

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

9
10 REPORTER'S TRANSCRIPT
 (Trial to Court: Volume 9)

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ff

12 Proceedings before the HONORABLE RICHARD P.
MATSCH,
13 Judge, United States District Court for the District of
14 Colorado, commencing at 9:00 a.m., on the 2d day of
October,
15 1997, in Courtroom C-204, United States Courthouse,
Denver,
16 Colorado.

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23
24
Transcription
Street,
629-9285

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3 District of Oklahoma, 210 West Park Avenue, Suite 400,
Oklahoma
4 City, Oklahoma, 73102, appearing for the plaintiff.
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and
6 JAMIE ORENSTEIN, Special Attorneys to the U.S. Attorney
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9 MICHAEL TIGAR, RONALD WOODS, and ADAM
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10 Attorneys at Law, 1120 Lincoln Street, Suite 1308,
Denver,
11 Colorado, 80203, appearing for Defendant Nichols.
12 * * * * *

13

PROCEEDINGS

14

(In open court at 9:00 a.m.)

15

THE COURT: Please be seated. Good morning.

16

ALL: Good morning, your Honor.

17

the Court

MR. MACKEY: May I have a moment to address

18

about a matter?

19

THE COURT: Yes, Mr. Mackey.

20

Honor,

MR. MACKEY: Thank you, your Honor. Your

21

Tigar

yesterday afternoon at the close of our session, Mr.

22

raise an

posed a question to one of the jurors that I wanted to

23

Court

objection to now for future jurors. That question the

24

convicted

may recall is: What would you do, in effect, if you

25

murders?

a defendant of cold-blooded, premeditated, multiple

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1

Honor, I

And as I've reflected on that question, your

2

to the

think there are a couple of objections I'd like to pose

3

the

Court. First of all, it's simply unfair and violates

4

promise that the Court has made to each juror, and that

is when

5 they come in, they're told, and well should be, no
one's going
6 to ask them to predict what their decision might be in
any
7 particular case. As the Court has pointed out to the
jurors
8 and to counsel, it is a very complex decision involving
all
9 sorts of information, none of which is known. And so
it's
10 simply unfair to box in, if you will, a juror on a
hypothetical
11 that is, quite frankly, very one-sided.

12 Secondly, I think, Judge, it's legally
irrelevant
13 because what's important about this examination, at
least in
14 our view, is to understand the jurors' views about the
process,
15 not predicting how they might decide in a hypothetical
that is
16 controlled by questioning, but their reaction to the
legal
17 process, the laws prescribed by Congress and
administered by
18 this court. And so for that reason, Judge, we'd pose
an
19 objection to future questions that attempt to put the
juror in
20 a position of predicting what she or he might do in a
21 particular factual situation.

22 THE COURT: Well, that's the only time I
remember that
23 the question was asked, Mr. Tigar. And I can't
remember
24 whether that's the specific phraseology that you used.
25 MR. TIGAR: It's close enough, your Honor. I
think

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1 the issue is fairly posed. Government counsel
yesterday asked
2 leading question after leading question after leading
question.
3 Can you set it all aside? I know you told us he was
guilty.
4 Can you set it all aside? Can you set it all aside?
And the
5 purpose of those questions was to get these jurors to
make
6 commitments. Can you participate in a process and
would you --
7 they even went so far as to say, be comfortable -- we
stopped
8 that -- participate in looking the defendant in the eye
and
9 saying we sentence him to death and so on.
10 This whole process, your Honor, is designed to
tell us
11 what folks are likely to do. That particular question
is

12 designed to do something very important, your Honor,
and that
13 is it's designed to ask these jurors whether deep down
inside
14 they're so committed to the view that if you commit a
15 particular crime, death is the only possible sentence
that they
16 could not participate in the process to which Mr.
Mackey
17 refers; that is to say, listen to the information and
so on.
18 And as I recall the dynamic, particularly of
that last
19 juror, and I think that would be an instructive, if I
recall it
20 correctly, I posed some questions that put that juror
on the
21 spot. Said, you know, if somebody commits a particular
crime,
22 you think death is the punishment. She in essence, I
think
23 said yes. I don't want to argue a challenge now. Your
Honor
24 came back afterwards and said, Well, now, wait a
minute,
25 there's a process here. Could you participate? You
put some

836

1 questions. And, well, we'll see this afternoon at 4
exactly

2 where that went.

3 But I think that it is not my obligation as
counsel

4 for Mr. Nichols to illuminate all sides of the inquiry.
My job

5 as an advocate is to raise the question: Is the
juror's view

6 about particular crimes such that when they heard that
somebody

7 or thought that somebody had committed one, that they
simply

8 shut down the cognitive process. That is what I
understand to

9 be my role in the life qualification of the jurors.

10 Now, if the particular words that the Court
would

11 prefer me not to use, particular formulations, of
course, you

12 know, I'm here to obey the Court's rules about how the
process

13 works. But as I understand it, the business of finding
out

14 which jurors are automatic death penalty jurors
requires me to

15 explore along the lines to which the Government is
objecting.

16 THE COURT: Well, let me just give you a
couple of

17 comments about that. I think that the dynamics of what
happens

18 with respect to a particular potential juror are
significant.

19 I don't like the idea of saying: This is a legitimate
20 question, this is not a legitimate question. It really
all
21 depends. And it depends upon what the juror has been
saying
22 and what the interaction is. I don't believe that we
should be
23 questioning these people according to some script, and
we
24 haven't been. These questions vary. I have attempted
to vary
25 my approach depending upon the individual and what we
know

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1 about him or her as already revealed in the
questionnaire
2 answers.
3 So I think that, too, it is the Court's
responsibility
4 to get the overall inquiry that is required. Counsel
have the
5 opportunity to bring out specific things that are
important to
6 their respective positions. That's part of advocacy.
But the
7 thing about attorney voir dire that has to be avoided
is to use
8 that as advocating their side of the case. And that's
to be

9 avoided.

10 I think in the particular circumstance any
effect from

11 the question put by Mr. Tigar was explained in the
further voir

12 dire that I conducted. Now, steering or putting
somebody on

13 the spot, both of those things probably should be
avoided, in

14 terms of the specifics of what would you do. So I'd
like to

15 avoid what would you do on both sides. I'm not sure
that

16 smacks of commitment, but I think that puts them --
your words,

17 Mr. Tigar -- on the spot, and we should try to avoid
that.

18 MR. TIGAR: Yes, your Honor, and I don't
recall -- may

19 I speak from here?

20 THE COURT: Yes.

21 MR. TIGAR: I don't recall the specific
language, but

22 I certainly understand the Court's view, and what I'm
trying to

23 ask, although perhaps inartfully, is: What is your
opinion,

24 what is your view, what are your thoughts. And I made

25 objections when I thought Government counsel was trying
to get

the
will
seriously.

1 a commitment. And if I have -- if I have sinned along
2 lines -- those lines, then I am heartily sorry, and I
3 reform what I'm doing. And I mean that quite

here, and
mildly

4 THE COURT: Well, we'll see how we go along
5 if I think that something is inappropriate, I will
6 suggest a change.

7 Okay. We have No. 75.

8 Good morning.

9 JUROR: Good morning.

right

10 THE COURT: If you'll please raise your hand,
11 hand, and take the oath from the clerk.

12 (Juror No. 75 affirmed.)

13 THE COURTROOM DEPUTY: Thank you.

14 VOIR DIRE EXAMINATION

15 BY THE COURT:

microphone,

16 Q. Please be seated there in the chair near the

yourself as

17 and you can swivel that around and sort of make

18 comfortable as you can under the circumstances.

19 A. Okay.

20 Q. And you were here yesterday?

21 A. Yes.

22 Q. And waited and we didn't get to you, and we made
you wait

23 again a little this morning. We apologize for the
delays and

24 to keep you waiting. We try to avoid that, but I'm
sure you

25 understand, it's not possible to predict exactly how
much time

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Juror No. 75 - Voir Dire

1 will be taken by each person who's asked questions, so
you're

2 here now, and we'll make use of this time and then
you'll be

3 excused for the day after you're completed here.

4 You took an oath here, and you previously took
such an

5 oath on September the 17th when you and other jurors
who had

6 been summoned to respond as possibly serving as a juror
in the

7 case of the United States against Terry Lynn Nichols;
right?

8 And you recall then being at the auditorium
building

9 in the Jefferson County Fairgrounds at which time I
introduced

10 myself to you and the other members of the jury panel

and

11 introduced other persons who were present with me,
being the

12 attorneys for both sides and the defendant. Let me
reintroduce

13 those persons and also a couple of additional ones.

14 You met Mr. Lawrence Mackey, who is the first
lawyer

15 here at the table immediately in front of you, which is
the

16 Government's lawyers' table. Miss Beth Wilkinson was
with us

17 as well. You did not then meet Mr. Patrick Ryan, who
is next,

18 and Mr. Geoffrey Mearns next to Mr. Ryan. These are
attorneys

19 who will be presenting the case on behalf of the
Government,

20 the prosecution.

21 You also recall meeting Mr. Michael Tigar and
22 Mr. Ronald Woods, who are attorneys for Terry Lynn
Nichols.

23 And Mr. Nichols was with us on that occasion as well.

24 Now, after the introductions, you'll recall --
and I'm

25 sure you recall these things. I don't want to suggest
that

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Juror No. 75 - Voir Dire

is
have to
about
an
Oklahoma in
Oklahoma
be tried
with a
were
an
building in
that there
1995,
to the
of eight

1 you've forgotten everything that happened there, but it
2 important to establish sort of a baseline here for the
3 questioning, and that's why we do it. And your answers
4 be out loud so that we can put them of record.

5 But you recall that I then gave an explanation
6 the procedural background of the case, explaining that
7 indictment was returned in the Western District of
8 the United States District Court there, which is in
9 City, and how the case was transferred to Colorado to
10 in Denver and that the charges in the indictment were
11 essentially, and paraphrasing, that Mr. Nichols, along
12 man named Timothy McVeigh and other persons whose names
13 not included in the indictment, conspired, entered into
14 arrangement to bomb a building, a federal office
15 Oklahoma City, and also that it was carried out and
16 was a bombing of a building there on April the 19th of
17 and that the indictment included the charges relating
18 actual bombing and to the killing of -- by murdering,

19 law enforcement agents in the building. You remember.
20 A. Yes, sir.
21 Q. I also described that -- an order that separated
the
22 defendants for trial and that directed that, because
there were
23 significant differences in the cases, that they should
not be
24 tried in the same trial before the same jury so that we
have
25 two separate trials, and indeed explained that the
trial of the

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Juror No. 75 - Voir Dire

1 case against Timothy McVeigh had already been held and
that he
2 had been found guilty and sentenced to death and that
now we're
3 selecting a jury and going to begin the trial of the
charges as
4 they relate to Mr. Nichols and that what had happened
in the
5 McVeigh trial must be set aside and the case be
completely
6 separated. So we are looking now to select persons to
judge
7 the evidence in the trial of Mr. Nichols. Okay?
8 A. Yes.
9 Q. You recall all that?

10 A. Yes, I do.

11 Q. And then as a part of this selection process, we
gave you a

12 very long questionnaire, and you cooperated with us and
gave us

13 your answers, and that completed questionnaire is with
you now.

14 A. Right.

15 Q. And I want you to feel free to refer to it at any
time, and

16 I'll be referring and counsel will, too, to certain
questions

17 on there, but I want to again assure you or reassure
you that

18 we respect your privacy and that we are all very aware
that

19 we've invaded your privacy, that we have asked you
things that

20 are quite personal, and we appreciate that and will not
21 disclose these things to -- publicly. That is why your
name is

22 not being used. We refer to you here by a number, and
that is

23 why we take special precautions that you not be seen
going in

24 and out of the courthouse, even, so that to the extent
that

25 it's possible, we can do that. Of course we are now
publicly

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we will 1 in open court, and people will hear your answers; but
attempt to 2 attempt in the course of this questioning again to
3 avoid identifying you.

going to 4 As we ask you questions here -- and we're not
that. 5 go through the whole questionnaire. Please understand

would 6 But if there is anything in this questionnaire that you
-- that 7 like to explain or expand upon, feel free to have that
you to 8 you have that opportunity. We'll of course be asking
9 explain certain answers. Okay?

10 A. Okay.

it sort 11 Q. Now, if you'll turn to the questionnaire, we have
in 12 of again as basic background. You were born, I guess,

13 Washington, D.C., and raised in that area, in Maryland.

14 A. Right.

government 15 Q. And were your parents or either of them in some
16 employment there?

17 A. Yes. My father was D.C. firefighter.

the 18 Q. Throughout the years that you were growing up in

19 family?

20 A. Yes. And then he worked for the state; he became a

21 bailiff.

22 Q. In Maryland?

23 A. Until he retired. Yes.

24 Q. Retired as a firefighter in the district?

25 A. Right.

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Juror No. 75 - Voir Dire

Maryland? 1 Q. And then became a bailiff in some court in

2 A. Right.

3 Q. What court, what level court?

4 A. Prince George's District Court.

5 Q. Which is cases where they tried felonies and --

6 A. Right.

7 Q. -- civil cases, too?

8 A. Yes.

9 Q. And how old were you when he became a bailiff?

10 A. In my teens.

11 Q. You were still at home?

12 A. Yes.

13 Q. And did he used to come home and talk about cases
that were

14 in court when -- in his courtroom?

15 A. No.

16 Q. Or did you ever go down to watch the court in
action?

17 A. Yes.

18 Q. Did you do that with some frequency or --

19 A. No.

20 Q. About how many times did you observe anything in a
trial?

21 A. Just a couple times, two, three times; that was it.

22 Q. And were these cases of particular interest to you
because
23 he said, Well, come on down today, we've got this or
that kind
24 of case on trial?

25 A. No, it was just at random, just to watch the case,
have

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1 some lunch with him.

2 Q. Just sort of drop in, visit --

3 A. Yeah.

4 Q. -- have lunch, as you said?

5 A. Right.

6 Q. Okay. And then is he still in that employment?

7 A. No. He's retired.

8 Q. Retired from that as well.

9 You had one sister and then quite a few
brothers?

10 A. Yes.

11 Q. One of your brothers was a police officer?

12 A. Right. He was a D.C. police officer.

13 Q. Okay. Lived in Maryland but worked in the
district?

14 A. Right.

15 Q. And it looks like he retired at a young age.

16 A. Yes. Back injuries.

17 Q. Was there a disability or something?

18 A. Disability from work. Hurt on the job.

19 Q. And what kind of injury did he sustain?

20 A. Back injury.

21 Q. Was it in connection with making an arrest or some
police

22 action like that?

23 A. Yes, it was.

24 Q. Do you know how -- what kinds of assignments he had
as a

25 police officer in Washington, D.C.?

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Juror No. 75 - Voir Dire

1 A. No, I don't. Just he walked the street. I don't
know.

2 Q. Patrol --

3 A. Patrol.

4 Q. -- officer and general duty?

5 A. Right.

6 Q. So how long was he an officer before this incident
that
7 caused his retirement?

8 A. I think 10 or 12 years. Not too long. Retired
somewhere
9 around the age of 30.

10 Q. Now, had you moved away from that area when he went
to
11 work?

12 A. No. I was in Maryland.

13 Q. I'm trying to remember when you left.

14 A. I didn't move to Virginia -- which was only about
an hour
15 and a half --

16 Q. Yeah.

17 A. -- until I think '86.

18 Q. So your brother's just a little bit older than you?

19 A. Right.

20 Q. Were you -- well, let me ask it this way: Did you
talk
21 with him about his experiences as a police officer? I
assume

22 you did.

23 A. Yes.

24 Q. And he relayed to you what went on on this or that

25 occasion?

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1 A. Some of the -- I guess outrageous incidences, he
shared.

2 Q. Can you think of some of them now so we can get an
idea of

3 what you mean by outrageous?

4 A. I really cannot think of any of them right now.

5 Q. Okay. That's all right.

6 Did he do homicide investigations --

7 A. No.

8 Q. -- do you know?

9 A. Huh-uh.

10 Q. Appeared in court I'm sure as a witness in
connection with

11 cases where he had a role in the investigation or
apprehension

12 of people.

13 A. Yes.

14 Q. Did you ever see him testify in court; did you ever
go down

15 in --

16 A. No.

17 Q. -- cases in which he was a police officer?

18 A. No, I didn't.

19 Q. Did he at any time express to you some view about
the court

20 system or the legal system that showed that he was
disapproving

21 or disappointed by it?

22 A. No, not at all.

23 Q. Did he, to the contrary, seem to be supportive of
it?

24 A. Very supportive.

25 Q. Were there times when he expressed to you some

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Juror No. 75 - Voir Dire

1 disappointment or even dismay that somebody was found
not

2 guilty or had been cases where charges had been
dismissed

3 because of police error like the failure to warn people
of

4 their rights or something like that?

5 A. No, he never shared that.

6 Q. That never happened?

7 A. No.

8 Q. Do you know whether there was ever a time when a
case was

9 dismissed because he did or failed to do something?

10 A. No, not that I'm aware of.

11 Q. All right. And do you know of any time when there

was any

12 disciplinary action taken with respect to his conduct?

13 A. No.

14 Q. Well, let me ask you, I guess, the really pertinent
15 question, and that is whether there's anything about
your

16 brother's work with the Washington, D.C., police force
that you

17 think would affect your ability to sit in judgment in a
18 criminal case, in this case in particular.

19 A. No.

20 Q. Among the things that we usually ask when anybody's
family

21 member or close family member is working in law
enforcement in

22 any way is the question of judging the credibility of
23 witnesses. I'm sure you recognize that's one of the
things

24 that jurors must do. We will have witnesses coming in
during

25 the trial of this case who are from the FBI, from
police

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Juror No. 75 – Voir Dire

1 positions, and indeed firefighter positions probably,
who will

2 give testimony. Some of that testimony will be
disputed.

such law 3 There may be witnesses contradicting the testimony of
4 enforcement witnesses, you understand.

5 Now, do you have any view that because
somebody is a 6 police officer or firefighter, they're more apt to tell
the 7 truth or less apt to tell the truth than anybody else?

8 A. No, I don't think so.

9 Q. So are you willing to judge the testimony of such
people 10 and their believability by the same standards as
anybody else?

11 A. Yes, I am.

12 Q. Now, you came out to Colorado, then, from Virginia
about 13 eight years ago?

14 A. Right.

15 Q. And live now in the Aurora area.

16 A. Correct.

17 Q. What caused you to come to Colorado?

18 A. It was a job.

19 Q. For you?

20 A. Yeah, a transfer.

21 Q. Now, and that's in connection with this respiratory
22 therapist --

23 A. Right.

24 Q. -- work that you were doing.

25 Yes?

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Juror No. 75 - Voir Dire

1 A. Yes.

2 Q. And what was -- when you came out, did you go to a
hospital
3 care unit or what?

4 A. I worked for a home health company, a national
company in a
5 position as a regional director.

6 Q. And was that the same company you were working with
in
7 Virginia?

8 A. No. But I had known the president of this company,
and he
9 called me and offered me the position, and that's why I
came to
10 Colorado.

11 Q. Of course in the health-care world, there have been
all
12 these consolidations and mergers and such. Was it in
13 connection with something like that?

14 A. Yes. To some region.

15 Q. I think you said regional?

16 A. Right.

17 Q. So were there a number of health-care facilities,
then,

18 under your supervision?

19 A. Right.

20 Q. And did you supervise in connection with the
respiratory

21 therapy aspect?

22 A. Well, the entire --

23 Q. Or more general?

24 A. -- aspect. Drivers, warehouse personnel,
respiratory

25 therapists.

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Juror No. 75 - Voir Dire

1 Q. But again, is this home care?

2 A. Right.

3 Q. So are we talking about things like oxygen supplies
to

4 people who need to be on oxygen support for emphysema,
things

5 like that?

6 A. Right.

7 Q. I mean that's not alone --

8 A. Right.

9 Q. -- but that's illustrative, is it?

10 A. Excuse me?

11 Q. Is that illustrative of the kind of --

12 A. Right.

13 Q. -- home care we're talking about?

14 A. Yes.

15 Q. Now, you're not doing that now, are you?

16 A. No.

17 Q. And that's because you went full-time to a more
difficult

18 position: taking care of children.

19 A. Yes.

20 Q. Okay. And that's what you're doing now --

21 A. Right.

22 Q. -- I mean it's home care in the most comprehensive
way.

23 A. Yes.

24 Q. And you're married?

25 A. Yes.

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Juror No. 75 - Voir Dire

1 Q. Husband has his own business, as I understand it?

2 A. Uh-huh.

3 Q. Which includes the sales and service of equipment
in large

4 computer applications; is that right?

5 A. Computer, copy.

6 Q. And copy?

7 A. Copy shops.

8 Q. How long has he had that business?

9 A. Two years he's had his business.

10 Q. And did he go into it after working for some other
company

11 or entity in the same kind of business?

12 A. Yes, Xerox.

13 Q. Okay. And how long had he been with Xerox?

14 A. I think five years.

15 Q. And is this a business that he conducts out of the
home

16 or --

17 A. No. He has --

18 Q. He has a business location?

19 A. -- office; right.

20 Q. And employees?

21 A. Well, it's only him and his partner right now.

22 Q. Okay. And when -- let's see. You understand that
-- let's

23 see -- your children are -- you got one who's not yet
in

24 school?

25 A. Right.

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Juror No. 75 - Voir Dire

1 Q. In preschool, is this --

2 A. No, he's not in preschool.

3 Q. At home.

4 A. Right.

5 Q. There's going to be home-care situation here if you
serve

6 on the jury --

7 A. Exactly.

8 Q. -- obviously.

9 A. Yes.

10 Q. And have you thought about that or made any
preliminary

11 arrangements for that?

12 A. Yeah, my neighbor has a day care.

13 Q. Oh, right next door?

14 A. Right.

15 Q. And will that be satisfactory between you and your
husband

16 to have the children, at least your youngster, the
youngest

17 one, there?

18 A. Yes.

19 Q. So you've thought that through since you've been
notified

20 of the possibility of being with us for several months?

21 A. Right. I had used her when I worked, so --

22 Q. I see.

23 And it will be satisfactory with you, I mean
in terms

on this 24 of being able, if you were on this jury, to concentrate
25 case during the day --

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Juror No. 75 - Voir Dire

1 A. Yes.

cared for 2 Q. -- and be assured that the children were being
3 adequately?

4 A. Yes.

5 Q. Okay. Now, one of the things, of course, that we
have been

6 concerned about -- and I told you of my concern and
asked you

7 to cooperate with us when you left the fairgrounds
after

8 completing the questionnaire -- was that you not really
talk

9 with anybody about the content of the questionnaire or
the

10 subject matter of the case and that you be careful
about radio,

11 television, newspapers, and so forth, to avoid
publicity that

12 could affect your judgment in the case.

13 We know, of course, that you have to do some
talking

14 like with your husband about the child care and what
the impact

15 on the family will be.

16 A. Uh-huh.

17 Q. And I take it you did do that?

18 A. Yes.

19 Q. And did your husband or anybody else involved in
that

20 express any opinions to you about whether you should
try to get

21 off the jury or, yes, you ought to be on the jury or
something

22 like that?

23 A. No, not at all.

24 Q. Or any opinions with respect to how you should
decide the

25 case, what you should do if you got the responsibility
to be on

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Juror No. 75 - Voir Dire

1 the jury?

2 A. No, not at all.

3 Q. And what about your ability to stay away from
publicity?

4 And the reason that I'm asking this is not to suggest
that you

5 would violate the directions, but just to recognize
that it's

6 difficult because when there is a matter of wide public

7 interest and a lot of things are being talked about

just in

8 conversation that may relate to it and a lot of stories
on the

9 news and the like, it's hard to avoid. Have you been
able to

10 avoid it?

11 A. I feel I have avoided it.

12 Q. And did you have a regular -- in terms of gathering
the

13 daily news, did you have a regular practice before I
asked you

14 to change?

15 A. Yes. I would read the paper in the morning.

16 Q. Which one?

17 A. Rocky Mountain.

18 Q. And you still subscribe to that, I suppose?

19 A. Yes.

20 Q. And your husband reads it.

21 A. Uh-huh.

22 Q. And does he sort of prescreen it and then you read
it

23 afterwards, or how do you work that?

24 A. Well, I still read it; but if I see any headline, I
just

25 turn the page.

the
relate
at

1 Q. Okay. And when you do see a headline, sometimes
2 headlines try to tell the story; sometimes they don't
3 much to the story. You have that experience in looking
4 headlines?

retain

5 A. Obviously I didn't look that much 'cause I don't
6 anything.

any

7 Q. Do you remember as you're with us here this morning
8 particular headline that you saw since --

9 A. No, I don't.

you also

10 Q. Okay. Now, you have -- just let me turn to -- oh,
11 told us that you watch Channel 4 News.

12 A. Right.

particular time

13 Q. Or did, anyway, regularly. Was that at a
14 of day like 10:00?

15 A. Noon.

16 Q. Noon.

17 A. Yeah.

18 Q. And do you still do that?

change

19 A. Yes. But if they start talking about anything, I
20 the channel.

21 Q. On page 18 we asked you about whether you have any

and you 22 familiarity at all with certain groups or movements,
Order of 23 marked a few of them. And I take it the Fraternal
24 Police is because of your father and brother.
25 Yes?

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1 A. Yes.
2 Q. Do you know any more about it --
3 A. No more than the titles, actually.
4 Q. Is that true of all of these?
Retired 5 A. Yes. Except for the American Association of
group as 6 Persons dealing in the health care; we dealt with that
7 well as far as insurances.
8 Q. Uh-huh. They do provide insurance programs --
9 A. Right.
10 Q. -- health benefit programs.
11 How about the Child Welfare League?
12 A. Just that the title I'm familiar with.
13 Q. Do you know what they do?
14 A. No.
15 Q. Okay. You've told us that you have a cousin who's

a

16 lawyer?

17 A. Yes.

18 Q. And where does she or he practice law?

19 A. In New York, I believe. New Jersey. I think New
Jersey,

20 yeah.

21 Q. Do you know what kind of law, what the nature of
the

22 practice is?

23 A. Tax.

24 Q. Tax?

25 A. Yeah.

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1 Q. Okay. Do you know whether this person has ever
been a
2 prosecutor or defense counsel in a criminal matter?

3 A. No, I don't know that.

4 Q. Let me -- you have never been on a jury, have you?

5 A. No, I have not.

6 Q. And except for visiting in the courtroom where your
father
7 was bailiff, you don't -- do you have any background
with
8 respect to the operations of the criminal justice
system or the

9 trials of cases?

10 A. No, I don't.

11 Q. Well, I'd like to review with you a few things to
be

12 certain of your understanding. And I mentioned some of
these

13 when I talked with you out there and the others at the

14 fairgrounds about although these charges were made
against

15 Mr. Nichols and others, Mr. Nichols entered his pleas
of not

16 guilty and thereby put into question and into dispute
all of

17 the allegations made against him and that fundamental
to our

18 legal system, fundamental to our constitutional system,
is what

19 we call the presumption of innocence, and that is that
any

20 person, no matter with what crime he or she may be
charged or

21 who the defendant may be, is presumed to be innocent of
the

22 charges made against the person and that presumption
carries

23 throughout the trial and entitles the defendant to an
acquittal

24 unless the charges are proved. You understand --

25 A. Yes.

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us for
indeed

1 Q. -- I'm sure that basic, and I hope you'll forgive
2 going through these basics, but they are, of course,
3 important us to and to all concerned.

responsibility
charged has

4 Now, a defendant charged has no duty or
5 to prove himself not guilty. In fact, a defendant
6 no duty or responsibility to prove anything or explain
7 anything. Therefore, he need not call any witnesses at
all at
8 the trial and certainly no defendant is required to
take the
9 stand and testify at trial.

can be
and
cases like
of the
discuss
the fact
that?

10 These are basic principles. And no inference
11 drawn or in any way can the failure to take the stand
12 testify, if that be the case -- in no way can that be
13 considered by a jury. And in fact, what happens in
14 that routinely, in giving the instructions at the end
15 trial, I and other judges tell juries, You may not even
16 in your deliberations about the evidence in the case
17 that a defendant does not testify. You understand

18 A. Yes, I do.

19 Q. And of course the reason is, again, that it is up
to the
20 prosecution, whoever has brought the case, whatever
level of
21 government it is, to prove that case by bringing in the
22 evidence upon which they've relied and upon which they
do rely.

23 And a defendant, then, can simply challenge that
evidence and
24 make objections to the evidence under the rules,
because the
25 rules of evidence control what can be heard and
considered, and

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1 also cross-examine the witnesses and challenge their
testimony.

2 But not only is it then required of the
prosecution to
3 come in and -- with the evidence, but it has to be
sufficient
4 to prove to the satisfaction of the jury that the
defendant is
5 in fact guilty. And that has to be proved beyond a
reasonable
6 doubt, not just, well, probably, but beyond that, to
the
7 satisfaction beyond a reasonable doubt. And of course
all

8 jurors must agree, there must be a unanimous verdict,
so that
9 before a defendant can be found guilty, the jurors must
10 consider the evidence and then follow the law with
respect to
11 what the requirements of proof are. And then if
there's any
12 reasonable doubt remaining in their minds, they must
return a
13 verdict of not guilty. That's fundamental law.

14 Now, do you agree with that?

15 A. Yes, I do.

16 Q. And do you accept it as law that would govern you
in this
17 case if you were on this jury?

18 A. Yes, I do.

19 Q. Now, we have to ask you some additional questions
here for
20 the reason that the crimes charged in this case provide
by
21 statute for the possibility of the penalty of death.

And I'll
22 explain in a few minutes what that means in terms of
the
23 procedures by which the jury has to address that
question. But

24 before I do that, I want to turn to what you've told us
because
25 we asked you in the questionnaire some of your views
about

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1 penalties, punishment, life in prison without the
possibility
2 of ever being released and death being the principal
ones. And
3 I want you to understand that when we're referring to
life in
4 prison without the possibility of ever being released,
that's
5 what we mean; it's not a case -- under federal law, if
there is
6 such a sentence, there is no way to be released, it's
not a
7 parole eligibility.

8 So I would like you to turn with us to pages
28 and 29
9 where you gave us answers on this subject. And if you
wish to
10 take a few minutes -- I'd like you to take a few
minutes to
11 read those to yourself so that you're familiar with
what you
12 said.

13 You understand that before these questions
were put to
14 you, there was quite an explanation in the
questionnaire about
15 of course the fact that we're asking you these
questions should
16 not be considered by you as any indication that Mr.
Nichols is

to the 17 guilty of anything. That would of course be contrary
18 presumption. And the question of punishment is never
19 considered by a jury in deciding the question of guilt.
In 20 fact, this is another instruction regularly given to
jurors: 21 You may not consider punishment when you are talking
about 22 whether the evidence is sufficient to prove guilt
beyond a 23 reasonable doubt. And normally in a case where death
is not a 24 possibility of punishment, the jury never concerns
itself at 25 all with it. But as I'll be explaining in a minute,
under the

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guilty 1 procedures that are required here, in the event of a

2 verdict, the jury would be involved.

3 But we want to know something about your views
coming

4 in before -- coming in to us here before we ever talk
to you

5 about what the law is in that regard.

6 The way I interpret your answers here -- and I
want

7 you to explain in any way you want. Perhaps it would
be fair
8 to say that, first of all, you don't have a religious
or a
9 moral conviction of some sort, principles that would
interfere
10 with your considering punishment, including death?

11 A. Right.

12 Q. Then in A through D, we've asked you to tell us
what you

13 think about the penalty of life in prison, and you
said: "Some

14 cases, depending on the circumstances and the crime and
then

15 death, the same," except you said, "Without doubt when
murder

16 is involved."

17 And then we asked in C and D, well, "What kind
of

18 cases do you think would be appropriate for life and
what kind

19 of cases do you think it would be for death?"

20 And you talk about the no rehabilitation and
then

21 certain kinds of murder, and under D, murder.

22 Now, my question is: Are you saying that if a
person

23 has been found guilty of a murder, there should be a
death

24 sentence automatically?

25 A. No.

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on that 1 Q. So you said in some circumstances. Can you expand
thinking 2 a bit for us as to the kinds of circumstances you're
3 of?

4 A. I would say serial rapist/murder-type situations,
5 premeditated. I wouldn't consider death penalty for
maybe a 6 crime of passion or -- I don't know. Somebody has done
7 something to my child and I strike out, I think that
that is -- 8 that's a crime of passion as well. In those cases, I
don't see 9 the death penalty.

10 Q. So are you saying, then, when you speak to a crime
of 11 passion, for example, that you would look at something
in 12 addition to the crime itself, like motivation?

13 A. Right.

14 Q. What were the circumstances as they relate to the
15 defendant?

16 A. Exactly.

would be 17 Q. Now, let me talk about how it comes up and what
18 required if you sat on this jury. Beginning of course

with,

isn't 19 repeating again, you don't ever get to this and it
determine 20 involved in the first phase; that is, the trial to
standards 21 whether Mr. Nichols has been proved guilty under the
end of it 22 we've talked about. And of course if not, that's the
23 all, just as it would be in any case.

the 24 Now, in cases not involving the death penalty,
still the 25 jury comes in with a verdict of guilty, and that's

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matter is 1 end of it as far as the jury is concerned because the
And 2 turned over to the judge to determine the punishment.

found 3 judges don't just say, well, I've heard the trial, he's
information. And 4 guilty, here's the punishment; they get more

something 5 more information is provided not only with respect to
something 6 additional about the circumstances of the crime,

things, 7 beyond what went into the evidence, but also additional

8 many things about the defendant: Who he or she is,
what are
9 the circumstances leading up to the particular offense,
the
10 things about the family life and background, work
history, all
11 of the things that go together to make each life unique
and
12 individual. And then there's a hearing with that
information
13 discussed and arguments presented by counsel for both
sides and
14 a judge says, under all these circumstances, including
those
15 things shown about the defendant, this is the
punishment for
16 this person for this crime. So it's a combination of
the
17 person and the crime.

18 It is different, as I say, when the
possibility is
19 death or life in prison without ever being released.
We don't
20 leave that up to a judge. That's a decision for a
jury. And
21 the jury comes to us from all walks of life, sort of a
cross
22 section of the community, and comes to us representing
the
23 conscience of that community, in a way.

24 And we have a trial after the trial, and that
trial is
25 called the penalty phase hearing. And it is at that

time that

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1 both sides present information, the Government
presenting
2 information: What we refer to as aggravating factors
3 supporting the view that death is just punishment. The
defense
4 will come forward with information, and we call these
5 mitigating factors, to support the view that death is
not a
6 justified sentence. And of course these factors
include these
7 things about the individual: Who he is, what he's
done,
8 separated from the trial, things that wouldn't come in
during
9 the trial.
10 And then the jurors have to consider all of
that, and
11 the court gives instructions about consider these
mitigating
12 factors, consider these aggravating factors, take it
all into
13 view; and it is then that you should analyze the case
according
14 to, you know, answering certain questions. But it's
not like
15 an arithmetical thing, it is not a weighing. It is:

whether 16 Considering everything that you've heard now, tell us
you know, 17 the defendant should live or die. And what that is,
after 18 is essentially a moral judgment to be made by jurors
19 considering everything they've heard.

20 You've followed very carefully. I know you've
is: 21 listened to me very carefully. The question of course
22 Will you be able to do that?

23 A. Yes.

an 24 THE COURT: Now, counsel for both sides have
that's, 25 opportunity to ask you some additional questions, and

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respond 1 I'm sure, you consider only fair. So we'll ask you to
2 to them as well.

3 So, Mr. Mearns, do you have some questions?

4 MR. MEARNS: Thank you, your Honor.

5 VOIR DIRE EXAMINATION

6 BY MR. MEARNS:

7 Q. Good morning, ma'am. How are you this morning?

8 A. Very good.

9 Q. I understand in response to some of your questions
from the
10 Court and from your questionnaire that you spent most
of your
11 life on the East Coast; is that fair to say?

12 A. Yes, it is.

13 Q. And if I understand your response correctly, you
came out
14 West as a result of a job opportunity?

15 A. Right.

16 Q. Okay. Has that been a good move for you so far?

17 A. Well, I didn't stay with the job; but I met my
husband, so

18 I say -- yes, I would say it was a good move.

19 Q. And I understand from your questionnaire that you
come from
20 quite a large family; you're one of seven children?

21 A. Yes, I am.

22 Q. Are you the only one in your family that has moved
out
23 West?

24 A. Yes, I am.

25 Q. Do you remain close to your brothers and sisters
and your

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1 parents even though you're out here?

2 A. Yes.

3 Q. You speak to them frequently?

4 A. Telephone, yes.

5 Q. Do you visit them or do they visit you?

6 A. I go back once a year, and my parents come out
maybe once

7 or twice a year.

8 Q. We learned a little bit about your father's work
this

9 morning. What did your mother do?

10 A. She was a registered nurse.

11 Q. Did she work when you were growing up?

12 A. I guess by the time I was -- she stayed at home
until I

13 think I was maybe in the fourth grade, and then she
went back

14 to work.

15 Q. Has she retired now?

16 A. Yes, she is.

17 Q. Was her employment history or what she did for a
living

18 what got you interested in being a respiratory
therapist?

19 A. Yes.

20 Q. How many years were you a respiratory therapist or
involved

21 in that field?

22 A. 19 years.

23 Q. You indicated on the questionnaire that at one

point that

24 you supervised other employees?

25 A. Yes.

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1 Q. When was that?

2 A. When I was a director, manager, in the home health
3 industry.

4 Q. That was here in Colorado?

5 A. Yes. As well as back East.

6 Q. So how many years were you a supervisor?

7 A. I think seven years total.

8 Q. What was the most number of employees that you ever
9 supervised?

10 A. 15 maybe, somewhere around there.

11 Q. You indicated in this response to, I believe it was
12 Question 44, you indicated that on one occasion you
fired an

13 employee?

14 A. Yeah. Probably on just a couple occasions I've had
to fire

15 employees.

16 Q. Do you recall either of those occasions very well
as you

17 sit here this morning?

18 A. It would be . . . one employee stole a company
vehicle, so
19 he was of course terminated. And the other would have
been job
20 performance.
21 Q. Were you personally involved in the decision in
either of
22 those cases to terminate the employee?
23 A. Yes, I was.
24 Q. Were you personally involved in either of those
cases of
25 actually telling the employee -- that is, communicating
to the

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1 employee -- that he was terminated?
2 A. Yes, I was.
3 Q. Tell us, if you can, just briefly, how you went
about
4 making the decision -- I guess as you said, when the
employee
5 stole the vehicle, that was not a particularly
difficult
6 decision. Was either decision difficult?
7 A. Yes, they're always difficult.
8 Q. How did you go about making the decision?
9 A. Well, when it was job performance, I gave warnings
and I

10 counseled; and then after that when nothing was
changed, then I

11 did fire the employee.

12 Q. When you say you counseled and gave warnings, did
you give

13 the employee an opportunity to explain his or her
behavior to

14 you before you took any action?

15 A. Yes, I did.

16 Q. Now, you indicated on the questionnaire that you
quit work

17 this past May; is that right?

18 A. Right.

19 Q. Was that a difficult decision for you?

20 A. Yes, 'cause I've always worked, so it was a little
21 frightening not to have a job; but I wanted to be with
the

22 children. I'd been working night shift so that I could
get my

23 children to school and so that they wouldn't have to
grow up in

24 a day care. So along with the sleep deprivation and
being a

25 zombie half the time when I was with them, I decided it
was

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1 time that I stayed home with them. But it was a
difficult

2 decision to make.

3 Q. Did your husband have a particular position; did he
4 encourage you one way or the other?

5 A. He encouraged me to. His company had grown to a
6 point where we could afford me to stay home.

7 Q. How do you feel now, given the prospect of jury
service,
8 about your decision to quit work and be with your
children?

9 A. Well, I think it's a little difficult 'cause I've
enjoyed
10 my time off, especially over the summer. And I enjoy
being
11 with my children and doing things, so that's a -- would
be a
12 little difficult, but I think it would be more
difficult on my
13 children.

14 Q. I'd like you -- if you would, there's Question 139.
That
15 question asked you whether you -- I'm sorry, I'll give
you a
16 moment.

17 THE COURT: What page is that?

18 Here it is, 32.

19 JUROR: Oh, yes.

20 BY MR. MEARNS:

21 Q. I'm sorry, 32. It indicates that you indicated
that you

22 attended a gun show?

23 A. Yes.

24 Q. When was that?

25 A. When I was dating my husband. I just went with
him.

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1 Q. About how long ago?

2 A. It was about eight years ago.

3 Q. And did you go primarily because he was interested
in
4 going?

5 A. Yes.

6 Q. What kind of an interest does your husband have in
7 firearms?

8 A. Well, we don't have any firearms, but he had done
some
9 hunting in the past.

10 Q. Where was that gun show; here in Colorado?

11 A. Yes. On 84th. I can't recall the place where they
usually
12 show those.

13 Q. Is that the only time that you've ever attended a
gun show?

14 A. Yes, it is.

15 Q. How about your husband, is that the only time he's
gone to

16 one --
17 A. No, I don't think it has been. But he hasn't gone
probably
18 since.

19 Q. Okay. Over on the next page, on page 33, Question
146.

20 You told us about some of the cases that you followed
closely,
21 and one of those was the O. J. Simpson case. Did you
in fact
22 follow that case fairly closely?

23 A. I'd say just fairly closely. I didn't watch it
every day.

24 I primarily followed it through the newspapers.

25 Q. Through the newspapers. Did you occasionally watch

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1 actually the trial proceedings on television?

2 A. Yes, I did.

3 Q. What did you think about that case?

4 A. I thought it was a circus, actually.

5 Q. In what sense?

6 A. Well, I just felt like because of the cameras in
the

7 courtroom -- I personally feel like that was a mistake.
I

8 think that everybody played up to that.

9 Q. And do you feel that equally with respect to the
attorneys
10 on both sides of the case?
11 A. Yes.
12 Q. What did you think about the verdict in that case?
13 A. I personally disagreed.
14 Q. If you were selected as a juror here, if you were
asked to
15 sit as a juror in this case, would any of the things,
the
16 impressions that you have or opinions that you have
about that
17 case affect your ability to be a fair and impartial
juror here?
18 A. No.
19 Q. You also indicated that you followed the trial of
Timothy
20 McVeigh closely. Where did you get your -- the source
of your
21 information, or how did you follow that case?
22 A. Again, just through the newspaper.
23 Q. Now, you recognize that, as the Court instructed
you both
24 in the questionnaire and at the time that you filled
out the
25 questionnaire, that this is a very different case, you

1 understand?

2 A. Yeah.

3 Q. If you were selected as a juror, could you
disregard

4 anything that you heard or feel about that case in
presiding as

5 a juror in this case?

6 A. Yes.

7 Q. Now, if you would turn to Question 159. It's over
on --

8 actually Question 158 and 159, on the bottom of page 36
and

9 over to page 37.

10 You indicate that you heard some information
or seen

11 some information with respect to this defendant, Terry
Nichols.

12 A. Right.

13 Q. You indicated -- and correct me if I'm wrong -- you
14 indicated that you had heard that he was a member of
some

15 militia?

16 A. Right.

17 Q. And you heard that he had some relationship to
Timothy

18 McVeigh?

19 A. Right.

20 Q. Yet on -- a little bit farther on, on Questions 160
and

Nichols. 21 163, you indicated that you have no opinion about Mr.

22 A. Exactly.

23 Q. Tell us how you -- how you -- why it is that you're
able to

24 answer those two questions or two sets of questions
somewhat

25 differently.

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1 A. Well, because on the news, I mean I would hear his
name,

2 but I really don't understand the involvement that he
had in

3 the bombing.

4 Q. You understand that the Court will instruct you, if
you are

5 selected as a juror, that any verdict that you reach in
this

6 case must be based solely on the evidence that you hear
in

7 court and the law as the Judge gives it to you? Do you
8 understand that?

9 A. Yes, I do.

10 Q. Would you have any problem following that
instructions?

11 A. No.

12 Q. Would you have any difficulty disregarding anything
that

13 you might have heard or seen about Mr. Nichols?
14 A. No, I wouldn't.
15 Q. If I may, I'd just like to turn -- before I sit
down, I'd
16 like to turn to some questions about the death penalty.
That's
17 beginning on Question 124 on pages 27, 28, 29.
18 As you see in the last paragraph, the last
instruction
19 paragraph on page 28, the questionnaire asks you when
answering
20 the questions to assume that you alone had the power to
decide
21 what the law should be; in essence the questionnaire
puts you
22 in the role of Congress. And you provided those
answers in the
23 questionnaire, and I believe some of your answers this
morning
24 to the Court assumed that role. You understand,
though, that
25 as the Court has told you this morning, that the law is

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1 somewhat different, that here as a juror, you must
follow the
2 law as opposed to stating what the law is. Do you
understand
3 that difference?

4 A. Yes.

5 Q. Specifically the Court told you that you have to
consider

6 all of the evidence, both the mitigating -- the
aggravating

7 factors that are put forward by the Government and the

8 mitigating factors that are put forward by the
defendant,

9 before you make any decision. Can you do that, ma'am?

10 A. Yes.

11 Q. You indicated in response to Question 129 on page
30 that

12 you agreed strongly with the proposition that a juror
should

13 follow the instructions that are provided by the Court.
You

14 recall that?

15 A. Yes.

16 Q. After hearing the Court this morning give you some
with

17 preliminary instructions as to what the law will be

18 respect to the penalty phase hearing, do you still
agree

19 strongly with the proposition that a juror should
follow the

20 law?

21 A. Yes.

22 Q. Now, you understand that the Court will provide you
with

23 instructions to guide your deliberations and your

conduct both

24 in the guilt phase of the trial and in the penalty
phase of the

25 trial? Do you understand that?

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1 A. Yes.

2 Q. For example, the Court went through some of the
legal

3 propositions and some of the instructions that you'll
be asked

4 to follow during the guilt phase; that is, that the
Government

5 will present evidence first in the Government's effort
to prove

6 beyond a reasonable doubt that Terry Nichols is guilty
of the

7 crimes charged; do you understand that?

8 A. Yes, I do.

9 Q. And that then the defendant will have an
opportunity,

10 but -- not an obligation, but an opportunity to present
any

11 evidence that he wishes to offer to prove that he is
not guilty

12 of the crimes charged; do you understand that?

13 MR. TIGAR: Object to that question, your
Honor.

14 THE COURT: Yes, improper phrasing of what the

law is.

15 We don't need to go through what the trial procedure
is. This

16 woman understands that.

17 BY MR. MEARNS:

18 Q. Do you think that there will be a similar procedure
with

19 respect to the penalty phase?

20 A. Yes.

21 Q. That is, as the Judge outlined, we will present
aggravating

22 factors, that we will do that.

23 Do you understand that you will also have to
consider

24 any mitigating factors?

25 A. Yes.

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1 Q. Do you understand that?

2 And you indicated, I believe, this morning
that you

3 will -- that you saw as one mitigating factor the
defendant's

4 state of mind.

5 Can you elaborate what you mean by that?

6 A. As far as what I mentioned like about a passionate
murder?

7 Q. Yes, ma'am.

8 A. Between I guess spouse . . . I don't know exactly
how --
9 what you want to hear.

10 THE COURT: Well, it isn't what he wants to
hear.

11 It's what you have in mind. I think you've explained
it when
12 you said a crime of passion. Like a matter that
involves --

13 JUROR: Something that happened to my daughter
-- a --

14 THE COURT: -- a relationship between a
husband and a

15 wife.

16 JUROR: Exactly.

17 BY MR. MEARNS:

18 Q. Can you think of this morning other possible
mitigating
19 factors of what you would consider before reaching a
decision
20 about an appropriate punishment?

21 A. I guess the patient -- the patient -- the person's
22 background, what -- if they've thought about the crime.

23 Q. And do you understand that under the laws that will
be
24 given to you, that you will be required to consider
both
25 aggravating and mitigating factors --

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question

1 THE COURT: I believe she's answered this
2 before.

3 MR. MEARNS: Thank you, your Honor.

4 THE COURT: Mr. Woods, you have questions?

5 MR. WOODS: Yes, your Honor, thank you.

6 VOIR DIRE EXAMINATION

7 BY MR. WOODS:

8 Q. Good morning.

9 A. Good morning.

I'm one

10 Q. As the Court introduced me, my name is Ron Woods.

Terry

11 of the lawyers that was asked by the Court to represent

Jeffco.

12 Nichols in this case. We met two weeks ago out in

have

13 We have to go last, so most of the questions

few

14 already been asked and answered, and I'll just take a

15 minutes of your time.

16 A. Okay.

17 Q. If you would go to page 33.

18 A. Okay.

Question 144,

19 Q. I want to cover the issues on publicity. In

the 20 the question is if you've heard or read anything about
And your 21 Oklahoma City bombing case and indicate your sources.
heard 22 sources are the TV news, the radio news, newspaper, and
people 23 other people discussing the case. Who are the other
24 that have discussed the case that you've heard?
25 A. Family, friends.

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and 1 Q. Has it been a matter of discussion with your family
2 friends?
3 A. I'd say some discussion, some just overhearing.
it 4 Q. Was that after it was moved here to Denver, or was
5 before, while it was still in Oklahoma City?
6 A. When it was moved here to Denver.
called 7 Q. Did you ever discuss the possibility you might get
8 as a juror in the case?
9 A. No, I didn't think I would.
verdict came 10 Q. Did you have any discussions once the McVeigh
11 in and the death sentence?
12 A. Yeah, I'm sure we talked about it.

13 Q. What was the nature of the conversation?
14 A. Whether we felt he deserved the death penalty or
not and
15 based on the information that we were given through the
media.
16 Q. And what was the general consensus of whether or
not he
17 deserved the death penalty?
18 A. That he got the punishment he deserved.
19 Q. All right. Now, you indicated also that you
followed the
20 McVeigh trial closely. Of course you could only do
that
21 through the newspapers --
22 A. Right.
23 Q. -- 'cause it wasn't televised. Did you follow it
only
24 through the Rocky Mountain News, or do you take other
25 newspapers at all?

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1 A. No, only through the Rocky Mountain News. What I
heard on
2 the television.
3 Q. Right. And I notice you watch Court TV
occasionally. As I
4 recall, there's always some lawyer commenting on the
current

5 trial that's going on. Do you recall listening to the
6 talking-head lawyers there commenting on the trial?

7 A. No.

8 Q. What TV news were you watching?

9 A. I watched Channel 4.

10 Q. And that's, what, CBS? They have national shows on
that
11 issue, also --

12 A. No, I never watch the national.

13 Q. Do you recall ever watching any CBS specials -- Do
you
14 watch the national news?

15 A. Yes, I do.

16 Q. And do you recall seeing any specials on the case?

17 A. On Timothy McVeigh?

18 Q. Yes.

19 A. Yes. I recall seeing one special. I believe it
was on his
20 life itself through the service and then up to the
bombing.

21 Q. Okay. Was this before the verdict came in, or
after the
22 verdict, or do you recall?

23 A. Gosh, I think it was before.

24 Q. Was it before the trial?

25 A. I think it was during the trial. I'm not really
sure.

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1 It's one of those "60 Minute" type things.

2 Q. Right, "60 Minutes." Do you recall seeing anything
about

3 Terry Nichols on that show?

4 A. No.

5 Q. Now, you had indicated that -- if you would just
flip over

6 to page 36, Question No. 158, the question being,
"Please

7 summarize what you've seen, read, or heard about the
Oklahoma

8 City bombing.

9 And you mention: "Only what pertained to the
10 explosion itself, the building involved, the Government
11 employees killed, the number of people killed,
injured."

12 What do you mean by "the explosion itself"?

13 A. I guess I just remember the mourning scene at --

14 Q. Did you watch it that day that it came on the news?

15 A. Yeah; right.

16 Q. What images do you recall from that day still?

17 A. Well, being a mother, the images of the children.

18 Q. Sure. Do you recall how many children were killed?

19 A. No, I don't.

20 Q. Do you recall how many people were killed overall?

21 A. Oh, I believe it was around 120-some-odd.

22 Q. The government employees killed: Do you remember
how many
23 of those were government employees?

24 A. No, I don't remember.

25 Q. And the Court explained to you, of course, that
part of

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1 this trial is the murder of the eight federal law
enforcement

2 officers involved that were on duty in that building.

3 A. Right.

4 Q. Now, you next state that you recall seeing family
5 interviews. What family interviews are you referring
to there?

6 A. The family members who had lost someone in the
bombing.

7 Q. Okay. Did you see any interviews of the family of
8 Mr. McVeigh or Mr. Nichols?

9 A. No.

10 Q. Okay. Your next statement that you recall is
professionals

11 being interviewed.

12 A. Right.

13 Q. What professionals are you referring to?

14 A. The rescue.

15 Q. The rescue?

16 A. Right.

17 Q. Okay. Do you recall what they said?

18 A. Just what a horrible scene it was.

19 Q. All right.

20 A. How trying it was on them.

21 Q. And your father and your brother -- well, your
father had

22 been a firefighter. Had one of your brothers been a

23 firefighter?

24 A. Yes.

25 Q. So I assume that had some pertinence to you at that
time?

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1 A. Right.

2 Q. "The type of explosives used." I'm still on page
36. In

3 that same question, 158, you're summarizing what you
know about

4 the case or what you've heard. What do you recall
hearing

5 about the type of explosive?

6 A. Well, now I can't recall exactly what it was but
that it

7 was in a rental truck and that it was a large amount.

8 Q. Do you recall hearing anything about Mr. Nichols'
9 connection with that Ryder truck or the bomb?
10 A. No. I don't know what the connection would be.
11 Q. And the next thing you recall seeing and hearing is
the
12 militia group members being interviewed?
13 A. Right.
14 Q. What militia group members were you speaking of?
15 A. I don't know what particular militia groups, but I
remember
16 seeing them on the TV in their fatigues and that the
gunfire --
17 Q. The gunfire.
18 A. Well, they were at some range, shooting range.
19 Q. What was the connection between that and this case,
if any?
20 A. It's my understanding that Timothy McVeigh was with
a
21 militia group.
22 Q. He was with a militia group?
23 A. Right.
24 Q. All right. And then your next statement that you
mentioned
25 that you had seen, read, or heard is the background and
beliefs

Question 1 of Tim McVeigh and Terry Nichols. That's still on

2 158.

3 A. Right.

4 Q. Can you tell me what you recall about the
background and

5 beliefs of Terry Nichols?

6 A. Well, you know, I really can't recall Terry
Nichols; but I

7 remember McVeigh and them showing videos when he was a
child

8 and then videos of Desert Storm and him -- and
interviews with

9 soldiers he had been with. And then him attending
militia

10 group meetings.

11 Q. And this was Mr. McVeigh attending militia --

12 A. Yes.

13 Q. Do you know which militia, if any, he was
attending?

14 A. No, I don't.

15 Q. All right. But your answer was that "the
background and

16 beliefs of Tim McVeigh and Terry Nichols."

17 A. Right.

18 Q. Can you give me what you recall about Terry
Nichols?

19 A. The only thing would be his relationship; that he
had some

20 kind of relationship with Tim McVeigh and that there

was some

21 type of militia involvement.

22 Q. Okay. As to the relationship: Can you tell me
what you're

23 thinking of there other than the militia involvement?

24 A. No. No.

25 Q. All right. Now, on the next page, 37, the answer
to 159:

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1 "Please summarize what you've seen, read, or heard
about Terry

2 Nichols."

3 And your answer is that "Just that he's a
militia

4 member and his relationship with Tim McVeigh."

5 A. That's all.

6 Q. What did you hear about Mr. Nichols' being in the
militia?

7 A. Only that he attended meetings. That's all.

8 Q. Do you recall where?

9 A. No.

10 Q. Do you recall where Terry Nichols -- according to
what you

11 saw and read and heard in the press -- do you recall
where he

12 was at the time the bomb went off?

13 A. He was in Oklahoma City.

14 Q. Mr. Nichols was?

15 A. Oh, Nichols, I'm sorry.

16 Q. Yes, ma'am.

17 A. No, I don't know where he was.

18 Q. Okay. I'm not trying to confuse the two with you,
with

19 Mr. McVeigh or Nichols. This is Terry Nichols, the one
that's

20 on trial now.

21 A. Yes.

22 Q. And what we're trying to do, and the Court asked
you these

23 questions about what have you heard about Terry
Nichols. And

24 that was the question, and your answer was that he was
a

25 militia member. And I'm just wondering what you heard
about

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1 him being in the militia.

2 A. I really can't recall anything.

3 Q. Okay. And then your next answer was: "His
relationship

4 with Tim McVeigh."

5 A. Yeah.

6 Q. What can you recall about his relationship with Tim
7 McVeigh?
8 A. I don't recall anything, just that it was said that
there
9 was a connection of some sort between the two during
the Tim
10 McVeigh trial.
11 Q. And you followed the Tim McVeigh trial closely?
12 A. I would say I followed it.
13 Q. Okay.
14 A. I didn't follow it closely, but I followed it.
15 Q. Well, do you recall whether or not Terry Nichols
was with
16 Mr. McVeigh when he was arrested?
17 A. No, wasn't.
18 Q. Okay. And do you recall where he was?
19 A. No, I don't know.
20 Q. I assume that you watched the television, then,
from the
21 day of the bombing and the next couple of days?
22 A. Yes.
23 Q. Do you recall the television coverage of Mr.
McVeigh's
24 arrest?
25 A. Yes.

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1 Q. And what do you recall about that?

2 A. That it was actually an accident that he was pulled
over
officer
3 and that he had firearm in the car and that the police
4 recognized him from the drawing.

5 Q. And did you see it on television when he was placed
in
6 custody of the federal authorities?

7 A. Yes.

8 Q. Okay. Now, do you recall anything about the arrest
of
9 Terry Nichols?

10 A. No, I don't.

11 Q. Do you recall any TV image of him being placed in
custody?

12 A. Yes, I recall.

13 Q. And what do you recall?

14 A. Just what he looked like. That's really about it.

15 Q. Do you know the circumstances of how he was placed
under
16 arrest?

17 A. No, I don't know.

18 Q. All right. Did you happen to see the TV coverage
of a
19 search warrant execution up in Michigan at a farm?

20 A. Right; I recall seeing that.

21 Q. And what do you recall about that?

found. 22 A. I believe just that there was explosive materials

23 Q. And whose farm was it; do you recall?

24 A. Terry Nichols', I believe.

he was 25 Q. All right. And was that your recollection of where

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1 arrested?

2 A. Yes.

have no 3 Q. All right. And then you go on to state that you

Terry 4 real opinion as to -- have you formed any opinion about

5 Nichols, and you say no?

6 A. Right.

7 Q. Other than he's in the militia?

8 A. Right.

search 9 Q. And it's your recollection he was arrested in a

10 where explosives were found?

11 A. Right.

watching 12 Q. All right. And your opinion didn't change from

13 the McVeigh trial, keeping up with the McVeigh trial?

14 A. No.

15 Q. All right. Now, the Judge has told you that Mr.
Nichols is

16 charged with the same thing that Mr. McVeigh was
charged with;

17 you understand that?

18 A. Yes, I do.

19 Q. And that was the intentional, deliberate bombing of
a

20 federal building. Do you recall the name of the
building?

21 A. No, I don't.

22 Q. With a truck bomb where a number of people were
killed.

23 And then there were eight separate counts of federal
agents

24 being killed. So you understand Mr. Nichols is charged
with

25 the same thing --

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1 A. Yes.

2 Q. Now, I'd like to talk to you about your views on
the death

3 penalty and -- and the answers that you gave are on
page 28.

4 On No. B or letter B -- excuse me -- on page 28: "What
is your

5 view as to whether the penalty of death should ever be
imposed

6 as a form of punishment for any crime?"

7 And you stated that "it should be imposed in
some
8 cases, depending on the circumstances, but without a
doubt when
9 murder is involved."

10 A. Right.

11 Q. And then you've explained to the Court and to the
12 prosecutor some of the distinctions in murders as you
13 understand. Like, for example, a crime of passion --

14 A. Right.

15 Q. -- that you wouldn't consider the death penalty,
and that
16 would be like when someone did something to your child
and you
17 lashed out.

18 A. Right.

19 Q. Do you think that the death penalty -- if someone
were
20 convicted of a crime like that, do you think the death
penalty
21 would even be part of the punishment in a murder such
as that?

22 A. No.

23 Q. Punishment range?

24 A. A crime of passion?

25 Q. Right.

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1 A. No.

2 Q. Right.

3 A. No.

4 Q. It wouldn't even be an option for the jury. Would
that be
5 your understanding?

6 A. Right.

7 Q. And then you gave another example of between
spouses or
8 something.

9 A. Right.

10 Q. All right. Then you sort of defined what you
thought of as
11 death penalty cases, being a serial murder or rape or
one that
12 was a premeditated murder.

13 A. Right.

14 Q. And then you thought about another distinction was
if the
15 person thought about the crime. I assume that means
planned
16 the crime.

17 A. Right.

18 Q. Is that the way you're distinguishing murder cases;
that
19 where the death penalty is appropriate and where
another range

20 is appropriate?

21 A. Right.

22 Q. Okay. I understand. Well, you heard the Court
explain to

23 you what Mr. Nichols is charged with. And if the jury
finds

24 Mr. Nichols guilty in this case, it will have been of a

25 premeditated, deliberate murder of more than one
individual.

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1 Do you understand that?

2 A. Yes.

3 Q. If the jury finds guilt on these counts.

4 Do you have any opinion as to -- when you say
"serial

5 murder and rape," what are you saying there as to
numbers by

6 serial, just one after another?

7 A. Right.

8 Q. What about just one murder, a serial -- excuse me,
not a

9 serial murder, but a murder and a rape where the person
is

10 convicted of deliberately, premeditated, intentional
murder of

11 a person? What do you think about the possible range
of

12 punishment there?

13 A. I think that -- that the death penalty is -- should
be a
14 consideration.

15 Q. All right. Should it be one of the ranges, or when
it's
16 premeditated like that, should it be the punishment for
a
17 premeditated, deliberate, intentional murder?

18 MR. MACKEY: Judge, objection to that
question.

19 THE COURT: Sustained.

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q. I understand you to have said -- and the reason I'm
23 suggesting that this was objectionable -- I understood
you to
24 say that it should be considered.

25 A. Right.

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1 Q. What we're searching for here is whether you have
any view
2 that a certain kind of crime should automatically
result in the
3 death penalty without any other kind of penalty being
4 considered, such as life in prison without release.

5 A. Right.

6 Q. Is there any kind of crime like that in your mind
that you

7 don't consider anything but death?

8 A. Is there any other crime beside --

9 Q. No, any -- you know, as you sit here now, do you
have in

10 mind that there's a crime for which no penalty other
than death

11 should be considered, that you shouldn't even consider
life,

12 but death automatically consider?

13 A. Yes.

14 Q. And what is that?

15 A. Are we talking about murder?

16 Q. Any --

17 A. Any crime.

18 Q. What crime?

19 MR. WOODS: It would be limited to murder,
your Honor.

20 I don't mean to interrupt the Court.

21 THE COURT: I think that's right, Counsel. We
22 wouldn't under the law be talking about a death penalty
unless

23 there was a murder.

24 BY THE COURT:

25 Q. So to avoid confusion here -- but, you know, there
are --

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1 let me just explain the background of this so you get a
better
2 understanding of why we're dwelling on it. You know
that the
3 death penalty is a matter under serious debate all the
time.

4 A. Right.

5 Q. And that generally when a state or the federal
government

6 has a case where the death penalty has been ordered and
then

7 when it comes time for its execution, of course,
there's a lot

8 of discussion again.

9 A. Right.

10 Q. And people have strong views. Some very strongly
in favor

11 of the death penalty, some very strongly opposed. And
I

12 suppose the range is that there are some who say any
murder,

13 death is it. Eye for an eye. Some say it's wrong to
take a

14 life --

15 A. Right.

16 Q. -- under any circumstances. All right. Those are
extreme

17 views. Do you hold a view like that?

18 A. No, I don't.

19 Q. Okay. So you're somewhere in between.

20 A. Right.

21 Q. We're trying to find where that is. And I think
that the

22 question that Mr. Woods was posing or the, what we want
to know

23 from his questioning is do you have a view that while
you

24 wouldn't impose death for every murder, there are
certain

25 murders where you would and you would not consider life
in

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1 prison without the possibility of release. Now, answer
that

2 for us.

3 A. I would -- I'd say that the person doing the crime,
if it's

4 premeditated and the victim is tortured, yes, I do
believe in

5 the death penalty. And I'm talking, I guess, about the
trigger

6 man, so to speak, not the, not people who were in on
the crime

7 but did not do the crime itself.

8 Q. So the role in the criminal conduct is important to
you?

9 A. Yes.

10 Q. And we've talked about this mitigating factors.
Now, you

11 know, another way to put the same question is: Are
there

12 certain crimes where you wouldn't consider mitigating
factors

13 at all? You, as a juror.

14 A. No.

15 Q. Even though you're instructed to consider with
them, is

16 there certain crime that you just couldn't do it?
That's what

17 we're trying to find out.

18 A. Yes.

19 Q. Yes, there are some where even though you were
instructed

20 to consider mitigating factors, you would not?

21 A. In some cases, yes.

22 Q. Well, what are those cases?

23 A. A plan that has been thought through and carried
out, to

24 me, it doesn't seem to matter if the person who's doing
the

25 crime was abused as a child; is that -- I don't think
that

1 their family life or how their parents treated them has
2 anything to do necessarily with what they've done as an
adult.

3 VOIR DIRE EXAMINATION

4 BY MR. WOODS:

5 Q. Yes, ma'am, and we appreciate you being frank with
us. And
6 that's the whole purpose of this hearing, is to get
your true
7 feelings. And as I understand it, you have a fairly
strong
8 view on the death penalty that you've had for some
length of
9 time. You've thought about it, obviously, and have
made
10 decisions as to your beliefs in the death penalty. And
as I
11 understand what you're saying -- and you've done a good
job of
12 distinguishing the type of murders where you don't
believe it's
13 the appropriate penalty.

14 But in those certain cases of murder where you
gave
15 example of a serial murder, that your view is the death
penalty
16 is the appropriate punishment there, not life in prison
and you
17 wouldn't consider life in prison for someone who is
involved in
18 a serial murder? Serial murders, plural?

19 A. Right.

20 Q. And as you understand, there are cases where there
are

21 multiple murders?

22 A. Right.

23 Q. And do you have a definition of what "multiple"
would be?

24 MR. MACKEY: Judge, objection.

25 BY MR. WOODS:

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1 Q. Like three or four?

2 THE COURT: There's no point beating about the
bush

3 with this woman, given these answers.

4 VOIR DIRE EXAMINATION

5 BY THE COURT:

6 Q. Let me just ask you this: You know what the
charges are in

7 this case.

8 A. Yes, I do.

9 Q. All right. And you know that what happened in the
McVeigh

10 case.

11 A. Right.

12 Q. But you know that the jury in that case heard a lot
of

13 information after the verdict.

14 A. Right.

15 Q. Before arriving at its decision on death as the
penalty.

16 A. Yes.

17 Q. Now, if you were to serve on the jury in this case
and

18 Terry Nichols was to be found guilty by the jury of one
or more

19 of the crimes charged --

20 A. Right.

21 Q. -- would you automatically say, Well, this is one
of those

22 cases where death should be the punishment, regardless
of what

23 I hear in the second phase?

24 A. No.

25 Q. You are open, are you, to considering the
mitigating

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1 factors if presented in a second hearing?

2 A. Right.

3 Q. Including things like the role in the offense, if
there's a

4 difference in the roles, as comparing McVeigh -- Mr.
McVeigh

saying? 5 and Mr. Nichols, for example? Is that what you're

6 A. Yes.

7 Q. Now, you know, I don't want to have you answering
this just

8 to be agreeing with me because I'm sitting here in a
black robe

9 and presided at the McVeigh trial. We want your view.
But I

10 think we've been walking all around the question that
really is

11 controlling here. So has anything I said caused you to
answer

12 yes, or are you telling us your own readiness to
consider the

13 case?

14 A. No, it's something I've already thought about.

15 Q. You've thought about what would happen in this case
if you

16 served on the jury and there was a verdict?

17 A. Right.

18 Q. And tell us again your thought.

19 A. Well, considering I don't have all the information,
my

20 thoughts are: I feel that it's totally separate from
Tim

21 McVeigh, and I don't have any opinion -- I haven't
heard enough

22 information; so at this point, as you say, it's a clean
slate.

23 Q. Well, now, this is on the question of whether
there's guilt

here: 24 proved. Now, what have you thought before you came in

25 Well, if this case ends up with a guilty verdict --

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1 A. Right.

thought 2 Q. -- what would I do about punishment? Have you

3 about that?

4 A. Yes.

5 Q. And what are your thoughts on that?

6 A. My thoughts would not be the death penalty.

7 Q. Without automatically, I guess --

-- but 8 A. At this point, because I don't have any information

any 9 at this point I would, if he were found guilty, without

go with 10 further information, I could only say that I wouldn't

11 the death penalty.

hard on 12 THE COURT: All right. Well, we've pushed you

13 this.

not going 14 MR. WOODS: Just a couple, your Honor. I'm

15 to prolong it.

16 THE COURT: Okay. I'm sure she'll appreciate

that.

17 VOIR DIRE EXAMINATION

18 BY MR. WOODS:

19 Q. I do have just a couple questions, because you'd
earlier
20 told us that you believed where it was a serial murder,
several
21 murders, that you would automatically assess the death
penalty
22 and you wouldn't consider life in prison. Is that what
you
23 told us?

24 MR. MACKEY: Judge, I object. I don't know if
"serial
25 murders" means in the mind of this juror a sequence of
murders,

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1 as opposed to a multiple.

2 MR. WOODS: We're going to clarify that.

3 THE COURT: All right. Go ahead.

4 BY MR. WOODS:

5 Q. Is that what you believe and told us earlier --

6 A. Right.

7 Q. -- about serial murder? You would automatically
give the

8 death penalty and wouldn't consider life in prison? Is
that

9 true?

10 A. Right.

11 Q. And here again, we don't have any information to
give you

12 in front of this case. You'll have to wait to hear
that. But

13 in a case where there were multiple murders, do you
have a

14 feeling that you think the death penalty is the
appropriate

15 sentence, or life in prison?

16 MR. MACKEY: Same objection.

17 BY MR. WOODS:

18 Q. You can't --

19 THE COURT: I'll sustain the objection. I
believe

20 this has already been gone over.

21 MR. WOODS: Quite frankly, your Honor, it's
unclear as

22 to what her --

23 THE COURT: Well, it may be to you, but it's
very

24 clear to me.

25 MR. WOODS: Well, we'll discuss it at the
challenge

1 for cause.

2 THE COURT: Yes, we will.

3 MR. WOODS: Thank you, ma'am. I appreciate
you
4 answering my questions.

5 THE COURT: Well, you are finished now with
answering
6 all these questions. And please understand that we've
had some
7 disagreement here about what should be asked you, but
don't
8 hold that against anybody. It's very awkward to ask
people
9 about what would you do on a jury when we don't have
any
10 information in a case.

11 JUROR: Right.

12 THE COURT: And that's why we have to, you
know, get
13 into these discussions about what can or can't be
asked; so to
14 the extent there's disagreement here, please understand
that
15 lawyers on both sides are doing their job, and I'm
doing my
16 job. And there's no strict formula because, you know,
we're
17 talking about people's beliefs and their judgment. And
you
18 can't chart that anywhere.

19 JUROR: Right.

20 THE COURT: So don't go away from here with
some
21 impression that, you know, well, there's been a dispute
here
22 between the lawyers and this lawyer or that lawyer is
right or
23 I'm annoyed at this or that lawyer for asking me the
questions,
24 or please don't be annoyed at me.
25 JUROR: I wish I could have been clearer.

900

1 THE COURT: Pardon me?
2 JUROR: I wish I could have been more clear
with my
3 answers so everybody would have understood.
4 THE COURT: Well, it's hard to articulate what
comes
5 down to a judgment about another human being, which is
what
6 we're talking about here --
7 JUROR: Right.
8 THE COURT: -- and your ability to make a
judgment
9 based on what happens in the courtroom and then looking
at this
10 after discussing it with other jurors. But, of course,
in the
11 end, each juror will have to make an individual moral

judgment.

12 JUROR: Right.

13 THE COURT: And, you know, what we are trying
to find

14 out is if in the end, then, you would be able to do
that

15 following the instructions of the law and not
prejudging that

16 judgment. And you've been telling us that you can.

17 JUROR: Right.

18 THE COURT: Okay. Well, you're going to be
excused

19 now. And unfortunately, we're not going to be able to
give you

20 any idea of when we're going to have the decisions as
to who

21 will serve on the jury. So you'll have to continue to
do that

22 which you've been doing, avoiding conversation about
the case

23 and about your possible participation in it and avoid
anything

24 in any of the publicity that might be out there. And
there

25 will be publicity out there, of course.

901

1 JUROR: Right.

2 THE COURT: So continue to be extremely

careful.

3 We'll get back to you when we can, but I can't give you
even an 4 estimated date, because as you appreciate, having sat
here 5 yesterday and today, the time varies according to each
6 individual person in here.

7 JUROR: Right.

8 THE COURT: Thank you very much for being with
us and 9 your response to these questions; you're excused now to
be 10 notified later.

11 JUROR: Thank you.

12 (Juror out at 10:32 a.m.)

13 THE COURT: We're going to take a recess. I'd
like to 14 talk to counsel for a moment about the next one. If
you will 15 approach the bench.

16 (At the bench:)

17 (Bench Conference 9B1 is not herein transcribed by
court 18 order. It is transcribed as a separate sealed
transcript.)

19

20

21

22

23

24

25

905

1 (In open court:)

2 THE COURT: We'll recess: 20 minutes.

3 (Recessed at 10:35 a.m.)

4 (Reconvened at 10:55 a.m.)

5 THE COURT: Be seated, please.

6 848.

7 If you'll please raise your right hand and
take the

8 oath from the clerk.

9 (Juror No. 848 affirmed.)

10 THE COURTROOM DEPUTY: Thank you.

11 THE COURT: Please be seated.

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. Good morning.

15 A. Good morning.

16 Q. We're sorry to keep you waiting, but we're -- it's
hard to

17 estimate the amount of time necessary to talk with
persons who

18 have been summoned as you have for possible service on
the jury
19 in this case.

20 And you will recall, I'm sure, that you were
with us
21 on September 17 at the Jefferson County Fairgrounds
when I met
22 with you and the other members of the jury panel and
you filled
23 out a lengthy questionnaire --

24 A. Yes, sir.

25 Q. -- which you now have in front of you, that
questionnaire.

906

Juror No. 848 - Voir Dire

1 Also, taking you back to that day, you'll
recall that
2 after introducing myself, I introduced the lawyers and
-- some
3 of the lawyers, anyway, and the defendant; so I want to
4 reintroduce them so you know who is here.

5 At this first table, you'll recall meeting
6 Mr. Lawrence Mackey, who is the first lawyer here, and
Ms. Beth
7 Wilkinson. They were there.

8 In addition, now we have Mr. Patrick Ryan, who
is next
9 to Ms. Wilkinson, and Mr. Geoffrey Mearns -- excuse me.
It was

10 Geoffrey Mearns earlier.

11 MR. ORENSTEIN: We switched. It's a
compliment.

12 THE COURT: Switched chairs on me. Mr. James
13 Orenstein.

14 For the defense, you've met Mr. Michael Tigar
and
15 Mr. Ronald Woods, attorneys for Terry Lynn Nichols; and
here's

16 Mr. Nichols. You met him as well out there.

17 Now, as I said, we asked you to complete a
18 questionnaire; and we have taken the completed
questionnaire,

19 made copies, as I told you we would, for counsel and
me, but no

20 one else. So your answers are private. Some of the
things

21 that we asked of you did indeed invade your privacy
some, but

22 I'm sure you understand the need for that.

23 With respect to the public, you're in a public
24 courtroom now, of course; but we are attempting to
still

25 protect your privacy by not using your name, referring
to you

907

Juror No. 848 - Voir Dire

1 by a number. And these questions that we ask of you

now, of

2 course, will be public. But we're not going to go
through all

3 the questions in the questionnaire and disclose what
you've

4 told us. We will be asking you to maybe amplify or
explain

5 some of the things that you said.

6 Now, I want to go to your concerns, because
you have

7 after answering all of these other questions -- and
then we

8 sort of at the end here asked if there is anything that
you can

9 think of that -- regarding your service that would, you
know,

10 make it so that you can't serve. And you answered
quite

11 directly some of those things. So I'd like to turn
right to

12 that and page 38 and your answers on page 38, and then
you have

13 used the additional page 40.

14 Now, let me just go to page 40 first, because
that

15 situation was uncertain as to what would be involved
there

16 because that refers to what happened or was going to
happen the

17 following day with respect to your father.

18 A. Well, they --

19 Q. Go ahead.

on the 20 A. -- went to the doctor, and they decided to hold off
of his 21 MRI for now. He's diabetic and they took him off one
spoke 22 sugar pills. His sugar immediately started to rise. I
call the 23 to Mother Monday night. She said they were going to
24 doctor today, probably get him in and go ahead with the
25 surgery; and if he does go on the surgery, my
estimation will

908

Juror No. 848 - Voir Dire

1 be they will not hold off on it; it will be within a
week after 2 the doctor has given the okay.

3 Q. Where does he live?

4 A. In Pueblo.

5 Q. Which is where you were born, and this is the
family home?

6 A. Yes.

7 Q. Now, does that -- is it your expectation to go
there to 8 assist in caring for your mother and him?

9 A. Yeah. I'm trying to move back there because as
they're

10 getting older -- they are raising my sister's son, and
it's

11 getting to be a bit much for them. Their yard is
getting to be
12 a bit much for them. They're slowing down in their old
age,
13 naturally; but I would like to be down there to help
them. If
14 I cannot move down there in this time frame, I would
like to be
15 able to work with my employer to be able to go down and
help
16 out with my nephew as much as possible, because my
mom's hope
17 is to spend as much time in the hospital with my father
as long
18 as he's there.

19 Q. And you have a young son?

20 A. Yes, I do.

21 Q. So what does this mean to you on possible jury
service?

22 Your jury service would interfere with these plans?

23 A. Yes, it would because if I was on a jury, I would
not

24 hesitate -- and you could hold me in contempt because
if I got

25 a call that my father, my mother, either one of them,
was

909

Juror No. 848 - Voir Dire

1 injured, sick or near death, I would not hesitate in
getting up

would do 2 and walking out. There is no doubt in my mind that I

3 that.

ready 4 Q. Well, we, you know -- don't get defensive. I'm not

5 to hold you in contempt.

6 A. I understand that, but just understand that you are
7 secondary to my father at this point.

8 Q. All right.

9 A. And in my mind, that's how it's going to stay.

either. 10 Q. Well, don't personalize the jury in terms of me,

understand. 11 I'm just one -- playing one role in the case, you

I'd like 12 Well, there are some other things on here and

back to 13 to address those, too, please. And page 38, let's go

little 14 it. And I don't want to -- it's a little -- I'm a

15 hesitant as to how to ask this because I don't want to

what 16 necessarily disclose names here; but as I understand

relationship with 17 you've written, a relative of yours has some

-- 18 a person who did reportage in the Timothy McVeigh trial

19 A. Yes.

and 20 Q. -- and is very interested in reporting in this case

21 would be very interested if you were on a jury in the
case for

22 which he or she was reporting.

23 A. Yes.

24 Q. And has that person approached you?

25 A. He was spoken to last night, not by myself. He's
very

910

Juror No. 848 – Voir Dire

1 interested, would like my home phone number, but my
relative

2 will not give it to him unless I request it. And if at
that

3 point, then, yes, I would speak to him directly, but I
don't at

4 this very present moment have a plan to call him.

5 Q. Well, but I'm referring back to before. Has he --
have you

6 spoken with him or he with you after you received your
summons?

7 A. No. I've never spoken with him. My relative has,
however,

8 notified him after I received my summons that I was
involved in

9 this process.

10 Q. And this is awkward to ask, too, but sort of is
your

11 relative more on his side than yours in this sort of
tension

persuade 12 that I sense here? I mean, is your relative trying to

13 you to cooperate with him?

I'm going 14 A. My relative has no problem in telling people that

have a 15 through this, so I don't think that the relative would

16 problem in disclosing anything that I would say in

17 confidentiality to her.

18 Q. I think we understand.

sort of 19 Now, you also expressed on page 37 -- we're

Question 160 20 going backwards in the progression here, but on

strong 21 and again on 163 that you formed a fairly firm and

22 opinion about this case from whatever. Is that right?

23 A. Yes.

24 Q. And what is it from?

because 25 A. I did not pay attention at all to the first trial

911

Juror No. 848 - Voir Dire

1 of my work schedule.

2 Q. Timothy McVeigh.

events, 3 A. Yes. I did, however, watch the initial sequence of

4 if you will.

City? 5 Q. You mean the reportage of the explosion in Oklahoma

And I 6 A. The explosion and everything that happened after.

they were 7 did keep very close paying attention to that. When

them is 8 naming their suspects and how they went about finding

changed. 9 when I formed an opinion, and that opinion has never

formed 10 Q. And if you could tell us a little bit about why you

11 that opinion at that time?

12 A. If I was in that situation and I heard my name in
13 connection with a crime, I would not hide. I would
call up an

14 attorney, say, You are representing me, we're going to
go to

15 the police, and fully cooperate with them. And that's
not a

16 popular opinion. I understand that, but that's my
opinion. If

I 17 I am innocent and have nothing to hide, I don't see why

any type 18 should have hid. I don't see why I should have made

19 of law enforcement come out searching for me.

20 Q. Is it your understanding that they went out to
search for

21 Terry Nichols?

22 A. That's how it was -- how I understood the
reporting,

23 because I remember his brother before I remember him.

24 Q. What about his brother?

25 A. That his brother had come out and spoken before

912

Juror No. 848 - Voir Dire

1 Mr. Nichols.

2 Q. Is it your view that a person charged with a crime
3 should -- I'm talking now about after actual charges
were
4 filed -- should at his trial or her trial come forward
and
5 testify?

6 A. Well, that is up to the defense. I -- if I was
sitting on
7 a jury, I would personally like to hear that
defendant's own
8 words as to if he's innocent or guilty.

9 Q. Well, let me ask you this. I mean, you've
expressed an
10 opinion here and it's based on what you understood.
Your
11 understanding is factually incorrect. I'm just going
-- we
12 can't get into the facts of this case and what may come
in the
13 evidence, but -- and I don't know those facts, but I do
know
14 because of some motions that were filed before we

started this

15 trial that indeed Terry Nichols did go to a police
station when

16 he heard his name mentioned on news in connection with
Timothy

17 McVeigh. He did go. Does that change your opinion?

18 A. No, because I also believe that you can look
someone

19 directly in the eye and tell a great deal about them.
I

20 believe Mr. Nichols has a look in his eye that is
hiding

21 something, and I don't believe that there is anything
that

22 anyone can say to change that in my mind.

23 Q. Are you looking at Mr. Nichols this morning? Is
that --

24 A. I was looking at him very closely on the 17th when
we were

25 at Jefferson County Fairgrounds. I was watching him,
watching

913

Juror No. 848 - Voir Dire

1 his mannerisms, and I -- still believed -- and this is
what

2 confirmed it -- seeing him for the very first time in
person

3 that his eyes were saying that he is hiding something.

4 Q. You also on page 35 apparently developed an
impression

5 about the lawyers representing Mr. Nichols simply from
looking
6 at them.

7 A. Uh-huh.

8 Q. And that's page 35, Question 149B. Tell us why you
wrote
9 that.

10 A. Because, again, that day, I studied -- I was about
12 rows

11 back the first time you spoke to us before we filled
out the

12 questionnaire, then we went in the second room. I sat
in the

13 front row so I could see everyone very closely. I
watched

14 everyone, their mannerisms; and I felt very
uncomfortable with

15 the defense. I would not want to be in a dark alley, a
light

16 alley, day or night with them. They're just --

17 Q. That's a pretty serious thing to say.

18 A. I understand that, but there are just people that
can give

19 off that impression to me. And it is nothing that they
can say

20 or do, it's just the mannerism about them.

21 Q. You, as you go about your ordinary workaday, that's
-- you

22 size up people that quickly, do you, regularly?

23 A. I do, because I was in an abusive marriage and it
took me a

24 while to get out of that; so I'm very cautious about
people
25 now.

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Juror No. 848 - Voir Dire

1 Q. I'm not putting you on trial.

2 A. No, I understand that, but I want you to understand
where
3 I'm coming from.

4 Q. That's what we're --

5 A. How I am judging people, if you will, whether I
want to

6 have any contact with them or if I want to steer clear
from

7 them. And they can be the sweetest people in the
world, but I

8 don't want anything to do with them. I would rather
keep my
9 distance.

10 Q. So, you know, putting it straight to you, you seem
to have

11 your mind made up about a number of things; and as I
gather

12 from the way in which you've said it, nothing that we
say or do

13 can change it.

14 A. No, sir.

15 THE COURT: Well, I'm not going to ask you

what you

16 think about me. I'm afraid of the answer.

17 Do counsel have questions?

18 MR. TIGAR: No, your Honor.

19 MR. RYAN: No, your Honor.

20 THE COURT: All right. You may step down and
we'll

21 get back to you with respect to your service.

22 MR. TIGAR: Excuse me, your Honor. May I just
put one

23 question?

24 THE COURT: Yes, you may.

25 MR. TIGAR: Sorry.

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Juror No. 848 - Voir Dire

1 THE COURT: In self defense? Is that name-
clearing?

2 MR. TIGAR: No, your Honor. I will have to
have this

3 transcribed and give it to my wife this evening.

4 VOIR DIRE EXAMINATION

5 BY MR. TIGAR:

6 Q. Ma'am, have you shared your views to which you are
entitled

7 with any of the other jurors riding in in the van or in
any

8 other context?

9 A. No, sir.

10 Q. Okay.

11 A. We were told we were not to discuss this case, and
I didn't

12 feel it was my place to.

13 Q. You understand why I would ask the question?

14 A. Yes.

15 THE COURT: Yes, and I appreciate your asking
it,

16 because I didn't think of it; and I appreciate that.

17 MR. TIGAR: Thank you, your Honor.

18 THE COURT: Because we don't, you know, want
any views

19 to be exchanged among jurors, so we appreciate that.
And

20 we'll, of course, ask that you not do that now.

21 Well, I'm going to excuse you off the case
now.

22 JUROR: Thank you very much.

23 THE COURT: And I want you to understand that
this is

24 not a -- we're not being judgmental about you and your
approach

25 to people or life. This is a matter of your being
unable to

1 serve on a jury.

2 JUROR: Thank you.

3 THE COURT: You're excused.

4 JUROR: Good luck to all of you.

5 THE COURT: No. 99.

6 Sir, if you'll stand and raise your right hand
and

7 take the oath.

8 (Juror No. 99 affirmed.)

9 THE COURTROOM DEPUTY: Thank you.

10 THE COURT: Please be seated.

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. We have reviewed the questionnaire that you filled
out, and

14 I note that you've shown that you have some difficulty
with

15 hearing.

16 A. A little bit, your Honor, yes.

17 Q. How about right now? Are you able to hear?

18 A. I had a little difficulty hearing --

19 Q. We have a device here that may help you. It's one
of these

20 fancy things that works according to some infrared; and
I don't

21 have any idea how it works, but they tell me it works
pretty

22 well.

23 Let's try it.

24 I think with that in place, maybe that will
help.

25 Does it?

917

Juror No. 99 - Voir Dire

1 A. Much better. Thank you, your Honor.

2 Q. Surely.

3 I want, then, to go back to remembering the
time that

4 you got a jury summons that notified you that you were
summoned

5 for possible service on the jury for the trial of the
case of

6 United States against Terry Nichols. You recall that?

7 A. Do I recall receiving the --

8 Q. Summons.

9 A. -- summons? Yes, I do.

10 Q. And you filled out a little questionnaire and sent
that in.

11 And then you were notified to come out to the Jefferson
County

12 Fairgrounds with other jurors; and at that time and
place, I

13 was there and introduced myself and also lawyers in the
case

14 and Mr. Nichols.

15 A. Yes, your Honor.

16 Q. Now, we have people here that I want to reintroduce
because
17 you ought to know who is here with us. You remember
meeting at
18 that time -- being introduced to Mr. Lawrence Mackey,
who is
19 here at this first table; Ms. Beth Wilkinson. And
they're here
20 for the Government, as they were then. And in
addition, we
21 have Mr. Patrick Ryan and Mr. James Orenstein. They
are
22 counsel for the prosecution, the Government in this
case.

23 You recall, also, that I introduced Mr.
Michael Tigar
24 and Mr. Ronald Woods as attorneys for Terry Lynn
Nichols and
25 Mr. Nichols, who is, of course, here.

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Juror No. 99 - Voir Dire

1 And then after introducing these people, I
explained
2 about the background of this case, how charges were
filed in a
3 court in Oklahoma City and then the case was moved from
4 Oklahoma City here to Denver. And then I ordered
separate
5 trials because we have an indictment that charged Terry

6 Nichols, along with a man named Timothy McVeigh and
other
7 persons not named in the indictment, with a conspiracy
or a
8 plan to bomb a building in Oklahoma City and to kill
and injure
9 the people in it and then also the charge is to carry
out that
10 bombing with the murder of eight law enforcement
officers in
11 the building, in the explosion. You remember all that,
I'm
12 sure.

13 A. Yes, your Honor, I do.

14 Q. And I explained, too, about how, because there were
15 different circumstances, there would be separate
trials. And
16 indeed, Mr. McVeigh's case was tried and the jury has
decided
17 that.

18 And now we're here to pick a jury and hear the
19 evidence as it relates to Mr. Nichols. And you
understand I
20 said it starts over; that what happened in the McVeigh
trial
21 has nothing to do with what may occur in the trial to
22 Mr. Nichols.

23 A. Yes, your Honor, I remember it.

24 Q. Okay. And that Mr. Nichols pleaded not guilty to
all of
25 these charges, and so now we're going to have a trial

to see if

919

Juror No. 99 – Voir Dire

1 the Government can prove what it says. And you
understand,
2 too, that I talked about basic principles of our legal
system
3 under our Constitution that any person charged with a
crime,
4 regardless of what it is or who that person is, doesn't
have to
5 prove themselves to be not guilty. The Government
makes the
6 charges, the Government has to prove it. So these
lawyers have
7 to bring in the evidence in the way of testimony and
exhibits,
8 and the jury has to judge that evidence fairly.
9 And because the defendant doesn't have any
duty or
10 burden to prove anything, the defendant doesn't have to
call
11 any witnesses or be a witness himself. And the jury
can't hold
12 it against him if he doesn't testify or call witnesses,
because
13 he doesn't have to. And, in fact, what we tell juries
under
14 those circumstances at trials when it happens is you
can't even

15 talk about it, the fact that a defendant doesn't
testify.

16 And then the law is that Mr. Nichols is
presumed to be

17 innocent. As he sits here with us now, he's presumed
to be

18 innocent; and that carries throughout the trial and
entitles

19 him to a verdict of not guilty, an acquittal, unless

20 fair-minded people on the jury decide that the evidence
shows

21 him to be guilty beyond a reasonable doubt.

22 A. I understand that, yes.

23 Q. Okay.

24 A. Thank you.

25 Q. And, you know, it isn't -- I'm repeating it not
because I

920

Juror No. 99 - Voir Dire

1 think you don't understand it, but it's pretty
important that

2 we establish sort of a baseline here from which we can
talk

3 further; and the baseline is these fundamental
principles of

4 law that apply in any case.

5 And then what "reasonable doubt" means is that
after

6 considering all of the evidence that's been presented

and

7 listening to the instructions about the law that deal
with what

8 it is that the Government has to prove for each of
those

9 charges, if at that time the jury is not convinced
beyond a

10 reasonable doubt, they have to give the benefit of that
doubt

11 to the defendant and find him not guilty.

12 Do you acknowledge these principles?

13 A. Yes, your Honor, I do.

14 Q. And you're ready to apply them in this case if
you're -- if

15 you were to serve on this case? Would you?

16 A. Yes, your Honor, I would.

17 Q. Now, turn to the questionnaire and your answers,
and you

18 have it there with you; and you ran out of time before
you

19 completed. And, of course, we instructed you that if
you did

20 run out of time, the thing for you to do is to just
stop where

21 you are, write "out of time," and then we'd take it
from there.

22 A. Yes, your Honor.

23 Q. So we are going to take it from there.

24 A. Okay.

25 Q. And I want to turn -- I believe it's on page 28,
where you

Juror No. 99 - Voir Dire

1 stopped.

2 A. Yes, your Honor. That's correct.

3 Q. Okay. Now, let me just ask you about the timing
and why

4 you ran out of time. I mean, some people got -- get it
done

5 faster than others. I understand that. Did you have
any

6 trouble in understanding the questions?

7 A. I don't believe I had any trouble, your Honor. I
just tend

8 to be a little bit slower on things like this and read
-- try

9 to understand it more fully as I'm reading it.

10 Q. Reading it several times over to be sure and then
--

11 A. On occasion, yes.

12 Q. And then being very deliberate about your answers?

13 A. That's correct, sir.

14 Q. Good. Well, don't feel embarrassed in any way
about

15 running out of time. We want to have your complete
answers.

16 I'm going to come back to the questions on
page 28.

17 We're not going to just pick up from there.

18 Let's go on over to 29. And look at -- and
please
19 take the time you need here. The Question 125 says,
"What role
20 do you think the federal government should play in
people's
21 lives?" Do you have an answer for that?
22 A. Governing rule. I believe it has the right to, to
the best
23 of my knowledge, do what basically it is doing, and it
-- in
24 keeping our country in steady order.
25 Q. That's good enough.

922

Juror No. 99 - Voir Dire

1 A. Basically, that's what I think it has to do.
2 Q. Yeah. It isn't an easy question to answer. People
have
3 been debating that since we started as a country.
4 A. Yes, your Honor. There are many aspects of the
federal
5 government like the military and things of that nature
that I'm
6 not sure that this touches on; but if we didn't have
our
7 military service, I don't think we would be enjoying
freedoms
8 that we have today.

9 Q. Okay.

20's 10 A. And I served in the military when I was in my early

11 and --

12 Q. You were in the Army from '63 to '65, apparently?

it. It 13 A. I think I'm one of the last draftees, and I enjoyed

14 was a wonderful experience for me.

15 Q. Did you get assigned overseas?

16 A. Yes, sir, I did.

17 Q. Where?

guess it 18 A. Ethiopia. Northwest Africa -- Northeast Africa, I

19 is.

at a 20 Q. And then you apparently went back into the reserves

21 later time.

22 A. That's correct, your Honor.

23 Q. '76 to '89, it says here.

24 A. Yes, your Honor.

up the 25 Q. Why did you go into the reserves? Was it to pick

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that. 1 extra money? I mean, that's one reason why people do

2 A. It was partially that and partially to get a little

bit of

3 the feeling back again that, you know, serving your
country and

4 gaining new experience. I -- for the first time and
only time

5 that I was ever in California, it was -- I was sent out
by the

6 military to attend a school out there; and it was a
great

7 one-week experience.

8 Q. So as a reservist, you did two weeks a year,
whatever it

9 is, on training?

10 A. On active duty, yes, sir -- your Honor.

11 Q. What rank did you have, or grade? This was the
Army;

12 right?

13 A. That's correct, your Honor. I -- when I went back
in, they

14 lowered my rank to Private First Class; and in the
interim time

15 there, I was assigned a chapel activity position
specialist

16 which had a top-ranking of Specialist Fourth Class, and
there

17 were no slots open for anything above that, so I only
advanced

18 back up to Specialist Fourth Class again. When I was
in the

19 military earlier, the two years that I had been
drafted, I went

20 in, you know, as a Private --

21 Q. Entry level?
22 A. Entry level, right; and I did achieve Specialist
Fourth
23 rank at that time, too, as I was leaving.
24 Q. What was your -- used to call it MOS. I don't know
what
25 they call it now. What was it?

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1 A. Earlier, I was a communications specialist and I
served --
2 at a com. center officer in Ethiopia for about a year,
3 receiving incoming and outgoing, more or less relaying
messages
4 around the world, and also they were just starting to
have
5 satellite communications and --

6 Q. Okay.

7 A. And we worked with that a little bit, too.

8 Q. What kind of school did you get sent to in
California?

9 A. That was a chapel activity specialist, school.

10 Q. I don't know what that means.

11 A. It's chaplains' assistants. Sort of like a clerk
typist

12 with a Bible.

13 Q. Okay. Now I understand. Well, let's get -- let me

ask you

14 this about going back in reserves. Did you like the
feel back

15 in uniform, the structure of military units, that kind
of
16 thing?

17 A. Yes, I did. And I liked the idea that it was only
18 part-time. But still during the summertime, you know,
it was

19 two weeks to get out and -- with the boys and have fun
down
20 range; and that was -- that's the way it worked.

21 Q. Okay. Well, back to the questionnaire. We covered
some

22 things here, but getting back to these answers, on
Question

23 126, how do you think the government is doing in what
you think
24 it ought to do.

25 A. I think there are some problems, especially with
the Senate

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1 and the Congress trying to find all the problems that
the

2 President of the United States might have with certain
areas,

3 and I believe there were some Supreme Court decisions
that I

can't 4 didn't really feel too comfortable with, but -- and I

5 really specify what they were, but --

6 Q. Any of them in the criminal law area?

the 7 A. I think it was more in general how things apply to

8 Constitution-type areas.

9 Q. Like in religion?

10 A. I believe that may have been one area.

11 Q. Like prayer in the schools, something like that?

12 A. Possibly. I don't really -- that might be one
area, yeah.

13 Q. Okay. We're not going to debate the Supreme Court
today.

14 A. They've got the --

15 Q. They debate with each other.

16 A. Right.

17 Q. Well, 127 is a question that we'd like you to tell
us

18 about; and you see that says, "Do you think the federal
19 government interferes with and is too intrusive in your
daily

20 life?"

21 A. I don't believe so, no.

22 Q. So we sort of rank that with 1 to 10, and are you
down on

23 the 1, 2, or 3 area?

24 A. That's correct. Yes, your Honor.

25 Q. Okay. And then going on, it says, "Do you have an

opinion

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1 about the constitutionality of federal tax laws?" Do
you?

2 A. Only that I believe I should pay my taxes
basically, and I

3 hope that they don't charge too much more than they
have in the

4 past.

5 Q. Okay. And then it's a question important to us
here: "Do

6 you agree or disagree that it is important to follow
this

7 court's instructions," meaning instructions about the
law? And

8 there is a range here from "agree strongly" to
"disagree

9 strongly." Where are you on that range?

10 A. I agree strongly.

11 Q. And because? It says, "Please explain."

12 A. It's one of the values that I've had all my life.

13 Q. Obedience to the law?

14 A. That's correct.

15 Q. Do you have a state driver's license?

16 A. Yes, your Honor.

17 Q. Have you ever heard anyone say that U.S. currency
is not

18 legal tender?

19 A. I don't believe I have.

20 Q. Do you have any opinion about Waco, Texas? See the
whole
21 question there?

22 A. I'm sorry that happened. I think -- I don't -- I
don't
23 think it was handled very well by the federal
government in

24 that case. I think if they waited a few more days or a
week

25 that things might have changed, but I don't think that
the

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1 federal government was responsible for the fires that
caused
2 the destruction there.

3 Q. Okay. Now, as we go through the questions from
here on,

4 I'm going to just ask you to read them to yourself, and
then

5 I'm going to ask you to answer. Okay?

6 A. Yes, your Honor.

7 Q. Instead of repeating them all. Question 133, the
answer is
8 for yes or no.

9 A. No, your Honor, I have not heard any that I can

recall.

10 Q. All right. The next one is 134.

11 A. No. We have no formal training.

12 Q. You don't need to -- just if it's yes or no, just
say yes

13 or no and we'll move along a little faster.

14 135?

15 A. My wife has had some formal training in building
homes,

16 building houses. She's basically a designing engineer
for --

17 she's -- she constructs boxes that people use to ship
things

18 that are very fragile and keeps them from being
destroyed.

19 Q. Like large shipping crates?

20 A. Large shipping crates or small for carrying a
little egg or

21 something like that.

22 Q. Yeah.

23 A. So she has had some informal, I'd say, training in
24 engineering.

25 Q. Like on-the-job training? Would that be
descriptive, that

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1 she learned by doing?

Institute and

2 A. No. She actually went to the Kansas City Art
3 majored in industrial design.

4 Q. Yeah. I think you told us that. Right. Okay.

5 136, yes or no?

6 A. Yes, but nothing really --

7 Q. Well, tell us what type.

most

8 A. Single-shot over/under .22, .410 shotgun is the

of BB

9 powerful thing we have in the house, and target pistols

10 nature is the only other.

11 Q. Pellet guns?

12 A. Well, BB, actually.

13 Q. Okay.

14 A. 1 -- .177 caliber, I believe it is.

to that?

15 Q. And with respect to 137, is your answer yes or no

16 A. I believe that we should be able to possess and own
17 firearms, yes.

18 Q. Essentially the way the law is?

19 A. Yes, your Honor.

20 Q. So --

21 A. I'd rather not see it changed either way.

22 Q. All right. Then how about 138, yes or no?

23 A. No, your Honor. I believe --

24 Q. 139?

one 25 A. I believe I have -- may have attended a gun show at

929

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1 time.

2 Q. As you sit here now, do you remember doing it?

3 A. It's a community-type thing that they have in Green
4 Mountain Falls. People bring in their rifles and
pistols and

5 show them off, and I believe I attended that once.

6 Q. Were they also for sale there?

7 A. I believe there may have been some aspect of that,
yes. I

8 believe so.

9 Q. How long ago was this?

10 A. Oh, it's been two or three years.

11 Q. Where was it?

12 A. At Green Mountain Falls, Colorado. They have a
little

13 community center there --

14 Q. Okay.

15 A. -- and people, I believe, dealers and manufacturers
even,

16 bring in weapons to show and sell.

17 Q. So with respect to 140, I think you've already
answered no.

18 A. Okay. Sorry. I lost my place.

told us 19 Q. Okay. Page 32, Question 140. I think you already
20 you wouldn't change.
21 A. That's right.
22 Q. 141?
23 A. No, I don't believe I've ever had --
24 Q. All right. 142.
25 A. No.

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1 Q. 143?
2 A. No.
3 Q. Now, 144 gives -- just take a moment to look at
that.
4 That's -- and then there is the list.
5 A. I really haven't done a lot of reading on the
subject, and
6 basically all that I'm familiar with has come from TV
news
7 coverage and radio news. I have --
8 Q. Let me just ask you about your regular habits
concerning
9 the keeping up with the news. Is it through radio or
10 television, or both?
11 A. Yes, your Honor. That's basically it. I do have a
12 newspaper subscription now that comes on weekends; but

for the

13 most part, radio and TV news is it.

14 Q. What paper do you get on weekends?

15 A. At times we get the Colorado Springs Gazette
Telegraph and

16 we also regularly get the -- on Friday, Saturday,
Sunday and

17 Monday The Denver Post.

18 Q. Is that a special edition of The Post for your part
of the

19 state, or is it the same that comes up here in the
Denver area,

20 if you know?

21 A. I believe it's pretty much the same as you receive
here.

22 The advertisements are for Denver.

23 Q. All right. Well, we'll come back to that.

24 A. Okay. But as far as magazines, anything I come
across, I

25 really haven't read in detail any information there.

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1 Internet, I don't deal on the Internet through
on-line

2 very much -- I mean, almost nonexistent.

3 Conversations? Very few people that I know of
have

4 talked about it very much.

months 5 I've had some correspondence from some friends
6 and months ago about it, but mainly -- not really very
much on 7 this subject; more on the Waco, Texas, incident.

8 Q. At the time that that was happening?

9 A. At the time that that was happening, yes.

10 Q. What -- why was that the subject of correspondence
between 11 you and -- I mean -- let me ask it a different way.

Are these

12 people you correspond with regularly?

13 A. Yes, your Honor.

14 Q. And what is there -- are we talking about
relatives, people

15 you were with in the Army, or what?

16 A. It's an old college friend after I returned from
service,

17 and we just have been in correspondence for the past 20
years

18 or so.

19 Q. Okay. So one person?

20 A. One person, yes.

21 Q. You exchange your views on a number of subjects, I
take it.

22 A. Well, not actually. He tends to send me a lot of
23 information, and I look at it, and occasionally I get
to write

24 or correspond by audio recording; but it's usually I
type up an

25 answer to him maybe once a month or something like
that.

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1 Q. Where does he live?

2 A. Kansas City, Kansas.

3 Q. And what business is he in? What kind of work does
he do?

4 A. He's been unemployed for some time, and he
currently is a

5 student at the University of Missouri at Kansas City,
sort of a

6 part-time student. And he studies things like
government; and

7 I'm not sure exactly where he's going with it, but --

8 Q. Well, is he a person who has what you would say a
pretty

9 established and fixed point of view with respect to
public

10 affairs and government?

11 A. Yes, your Honor. I think so.

12 Q. How would you identify him in terms that people
tend to

13 use, like right wing, left wing, liberal, conservative,
ultra

14 conservative, extremist? You know what I'm -- these
words are

15 hard to identify, but --

16 A. I think he would be considered a conservative, not
--
17 bordering on ultra conservative, possibly.
18 Q. And he lets you know his opinions about a lot of
things is
19 the way I get it.
20 A. Yes, your Honor.
21 Q. Now, does he belong to any particular groups or
22 organizations, sharing his views, to your knowledge?
23 A. Not that I know of. None in the hate crime area
that I
24 know of.
25 Q. Well, in any area?

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1 A. He's very active in his synagogue; but other than
that, I
2 don't believe he's active in any other activities.
3 Q. When you respond to him, are you engaged in a
little
4 debate-type thing? Do you take a different view, or do
you
5 tend to go along with what he says? What would you say
to
6 that?
7 A. It would sort of be pro and con. I point out the
pros of
8 his opinion and the cons that I disagree with or agree

with;

9 but for the most part, I don't -- don't accept most of
what he 10 has to say.

11 Q. Okay. And was the Oklahoma City bombing and the
subsequent

12 events, prosecution, trial of Timothy McVeigh -- were
those

13 things discussed between you and your former college
friend --

14 friend you knew from college in your correspondence?

15 A. We touched on the Oklahoma City -- not Oklahoma
City --

16 the -- sorry. I'm getting some feedback on this.

17 Q. Oh. Well, maybe it's where the microphone is.

18 A. That could --

19 Q. If you turn a little in your chair, maybe that will
20 straighten it out.

21 A. No. It seems to be very heavy static.

22 Q. Try another one.

23 A. Definitely does help.

24 Q. Is this going to be better?

25 A. I hope so, but it's -- still getting static now,
only in

934

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1 the left ear.

2 Q. Has this changed from when you started out?

3 A. Yes, your Honor, it is changed from then, but --

4 Q. I'm helpless. I don't know what to do. When the
5 technology goes down, I'm helpless.

6 A. It's just momentary zapping, and it's stopped now.

7 Q. Okay. What I was asking you about was: In your
exchange
8 of correspondence, was the subject of the bombing in
Oklahoma
9 City included?

10 A. I don't believe that it was.

11 Q. Or the trial of Timothy McVeigh?

12 A. No, I don't believe it was included, either.

13 Q. Okay. Let's go to 145, and you're asked to give us
your
14 estimate about how much media coverage you've seen
about
15 everything that may relate to the bombing in Oklahoma
City that
16 occurred on April 19 of 1995.

17 A. Oh, I think it was a very momentous event; so I
think that
18 the media coverage probably, I would say, was basically
19 adequate.

20 Q. No, this is asking you how much you've seen.

21 A. I'd say between -- not too much and quite a bit,
actually.

22 It's --

23 Q. Okay.

There 24 A. Probably -- I don't think -- I think not too much.

25 is --

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about 1 Q. Now, 146 is asking you about closely following news
come to 2 other cases. Are there any, as you sit here now, that
3 mind, cases that you followed with particular interest?

4 A. No, your Honor, I don't believe so.

5 Q. Do you watch Court TV? That one is clear enough.

cable, and 6 A. Occasionally, but not very often. I don't have

to 7 so any more in the last two years I'd say no; but prior

8 that, I enjoyed it on occasion.

that it? 9 Q. Did you have cable before the last two years? Is

have 10 A. No, your Honor. I just -- visiting people that did

11 cable, maybe would watch it once in a while.

12 Q. Okay. 148 is a list of names.

his work. 13 A. Sean Connery, I don't know personally, but I know

14 Q. What do you -- what are you referring to?

15 A. Movie actor.

16 Q. Okay. That's a different fella. Okay?

17 A. Oh, Connelly. I'm sorry.

18 Q. I'll tell you what, we'll skip over this one and
come back

19 to it at a later time. Okay?

20 A. Yes, your Honor.

21 Q. All right. Let's go to next page. 149. I think
this one

22 is straightforward.

23 A. No, your Honor, I have not formed any opinions.

24 Q. On either one?

25 A. Either.

936

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1 Q. 150.

2 A. No.

3 Q. 151?

4 A. No.

5 Q. 152?

6 A. No.

7 Q. 153?

8 A. No.

9 Q. 154?

10 A. No.

11 Q. 155?

12 A. I don't believe so, although our church may have

13 contributed --

14 Q. Something?

15 A. -- something, yes.

16 Q. So you don't remember it, but it's possible. That
is what

17 you're saying?

18 A. Yes, that's what I'm saying, your Honor.

19 Q. Okay. 156?

20 A. No.

21 Q. 157?

22 A. No.

23 Q. Now, 158 is a question that takes some answer
besides yes

24 or no. Please read that and then tell us in summary.

25 A. Basically, the news information, television
coverage at the

937

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1 time of what was happening and subsequent investigation
and

2 pursuit of persons that may have been involved in the
bombing.

3 Q. How about the proceedings in court?

4 A. I did not follow that close at all.

5 Q. Okay.

6 A. Basically didn't follow it. I do know that Mr.
McVeigh was

7 judged guilty of the crime, but I did not, you know --

8 Q. Did you watch any of the news coverage of the
reporting of

9 the verdict of guilty in that case?

10 A. No, your Honor.

11 Q. Did you watch any news coverage of the reporting of
12 reaction to the sentence to death by the jury?

13 A. No, your Honor.

14 Q. 159?

15 A. Practically nothing.

16 Q. Well, is there anything that you can remember about
Terry

17 Nichols?

18 A. No. I'm afraid not.

19 Q. So what's your answer to 160?

20 A. Well, I believe, as you've told us, that he is
innocent

21 until proven guilty.

22 Q. And 161, then, is your answer?

23 A. No, your Honor. That's basically --

24 Q. Okay. 162?

25 A. Well, as I say, practically nothing. Nothing,
really.

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it 1 Q. Okay. And so I take it 163, your answer there is
2 hasn't?

3 A. That's correct. It has not.

the 4 Q. Okay. Now, we want to ask you to look carefully at
here. I 5 questions on page 38. I'm not trying to hurry you,
and then 6 want you to read each one of these questions carefully
7 give me your answers. 164?

8 A. 164? No, I can't think of any reason.

9 Q. All right. And 165?

and this 10 A. Other than the problem I have with my hearing --
for 165. 11 is doing much better -- no, I can't think of anything

12 Q. All right. And 166?

13 A. No, your Honor.

over 14 Q. Okay. Now we'll go back, and we're not going to go
review a few 15 all the questions you did answer, but let me just
16 things with you.

17 You live in Woodland Park now; right?

18 A. Yes, your Honor.

19 Q. Came from Kansas City?

20 A. That's correct, your Honor.

21 Q. And you were sometimes in Kansas City, Kansas,
sometimes in

22 Kansas City, Missouri?

23 A. That's correct, your Honor.

24 Q. Back and forth? I mean, you lived in one and then
you

25 lived in the other? Is that --

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1 A. Yes, your Honor, basically. It's -- I mainly lived
in

2 Johnson County, Kansas, and there -- I'm getting some
static

3 again. I may have to --

4 Q. I'm sorry?

5 A. It's all right -- I guess maybe --

6 Q. Maybe we can move the microphone.

7 A. I'm not sure if that's it or not. There is a
little bit

8 of -- but it's not that kind of static. It's more of a
-- some

9 kind of interference.

10 Q. Maybe it's with your shirt collar.

11 A. I don't believe so.

12 Q. We're not going to ask you to take your shirt off.

13 A. It's like radio interference. It's like radio

14 interference.

15 I'm not hearing anything now from it. Thank
you.

16 Q. Can you hear me all right now?

17 A. Yes, your Honor, now I can.

18 Q. Okay. Well, you were talking about being in
Johnson

19 County, and I guess I don't know Kansas well enough to
know

20 that. Is that the county where Kansas City is?

21 A. No, your Honor. It's -- I've been away from there
for so

22 long I'm not really sure what the -- I believe it's
Jackson

23 County from Kansas City, Missouri.

24 Q. Where did you live?

25 A. When I was very young, I lived in Jackson County up
until

940

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1 about age 8. Then I moved to Johnson County in 1951
through --

2 I'm still getting bad interference -- from 1951 through
19 --

3 well, '62 when I went in the military, or '63 I guess
it was.

4 I lived in Johnson County, Kansas, which is close to
both

5 Kansas City, Missouri -- it's a suburb of Kansas City,
6 Missouri, and Kansas City, Kansas.

7 Q. Okay. Well, is it an urban area, a developed
residential
8 area?

9 A. Yes, your Honor.

10 Q. Okay.

11 A. And I attended elementary and middle and high
school during
12 that -- the 50's, basically.

13 And I never actually lived in Kansas City,
Kansas,

14 that I can think of. I had relatives -- my aunt lived
there

15 and I visited her once and occasionally; but other than
the

16 fact that my father used to work in Kansas City,
Kansas, in the

17 very early 50's, I didn't get over there very much.

18 Q. Let me turn to page 4. And Question 18.

19 A. Yes, your Honor.

20 Q. Is that-- is that a controlled condition now?

21 A. Yes, your Honor. The medication controls the sleep
22 disorder known as narcolepsy and --

23 Q. That's where you can fall asleep when you're
sitting in the

24 chair?

25 A. That's right, your Honor.

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1 Q. And is that a problem now at all?

2 A. I've had medication today, so it's not a problem at
this

3 moment. If I had not had the medication, it would be a
--

4 probably a serious problem, I think.

5 Q. And how long have you been taking this particular
6 medication?

7 A. For a little over -- something like 25 years, I
believe.

8 Oh, this particular one that I'm taking now?

9 Q. Yes.

10 A. It's similar to the medication that I was taking 25
years

11 ago, but it's a new prescription that -- possibly five
years on

12 the current medication.

13 Q. And does that control the condition?

14 A. Yes, your Honor, it does.

15 Q. So have you had any problem with, you know, falling
asleep

16 inappropriately since you've been on it?

17 A. No. I would say I haven't had any problem with
that; but

18 it does -- there is a side effect called cataplexy;
that if you

19 get very excited or find something very humorous,
suddenly it
20 can cause a loss of motor and muscle control, causing a
21 similarity to fainting. That doesn't happen very
often.
22 Usually it only happens at the end of the day after I
get home
23 and am with my family in a relaxed atmosphere; and
suddenly
24 something comes up, and it can immobilize me maybe for
up to a
25 minute.

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1 Q. Well, do you black out?
2 A. It's similar to a blackout in some cases. In some
ways, it
3 is a complete blackout.
4 Q. Do you remember when it happens, or does somebody
say you
5 blacked out?
6 A. Pretty much I am cognizant of it happening; and if
I was
7 standing at the time, I usually am capable of letting
members
8 of the family know through grunts and loud, you know,
9 utterances, nonverbal utterances that something is
wrong. And
10 they usually come and stand by me until this cataplexy

has run

11 its course.

when

12 Q. So do you see and hear what's going on in the room

13 this happened?

the

14 A. No, your Honor. I -- I can hear what's going on in

I have

15 room but I can't -- vision -- I don't see, but I do --

where I'm

16 knowledge of what's going on; and in the situation

my

17 standing and there is danger of falling, I usually lock

locked.

18 knees and do my best to remember to keep my knees

19 Q. Do you drive?

that.

20 A. Yes, your Honor. I haven't had any trouble with

sitting with

21 Q. Would you expect that to be a problem for you

22 us on the jury?

I've

23 A. No, your Honor. If I received the medication that

24 been prescribed, it shouldn't be a problem.

25 Q. How often do you take it in a day?

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and I

1 A. I believe there are 16 tablets prescribed to take,

2 take it in -- I usually have a large dose in the
morning and
3 then two to four at various times during the day when I
4 remember to take it, but I usually remember to take it,
5 so . . .

6 Q. Are there set intervals, like four hours or --

7 A. No, your Honor, not set. It's just to take -- take
16 tablets a day.

9 Q. Spread out over the day?

10 A. Spread out over the day basically is the way the
wording
11 is, yes.

12 Q. Okay. Page 5. Without reading what you've
written, what
13 was the -- can you tell us in a general way what was
the
14 problem that caused you to seek this assistance?

15 A. Oh. No. 20? That is it?

16 Q. Yes. I'm sorry. No. 20, yes.

17 A. I believe it was just conflict with a supervisor,
and I
18 believe the narcolepsy had a little bit to do with it,
too. At
19 the time that this occurred, my employer didn't know
about the
20 condition, and yet I was -- it was something I was
trying to
21 keep secret, basically.

22 Q. I see. So you went for counseling?

23 A. Yes.

24 Q. As to how to handle this conflicting problem. Is
that --

25 A. Yes, your Honor.

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1 Q. Okay. Now, you went to the University of Missouri?

2 A. Yes, your Honor. University of Missouri at Kansas
City.

3 It's a branch of University of Missouri.

4 Q. Yeah. And art, drama, media: Those were the areas
of

5 interest?

6 A. Yes, your Honor.

7 Q. And then the way I have it, you went to a
television

8 station for a few months.

9 A. Yes, your Honor.

10 Q. Is that right out of college?

11 A. That's correct.

12 Q. Tried your -- tried out being a cameraman and
didn't like

13 it. Is that right?

14 A. That's correct.

15 Q. What didn't you like?

16 A. Some of the direction, basically, and the lack of
money.

17 It was only paying -- in 1975, it was paying \$2.50 an
hour.

18 Q. Was this all in-studio?

19 A. Yes, your Honor.

20 Q. Were you ever out on the street doing news, that
kind of

21 thing?

22 A. No. I never -- they were just starting to get some
of the

23 smaller cameras where you could do that, and I never
got out on

24 the street.

25 Q. So you are rolling one of those big things around
inside of

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1 a studio?

2 A. That's right, your Honor.

3 Q. And you decided that wasn't for you, so where did
you go

4 from there?

5 A. I went into custodial work at the elementary school
in

6 Woodland Park. It paid probably twice as much as the
TV

7 position with a lot less stress, so --

8 Q. And you've -- you're with the school district now?

9 A. That's -- that's a different School District right
now,

10 your Honor. I'm with the Colorado Springs school
district now.

11 Q. Okay. Have you been in the public schools, then,
for

12 different districts but for most of your work life?

13 A. It has mainly been with the Colorado Springs School
14 District as far as substitute work goes. I was in the
Woodland

15 Park School District for about two-and-a-half years,
I

16 believe, as a custodian and then moved into the -- oh,
it was

17 sort of the media branch of School District 11 for a
short

18 time, and it was about three to four months there and
that

19 position didn't work. But then I was given the
opportunity to

20 go to Hewlett Packard in their custodial work, so I
moved there

21 and was in their custodial employ for about 10 years.

22 Then that was canceled because of other people
coming

23 in, hiring out to firms to come and clean; so I worked
as a

24 board assembler, building microcircuits and things like
that

25 for about three-and-a-half years. And then they
started

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1 downgrading, or whatever they call it, downsizing, I
guess, the
2 company; so in 1991, I took a special pay option and
left
3 Hewlett Packard and have been substituting as a, oh --
oh, a
4 school aide or clerk-typist-type positions that they
might
5 have. And I recently was rehired full-time; and my
current
6 position is study hall supervisor.
7 Q. But it's a study hall for the people who have been
acting
8 up and got sent there --
9 A. In this case, yes, your Honor.
10 Q. Like after school hours?
11 A. It's an all-day, sort of people -- it's a step for
12 students -- instead of being, expelled, they are sent
to this
13 study hall for a day or two.
14 Q. Oh, they spend a whole day there?
15 A. That's correct, your Honor.
16 Q. I'm told that -- when I was in school and you had
17 detention, it was usually after hours. You spent time
like 4
18 to 6 or something in the afternoon. Do you have that,

too?

45 19 A. There is after-school detention, and that's about

20 minutes after school is out, yes.

21 Q. Okay.

22 A. It's not major --

aren't 23 Q. So your big job there is to make sure these folks

supposed to 24 acting out when they're in study hall and they're

25 be hitting the books; is that --

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1 A. That's right, your Honor, yes.

2 Q. Okay. You're married.

3 A. Yes, your Honor.

4 Q. Wife works in the library?

5 A. Yes. The Pikes Peak library district, yes.

6 Q. And you're active in your church?

7 A. That's correct, your Honor.

lawyers. 8 Q. You tell us you have church friends who are

9 A. Yes.

know? 10 Q. And are any of them practicing criminal law, if you

a judge 11 A. Well, I have a friend who is a -- currently one --

12 in --
13 Q. County court?
14 A. Teller County court, yes. But I don't think that's
quite
15 the same as being a lawyer, is it?
16 Q. No, it isn't the same as being a lawyer.
17 A. I'm sure he has the law degree, of course.
18 Q. I'm just asking you whether you have friends who
work in
19 prosecuting or defending criminal cases.
20 A. I -- it's possible, but I don't know about it. I
believe
21 one of my friends is a lawyer who has worked for the
City of
22 Woodland Park, and I'm not sure if he's done any
prosecuting of
23 cases in that area or not.
24 Q. Okay. With respect to your friend the judge, have
you
25 talked with -- this is a man?

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1 A. Yes, your Honor.
2 Q. Have you talked with him about anything connected
with
3 these cases, Mr. McVeigh's case or Mr. Nichols' case?
4 A. No, your Honor.

5 Q. Or your being on a jury?

6 A. No, your Honor. I did appear before him once as a
7 potential juror and was not chosen to be on the jury,
but it
-- how
8 was a short case and I wanted to see how things would
9 the court was handled; so I stayed during the trial,
which did
10 only last one day, and found it to be quite
interesting.

11 Q. What kind of a case was it?

12 A. Drunken driving, your Honor. The defendant was
found
13 guilty by the court, and I did not agree with their
decision,
14 but --

15 Q. It was a jury, though, right?

16 A. The jury made the decision, yes.

17 Q. You said "by the court." It was by a jury?

18 A. It was by -- yes, your Honor. Sorry about that.

19 Q. You didn't think the jury decided right?

20 A. I don't believe so. There was some mention that --
by the
21 defendant that he was not driving the car when it was
stopped
22 but that he did trade positions with somebody, so he
was behind
23 the steering wheel when the officer came up; and it was
never
24 proved that -- to my opinion that -- that he had been

driving,

25 but the jury felt that he had, so -- and maybe --

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1 Q. Now, was this his testimony? He testified that he
wasn't

2 driving, he moved over behind the wheel after the car
stopped?

3 Was that his testimony?

4 A. I believe that was his testimony, yes, your Honor.

5 Q. So you thought that created enough doubt that there
ought

6 to be a not guilty verdict; is that what you're telling
me?

7 A. I felt that was the case, yes.

8 Q. Did you talk to any of the jurors afterwards?

9 A. No, your Honor.

10 Q. Or the judge?

11 A. No, your Honor.

12 Q. I mean about the case?

13 A. Not about the case, no.

14 Q. So what are you saying? You didn't think the jury
gave the

15 defendant the benefit of the doubt in that case?

16 A. That's what I'm saying, yes.

17 Q. That was how long ago?

and a 18 A. Within the last two years, probably about a year
19 half, I think.
20 Q. Now, I want to turn to page 24.
21 A. Yes, your Honor.
22 Q. Question 110 at the bottom.
23 A. Yes, your Honor.
24 Q. What's that about?
time I 25 A. Very close friend of mine from high school. At the

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1 was not too familiar with what was going on, but it
seemed to 2 me that he had mentioned to me that he had been somehow
3 arrested and taken to a minimum-security holding
situation, and 4 he had been released from -- I'm sorry. He hadn't been
5 released. He escaped from that -- that situation. I
asked his 6 parents and him to find out a little bit more about
what was 7 going on. His parents said that they investigated and
found 8 that he had not been arrested; that -- and that there
were no 9 warrants for his arrest at that time. So my friend
felt

is only 10 free -- this was on the Missouri side. Where we lived

Missouri at the 11 4 or 5 miles from the border between Kansas and

area, 12 time. And my friend and I, we travelled all over the

go from 13 Lees Summit, Ruskin -- it's -- you know, very easy to

14 one city limits to the other without even realizing it.

into this 15 But shortly after my friend's parents looked

my 16 and said that he -- that there was no situation there,

Missouri; 17 friend was arrested in -- I believe it was Raytown,

believe it 18 and in the process of being transferred back to -- I

to be 19 was Kansas City, there was a place where he and -- was

of 20 transferred from one group of officers to another group

time and 21 officers. And somehow, he escaped from them at that

and held 22 created a situation where he broke into someone's home

police 23 them at bay; and shortly thereafter, he was killed by

24 officers.

about what 25 Q. Do you -- what's the source of your information

Juror No. 99 – Voir Dire

1 happened? You talked with his parents?

2 A. Personal experience basically, your Honor. I
talked with

3 him possibly -- yeah, during the month before the --
when he

4 was killed. I talked with him and his parents, and his
parents

5 said that there was no substance to the fact or to the
6 allegation that he had been arrested and escaped. They
said

7 that the people on the Missouri side said there were no
8 warrants for his arrest anyway there; and if someone
escapes

9 from a prison, I'm sure there will be warrants for his
arrest;

10 but -- so he had a girlfriend that lived on the
Missouri side,

11 and he and I quite often would go out to Lees Summit,
driving

12 around. He used to work --

13 Q. Well, now, is this after he escaped?

14 A. Yes, your Honor.

15 Q. Were you traveling with him after he escaped?

16 A. I was not traveling with him, but I -- he would
stop by my

17 home and we would talk for a short time and --

18 Q. Did he tell you he escaped from jail?

19 A. I believe he told me that, yes; but it was only one
time,

confusing 20 and nothing more was said about it. But it was very

21 at the time for me.

22 Q. Well, it's confusing for me, too. And you still
have some

23 confusion about what actually happened?

24 A. That's correct, your Honor.

25 Q. But the way I hear you telling it, he ended up
escaping

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Juror No. 99 - Voir Dire

1 again.

2 A. Yes.

3 Q. From people who had him in custody?

4 A. I -- on Sunday morning -- I saw him on Friday
morning.

5 Then Sunday morning, as I was getting ready for church,
I heard

6 this news broadcast that he had been killed while
trying to

7 escape from the police. And it, you know, was a very
traumatic

8 experience. I couldn't believe that it happened, but
--

9 Q. You were about 22, 23 years old?

10 A. About 20, I believe, your Honor.

11 Q. About 20.

12 A. Uh-huh.

13 Q. And -- well, I'm still a little confused, because I
thought
14 you said that he went into somebody's house and held
the people
15 there.

16 A. I believe I talked with a person that may have been
17 accompanying him after -- at that -- during the
incident, a
18 young boy that was a friend of both -- a mutual friend;
and
19 this young man said that he had seen the police arrest
my
20 friend and then -- he had been there when my friend
escaped
21 from them, and he accompanied the police in the pursuit
of him
22 and was there when my friend was killed by police
officers, a
23 shot.

24 Q. Well, did you hear that he had -- your friend, that
is --
25 had a gun or a weapon of some kind?

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1 A. He apparently picked up a paring knife or something
of that
2 nature when he entered the house of the people that he
held for

3 a short time, held as hostage. He was trying to,
according to
4 this other friend, call his girlfriend on the phone,
and that
5 communication was cut short by her parents. And while
he was
6 trying to reestablish contact with her, the family
somehow
7 grabbed a hold of a mattress on a bed and overpowered
him. You
8 know, a paring knife is not much of a weapon against a
mattress
9 coming at you with three or four people pushing it.
And the
10 police then entered the residence. I believe he still
had the
11 knife, and they shot him at that time.

12 Q. And killed him?

13 A. And killed him, yes.

14 Q. Page 25, Question 111. Now, this is as a result of
this
15 same incident that you're talking about?

16 A. I -- yes, your Honor. That is --

17 Q. So what is your assessment of what the police did?

18 A. Well, under the situation, I don't know that they
could
19 have done too much more under that pursuit situation;
but I
20 think if -- it appears now that maybe he had been
arrested on
21 the Missouri side and that that information was not
released to

22 his parents.

23 Q. Yeah, but getting to the final thing, the killing
of this

24 young man: He was about your age at this time, was he?

25 A. Yes, your Honor.

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Juror No. 99 - Voir Dire

1 Q. Is it your view today that the police had no
justification

2 for shooting and killing him?

3 A. No. I would say if he still had the weapon, they
probably

4 did have a justification for shooting and killing him;
but I

5 believe the family had immobilized him, pushed him to
the floor

6 to where he -- I don't know. I believe at the time,
you know,

7 anyone attempting to escape from police must have been
sort of

8 insane. I think it was temporary insanity, either --

9 Q. Well, but answer this question: Do you hold it
against

10 those police that your friend was killed in this
shooting?

11 A. No, your Honor. I think it was very unfortunate,
but I do

12 not hold it against the police, no.

13 Q. Well, that's really, you know, why we're going into
this in
14 such detail, because sometimes people come from an
incident
15 like that and distrust police generally. Sometimes
they have a
16 different view. So I guess the question is, is there
anything
17 about what you know, what you've been told, about this
whole

18 incident that would affect your ability to be a juror?

19 A. No, your Honor. Basically everything I was told is
20 hearsay, so I do not have any definite fact on what was
21 happening.

22 And actually, my -- I've worked, I think,
fairly
23 closely with our Woodland Park police in many
instances. In my
24 neighborhood when we had an accident recently, down at
the
25 intersection very close to where my house is, I called
the

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1 police immediately to let them know and send out
officers to
2 investigate. And there have been other incidences
similarly,
3 usually automobile, driving off the road or something
like

4 that. I'll usually call.

5 There was one incident when a neighbor of mine
came
6 over. She said that her husband was trying to kill
her; and a
7 man did try to break into the house to get her. And
she went
8 to our bathroom, and my wife kept the door from opening
and
9 kept the man that was in pursuit of her out of the
house.

10 And when she left, my wife discovered there
was some
11 residue in our toilet. We -- our toilet doesn't flush
too well
12 unless you add water at the same time; and so we called
our
13 police officers, and they found it was marijuana that
this
14 woman had tried to flush down our toilet. She wasn't
aware
15 that the toilet didn't flush very well, so there was
16 considerable residue left; and the police came and
talked with
17 her about that.

18 Q. This was a neighbor?

19 A. Next-door neighbor, yes.

20 Q. You knew her husband?

21 A. No, I didn't know her husband, didn't know her very
well;
22 but apparently there was some violence. I had heard

rumors

and when 23 that there was violence between the husband and wife;
her 24 she came to the house, she and, I believe, a child with
to get 25 were running from somebody else. And this person tried

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the door 1 into the house, pushing his way in, and my wife pushed
2 against his arm and --
3 Q. Did you know that it was the husband at the door?
4 A. I don't know who the person was, no; but the main
thing was 5 that she left a residue of marijuana in our toilet; and
that, 6 you know -- that was --
7 Q. Did this result in any arrest?
8 A. The police officers did come and did speak to her
but -- 9 and they did collect evidence from the toilet. This
was -- by 10 that time, it was fairly clean, I guess, but I don't
believe 11 that an arrest occurred.
12 The lady did move from that residence, though,
within 13 the week; and we now have different neighbors that have

been

neighbor 14 with us for about four years now -- four or five. The

the 15 did move. I don't know if there was any follow-up by

16 police about that.

here about 17 Q. Okay. All right. We need to talk a little bit

we 18 your views concerning punishment in criminal cases, and

back to 19 skipped over some of this on page 28. I want to go

20 that page.

21 A. Yes, your Honor.

22 Q. Are you there?

23 A. Yes.

here 24 Q. Now, you remember there was a lot of explanation

page 27. 25 before these questions on page 28. If you go back to

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Juror No. 99 - Voir Dire

1 A. Did you want me to reread this?

2 Q. Actually, maybe it would be advisable.

recess; and 3 I think what I'm going to do is take our

you. 4 during this time, you'll take this questionnaire with

a place 5 We'll provide a place -- we'll give you lunch, provide
and then 6 other than with the other jurors so you read that over
answer -- 7 be prepared to answer the questions that you didn't
8 okay?

9 A. Yes, your Honor.

then we'll 10 Q. -- on this page 28; and it goes over to 29, and
11 talk about it.

in? 12 A. Yes, your Honor. Would you mind my filling those

13 Q. Go ahead, yeah. You can do that.

going 14 THE COURT: So you can step out now, and we're
need to 15 to be in recess about an hour and a quarter. Do you
you, 16 take your medication? Do you have your medication with
17 too?

18 JUROR: Yes, your Honor.

course. 19 THE COURT: You're free to take that, of

20 JUROR: Thank you.

21 THE COURT: You can step out now.

22 JUROR: Thank you, your Honor.

23 THE COURT: We'll have you back.

24 (Juror out at 12:21 p.m.)

25 THE COURT: For what purpose do you rise, Mr.

Tigar?

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Honor if, 1 MR. TIGAR: Well, I was going to ask your
some 2 given the concerns expressed yesterday, there might be
this 3 change in the order of the persons that we would see
for that, 4 afternoon. There were two situations that might call
5 your Honor.

6 THE COURT: We'll have to have a report from
7 Mr. Manspeaker. I don't know.

8 MR. TIGAR: Yes, your Honor. We'll keep in
touch with 9 Mr. Manspeaker. And we would suggest that if there are
other 10 jurors called who didn't finish their questionnaires,
perhaps 11 they could be given the opportunity to do so in writing
before 12 they can come to court.

13 THE COURT: Yes. I did it this way because
that's 14 what I told them I was going to do, and I try to be
true to my 15 word; but we'll give them that option, if that's
agreeable to

16 the Government.

17 MR. MACKEY: It is.

18 MR. RYAN: Yes, your Honor.

19 THE COURT: It would save us a little time,
maybe.

20 But some of these things, the questions aren't adequate
to

21 cover.

22 MR. TIGAR: Well, your Honor, I --

23 THE COURT: I'm not making fun of this man.

24 MR. TIGAR: I appreciate that, your Honor.
We're

25 getting a great deal of information about how the juror
decides

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1 things and how he approaches problems, and so I wasn't
2 suggesting that anything that happened up to now was
something
3 we disagreed with.

4 THE COURT: But I think it may save us time in
the

5 long run; and of course, the questionnaire is not
public, which

6 is why I tried to be somewhat circumspect in asking the
7 questions. But so that I can be true to my word, we'll
give

8 them their choice whether they want to do it ahead of

time or

9 do it in court.

10 Okay. What's an hour and a quarter from now,
since

11 we're on an odd time here? About 20 to?

12 All right. We'll be in recess.

13 (Recess at 12:23 p.m.)

14 * * * * *

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17 * * * * *

18 REPORTERS' CERTIFICATE

19 We certify that the foregoing is a correct
transcript from

Dated 20 the record of proceedings in the above-entitled matter.

21 at Denver, Colorado, this 2d day of October, 1997.

22

23

24

25

Paul Zuckerman

Kara Spitler