within the meaning of
the Jury

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1 Selection and Service Act of 1968, as amended.

2 The Government places principal, indeed,
exclusive
3 reliance, because other cases just depend on it, on
Beecham in
4 the United States Supreme Court. Now, that was a case
in which
5 the Supreme Court following the Thomas and Scalia view
of
6 statutes took a literal view of reading, and it
involved a
7 section of the criminal code that has a choice of law
clause;
8 that is to say, you can't have a firearm unless your
civil
9 rights have been restored under federal law. And the
court
10 refers repeatedly in Beecham to the choice of law
clause.

11 There is no choice of law clause in the Jury
Selection
12 and Service Act of 1968. So we have to go back and ask
13 ourselves, well, how do we interpret this statute?

14 The Colorado Constitution says that once
you've served
15 your time, your civil rights are restored; and they
mean that
16 you can vote in all the elections in Colorado,
including voting
17 for people who serve in federal offices.

18 Is there any reason to think that a person who
is
19 totally qualified as a voter, an elector in Colorado,

is

and 20 disqualified for jury service under the Jury Selection
21 Service Act?

your 22 I think that the definition of citizenship,

In the 23 Honor. We fought a war over it, as a matter of fact.

all 24 first clause of the Fourteenth Amendment, we read that

citizens 25 persons born or naturalized in the United States are

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Fifteenth 1 of the United States and of a state. And then in the

2 Amendment, we read that the right to vote shall not be
3 infringed upon on account of race or previous condition
of

4 servitude, and the Twenty-Sixth Amendment does it for
age, and

5 so on.

6 What that says to us, your Honor, is that
citizenship

7 has always been regarded as dual in our country. Under
the

8 privileges and immunities clause of the main body of
the

9 Constitution, there are certain rights of federal
citizenship;

10 and indeed, there were those such as Frederick Douglas
that
11 extended that to voting and jury service and not even
being a
12 slave at all. Well, a war between the states was
fought
13 because the Supreme Court said differently.

14 What we see now is that citizenship as defined
in the
15 Constitution as this dual thing: It is citizenship of
the
16 national government, but it is also citizenship of a
state.

17 Question: What does the Jury Selection and Service Act
mean
18 when it says civil rights have been restored?

19 Against a constitutional background in which
"equal"
20 citizenship of a state is of equal dignity -- I say
citizenship
21 because we fought a war over it -- with national
clause,
22 and in a statute in which there is no choice of law
that this
23 which was the determining thing in Beecham, we think
literal
24 juror is entirely qualified to sit as a matter of
25 statutory interpretation.

1 Now, even were that not so, should your Honor
be faced
2 with or seized of a doubt at the close of the day, you
remember
3 the last part of Justice O'Connor's opinion -- I think
it's
4 Justice O'Connor -- in Beecham. Beecham said, Well,
how about
5 the rule of lenity for me? No rule of lenity for you,
6 Mr. Beecham, because the statute is clear on its face,
the
7 choice of law clause.

8 This isn't a criminal proceeding for the juror
in
9 question. It wouldn't be the rule of lenity, but it
would be a
10 rule of construction from the Jury Selection and
Service Act
11 itself, the purpose of which, as the Court may recall,
was to
12 end the Key Man system, was to end the system of
discrimination
13 in all its forms, which existed in many parts of the
federal
14 courts, even outside the American South prior to the
passage of
15 the Act. So there is a canon of construction which
ought to
16 push the Court toward permitting juror service if any
doubt
17 remains at the close of the day.

not 18 Thus, we think the Government's position is
particular 19 well-taken. It's limited to the terms of that
that 20 statute as construed by the Supreme Court in light of
21 particular clause.

on 22 THE COURT: Mr. Connelly, you signed the brief
argue the 23 this, I think. As usual, the burden falls on you to
24 law. And I do have the brief; and as I mentioned, I do
25 recognize the distinction between the scope of the
prohibitions

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dealt with, 1 of the firearms legislation, which is what Beecham
2 and the question of who is disqualified under the
statute.

3 MR. CONNELLY: Right, your Honor.

troubles me 4 THE COURT: And of course, one thing that
since that 5 beyond this statutory interpretation issue is that
those 6 case was decided, the Supreme Court has come down with
a jury, 7 cases dealing with the constitutional right to serve on
8 not likely to be eliminated by some statutory

construction.

9
DISQUALIFICATION

PLAINTIFF'S ARGUMENT RE STATUTORY

10
there is a

11
defeasible

12
Congress

13
federal

14
there is

15
protection of

MR. CONNELLY: Well, certainly, your Honor,
constitutional right to serve on a jury. It is a
right in the sense that Congress is -- it's within
power if they so wanted to say that once convicted of a
felony, you are forever disqualified. I don't believe
any argument that that invokes any constitutional
the juror. It really is a question of statutory
interpretation.

18
a
background

20
plainly if

21
been

22
the

23
to the

24
restoration of civil rights.

25
obviously

THE COURT: Well, but I think, you know, it's
question of statutory interpretation against that
that suggests to me that the Congress ought to speak
they're going to completely disqualify a person who has
convicted of a federal felony. And I don't think that
statute is that clear, because the statute does refer
restoration of civil rights.

MR. CONNELLY: I think, your Honor, that's

in: Did
federal
is that
agreement
this
of
Our
1 where the question of statutory interpretation comes
2 Congress intend for states to have the power to restore
3 civil rights after a federal conviction? Our position
4 this is a question of federal law. I think we're in
5 on that. And the question is did Congress intend in
6 instance to defer to the states to restore civil rights
7 people that had been convicted of a federal felony.
8 position is not.

Constitution
defer to
respect
by the
with
9 An interesting analogue is really the
10 itself in terms of voting rights. The framers of the
11 Constitution clearly did intend in that instance to
12 state law. In Article I with respect to the House of
13 Representatives and in the Seventeenth Amendment with
14 to the Senate, the qualifications for federal electors
15 plain terms of the Constitution are determined by --
16 respect and with deference to the qualification that

the state

17 imposes on the most numerous branch of the state
legislature;

18 so in that case, the framers of the Constitution here
clearly

19 knew how to make federal law dependent on a reference
to state

20 law.

21 So our position -- and it's consistent with
Beecham.

22 It's not our position that Beecham controls; although
during

23 the oral argument of that case, Justice O'Connor posed
a

24 question to the representative for Mr. Beecham, saying,
Isn't

25 this really one and the same question? The
construction of the

263

1 federal firearms law: Isn't that really the same
question as

2 the construction of the federal jury service law?

3 And Justice Souter, I think, in that case also

4 questioned -- it was his understanding expressed during
oral

5 argument that once you're convicted of a federal
felony, you're

6 forever disqualified from serving as a federal juror.

7 Now, the opinion didn't address that, but it
did cite
8 in a footnote -- it cited 1865 in terms of the juror
9 qualification as an issue they didn't express any
opinion on;
10 but they did cite it in connection with the argument
that,
11 well, there is no general federal procedure for
restoring
12 federal civil rights. And that is the argument that
the Ninth
13 Circuit in Beecham relied on to say it must be --
Congress must
14 have intended to defer to state law, because there is
no
15 general federal procedure for restoring federal civil
rights
16 after a federal conviction.

17 The majority -- not the majority, the
unanimous court
18 in Beecham rejected that analysis and said, Even
assuming that
19 there is no way to restore federal civil rights, it's
our
20 interpretation of the statute that Congress intended
for it to
21 be a federal question and, in case of federal felony,
to turn
22 solely on federal law."

23 Now, there is a way to restore federal civil
rights
24 after a conviction, and that's a pardon and
presidential --

rights. 25

THE COURT: That isn't a restoration of

264

1 That's an elimination of all of the disabilities.

2
debate in the

MR. CONNELLY: There has been historical

3
pardon -- and

Supreme Court and the commentators, but a typical

4
Vietnam

we cited one: President Carter's blanket pardon of

5
crime; and

draft resisters does say, You're pardoned from this

6
restored."

your full civil, political, and other rights are

7
be a

And there is case law saying that restores the right to

8
indeed

federal juror. So there is a mechanism in federal law,

9 in the Constitution, to restore federal civil rights.

10
that to

Now, it's our position that Congress intended

11
rights after

be the only mechanism for restoring federal civil

12
to be in

a federal felony; that they did not intend for states

13
federal

the business of restoring federal civil rights to

14 felons, and that really is a question of federal law.

15 I think Beecham did not turn solely on the
choice of

16 law clause --

17 THE COURT: Well, why is this language in the
statute?

18 MR. CONNELLY: Because it governs state and
federal

19 felony convictions alike. It says, If you've been
convicted of

20 a federal or state felony, you are disqualified unless
your

21 civil rights have been restored; and it is our position
that

22 there are different ways of --

23 THE COURT: So that Congress was really saying
unless

24 it's a state felony and your state rights have been
restored --

25 MR. CONNELLY: Or unless your federal civil
rights

265

1 have been restored by a pardon.

2 THE COURT: It can't be except by a pardon.
It

3 doesn't take Congress to say -- to create an exception
for a

4 pardon.

5 MR. CONNELLY: Well, in 1978, when the statute
was --

6 was most recently amended, there was a way to restore
federal
7 civil rights without a pardon, and that was the old
Youth
8 Corrections Act. There was a mechanism for a
certificate to be
9 issued. So it would have covered that at the time, and
10 obviously Congress can change the procedures for
restoring
11 federal civil rights. They're not static. Congress
took away
12 that particular mechanism in 1984; but for those six
years,
13 there was a way outside of the pardon process to
restore
14 federal civil rights.

15 THE COURT: Okay.

16 MR. CONNELLY: Thank you.

17 RULING ON STATUTORY DISQUALIFICATION

18 THE COURT: Well, I'm interpreting the Act to
not
19 disqualify this person whose rights have been restored
under
20 Colorado law; so we will -- we're having trouble
reaching him,
21 though.

22 MR. MANSPEAKER: That's correct, your Honor.

23 THE COURT: I make no comment about that, but
we don't
24 have him ready for tomorrow, apparently, because he
doesn't

25 have a phone.

266

your 1 MR. TIGAR: Once he hears he's been liberated,

2 Honor, he'll show up.

we'll 3 THE COURT: I didn't say that, either. But

know 4 continue to try to reach this person, and we'll let you

assuming -- 5 about that. But he's not disqualified by statute,

been 6 and it is an assumption that indeed his rights have

the 7 restored under Colorado law. It's not clear enough on

we'll have 8 answers to the questionnaire that we know that, so

9 to bring him in to find that out.

10 We'll recess till 9:00 tomorrow morning.

11 (Recess at 5:12 p.m.)

12 * * * * *

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24

25

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1 REPORTERS' CERTIFICATE

2 We certify that the foregoing is a correct

transcript from

3 the record of proceedings in the above-entitled matter.
Dated

4 at Denver, Colorado, this 29th day of September, 1997.

5

6

Paul Zuckerman

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Bonnie

Carpenter

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