

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 10)

11
 ff

12 Proceedings before the HONORABLE RICHARD P.
 MATSCH,
 13 Judge, United States District Court for the District of
 14 Colorado, commencing at 1:40 p.m., on the 2d day of
 October,
 15 1997, in Courtroom C-204, United States Courthouse,
 Denver,
 16 Colorado.

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22
23
24
Transcription
Street,
629-9285

Proceeding Recorded by Mechanical Stenography,
Produced via Computer by Paul Zuckerman, 1929 Stout
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1 APPEARANCES

Western
Oklahoma

2 PATRICK RYAN, United States Attorney for the
3 District of Oklahoma, 210 West Park Avenue, Suite 400,
4 City, Oklahoma, 73102, appearing for the plaintiff.

and

5 LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNES,
6 JAMIE ORENSTEIN, Special Attorneys to the U.S. Attorney
7 General, 1961 Stout Street, Suite 1200, Denver,
8 80294, appearing for the plaintiff.

THURSCHELL,
Denver,

9 MICHAEL TIGAR, RONALD WOODS, and ADAM
10 Attorneys at Law, 1120 Lincoln Street, Suite 1308,
11 Colorado, 80203, appearing for Defendant Nichols.

12 * * * * *

13

PROCEEDINGS

14

(Reconvened at 1:40 p.m.)

15

THE COURT: Be seated, please.

16
respect to

Before resuming, is there agreement with

17

No. 895?

18

MR. TIGAR: Yes, your Honor.

19

MR. MACKEY: Yes, your Honor.

20

THE COURT: He may be excused?

21

MR. TIGAR: He may be excused.

22

THE COURT: Then let's bring 99 back in.

23

(Juror No. 99 was recalled to the stand.)

24

VOIR DIRE EXAMINATION CONTINUED

25

BY THE COURT:

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Juror No. 99 - Voir Dire

1
device?

Q. All right, sir. What happened to the hearing

2
pretty

A. It's in the chair in front of me. I can hear you

3
well without it, your Honor.

4
suggested

Q. All right. If you need it, put it on. It's been

5
or move

to me that maybe when you put your hand on your shirt

6
the

your hand around, that it picks it up. So that may be

7 source of the interference, I don't know.

8 A. I'm the only one wearing one of these; right?

9 Q. Yes.

10 A. It would probably help if somebody else in the room
were

11 wearing it, because then I could determine whether it's
just me

12 or whether --

13 Q. Well --

14 A. I know it's not just me, but if it's just --

15 Q. Well, they do tell me that when you touch your --
like when

16 you touch your shirt while it's on there, it will pick
that up

17 and cause static.

18 A. I believe that's a possibility, yes. But I'm --
right now,

19 I just heard a little zap, and so, you know, my hands
are down

20 here now.

21 Q. Whatever works, okay?

22 A. All right, your Honor. Thank you.

23 Q. You did during this recess go ahead and complete
pages 28

24 and 29, and we have now copied those answers. And you

25 understand that we have to ask some questions about
possible

Juror No. 99 - Voir Dire

1 punishment and your general opinions with respect to
2 punishment, particularly with respect to the punishment
of
3 putting somebody in prison for life without any
possibility of
4 release ever and the punishment of death because of the
crimes
5 charged in this case being crimes that under the
statute carry
6 the possibility of a death sentence. That's why we've
asked
7 you these questions.

8 A. Yes, your Honor.

9 Q. Now, in a moment, I will review with you what the
procedure
10 is with respect to trial and a punishment issue. But
of course
11 before we talk about this at all, I want to emphasize,
as the
12 questionnaire did, that Mr. Nichols is presumed to be
not
13 guilty.

14 A. Yes, your Honor.

15 Q. So we would not be talking about punishment at all
unless
16 he were to be found guilty by a jury.

17 But since we have to -- we only have this
chance to
18 talk to people for jury service. We can't after a

trial, then

19 talk again, so we have to include the possibility of a
20 punishment decision now in speaking with you.

21 And you have answered here the questions in
terms of

22 what you think about the death sentence and life
imprisonment

23 without being instructed on the law.

24 A. Yes, your Honor.

25 Q. Okay. Now, are these views that you have expressed
here

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Juror No. 99 – Voir Dire

1 opinions that you have held for sometime?

2 A. Yes, your Honor.

3 Q. Have you thought about the death penalty in a
serious way

4 at times?

5 A. Yes.

6 Q. Have you thought about it in terms of any
particular cases

7 that you may have heard about?

8 A. Yes, your Honor.

9 Q. Like which one?

10 A. Currently I would say the JonBenet Ramsey murder.

11 Q. And what about that in terms of the death penalty?
No one

12 has been charged in that case, as I understand it.

13 A. I believe you're correct. But I understand from
media
14 coverage that the extent of the suffering that the
child went
15 through in the process of the murder, which probably
was a
16 premeditated murder, I believe that would justify
putting that
17 person to death. I sure wouldn't want to be in the
same cell
18 with that type of murderer, myself, if I was in prison.

19 Q. All right.

20 A. I think that's -- if I'm correct, they do keep
murderer,
21 murderers, convicted murderers separate from most of
the
22 general population in prisons; is that correct?

23 Q. Well, it depends on whoever is running the prison
or who
24 the people are. I mean there's no categorical answer
to that.

25 But we're talking here about really the
choices

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1 between keeping somebody alive but in a prison and in a
secure
2 way and never getting out vs. putting a person to

death.

3 That's the type of choice. And so are you saying here
that in
4 certain types of murder cases -- and you've described
here I
5 think under D what you're saying -- there should be a
penalty
6 of death and that's it; that is to say, for certain
crimes,
7 people should be put to death regardless of anything
else? Is
8 that what you're telling us?

9 A. More or less, yes, I think it is.

10 Q. So in connection with this case you've mentioned
under
11 investigation, is it your view that whoever did that
should be
12 killed, no matter what? Or who that person is or why
it was
13 done?

14 A. I . . . well, right now, that would be my feeling.
If

15 the -- I hope whoever committed the murder is caught
and that
16 there is a trial; and if there are extenuating
circumstances,
17 you know, this little girl was causing all sorts of
trouble for
18 this person -- there might be some extenuating
circumstances,
19 but I don't see them.

20 Q. Okay. But you could imagine extenuating

circumstances that

21 could be presented and if they were, they ought to be

22 considered; is that what you're --

23 A. Yes, that's correct.

and

24 Q. Well, let me address this in a little different way

There

25 talk about the actual procedure that is to be followed.

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1 is, first of all, a trial on the question of the
sufficiency of

2 the evidence, I mean we've been over that. You've seen
that in

3 a case that you observed in the county court; right?

4 A. Yes, your Honor.

5 Q. And the jury's job is to listen to the evidence and
decide

6 whether the evidence proves the person on trial guilty
beyond a

7 reasonable doubt.

8 Yes?

9 A. Yes, your Honor.

10 Q. If not, the verdict is not guilty.

11 A. Yes.

12 Q. If the verdict is guilty and there's no death
penalty

13 involved, then it's up to a judge to decide the
punishment in

14 the case. Do you understand?

15 A. I'm -- I don't know that technically about it, but,
yes,

16 I'll agree with that.

17 Q. Well, in the case that you observed, the jury found
the

18 defendant guilty?

19 A. That's correct, your Honor.

20 Q. Then do you know what the judge did about
sentencing?

21 A. I do believe at that time the judge did determine
the

22 sentence, and I don't believe there was any
deliberation in the

23 jury about that.

24 Q. No --

25 A. He didn't ask them.

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1 Q. Well, that's what I'm getting to.

2 A. Okay.

3 Q. The jury is not involved in the punishment decision
4 ordinarily.

5 A. All right.

6 Q. And a judge is. And before a judge makes a

sentencing

7 decision, the judge gets more information about the
case,
8 including more information about the defendant, the
things
9 about his background, his life history, his employment
history,
10 family relationships, all those things that differ from
people
11 so that it makes one person different from all others,
12 individual characteristics, and then holds a hearing
and
13 listens to both sides and makes a judgment, a sentence
14 appropriate to that person and that crime. Understood?

15 A. Yes, your Honor.

16 Q. Now, that's the way it is normally; and when a jury
is
17 given a case to decide, the judge instructs the jury,
Look,
18 don't think about punishment, 'cause that isn't your
job. You
19 may not consider it. And that would be true here, too;
that to
20 decide whether the evidence supports the charges
against
21 Mr. Nichols, the jury would be asked to just consider
the
22 evidence at the trial and decide that question, don't
talk
23 about or think about punishment.

24 But if the jury finds the defendant guilty in
a case

25 where the punishment may be life in prison with no
release or

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1 death, now, that's not a question under federal law
that we

2 leave to the judge. We say that question should be
decided by

3 a jury, jury of 12 people coming out of the community
and

4 exercising their judgment.

5 But before that jury can make the decision,
they have

6 to hear more, and they have to consider more
information than

7 that which was given to them at trial. So there is a
second

8 hearing, like a second trial; and it is at that time
that the

9 prosecution comes forward with information that we call

10 aggravating factors, things about the offense, things
that the

11 Government claims would support death as a justified
sentence.

12 The defense, on the other hand, comes forward
with

13 information to the contrary, things about -- like I've
said

14 with respect to what a judge hears, things about the
individual

15 defendant, what he -- his background has been, what
things he's
16 done in his life that show value to his life, things
that may
17 relate to why he was involved in the offense and his
role in
18 the offense. So that these are called mitigating
factors.

19 And then the court gives the jury some
instruction
20 about how they should analyze this in terms of a
logical
21 sequence of answering some questions that lead the
jurors
22 through an analysis of all that they have heard.

23 So the jury then is obligated to consider both
the
24 aggravating factors and the mitigating factors before
making a
25 decision of life or death. But there's no formula;
there is no

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1 equation. It's up to the jurors individually then to
make
2 decisions on this. And each juror must decide the
issue as to
3 whether the defendant should live or die. And that
question
4 really is a moral judgment to be made by each juror.

5 Do you understand the framework I've suggested
to you 6 here?

7 A. Yes, your Honor, I do understand that.

8 Q. The question that I must ask of you is whether you
believe 9 that you could and would do that if you served on the
jury in 10 this case.

11 A. I do believe I could do that, yes. Would do that.

12 THE COURT: All right. Now, counsel have some
13 questions for you, I'm sure, to follow up on this
questioning 14 and maybe some other subjects. So we'll have first
from the 15 Government, Mr. Orenstein.

16 MR. ORENSTEIN: Thank you, your Honor.

17 VOIR DIRE EXAMINATION

18 BY MR. ORENSTEIN:

19 Q. Good afternoon, sir.

20 A. Good afternoon, sir.

21 Q. Now, I understand from what you told his Honor that
your 22 job now is to monitor students who have acted up in
school; is 23 that correct?

24 A. Yes, that's correct.

25 Q. Let me introduce myself. My name is Jamie
Orenstein.

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1 We've never met, have we?

2 A. Not to my knowledge, Jamie.

3 Q. Now, this is actually a job that you've started
recently;

4 is that correct?

5 A. It is correct in this particular case, although in
past

6 years, I have performed this type of work before.

7 Q. With the same school district or a different one?

8 A. Same school district. Same school, I believe.

9 Q. I also noticed that you have a 16-year-old son who
is now a

10 high school junior. Does he go to the same school?

11 A. No, no, he does not.

12 Q. So he's never been one of your customers?

13 A. Not there, no.

14 Q. Now, you mentioned in the questionnaire -- and if
you could

15 turn to page 8, Question 38, you mentioned that you
like to

16 make a study of the Constitution and to teach your son
about

17 it. Do you see that answer?

18 A. Is this 38, you say?

19 Q. Yes.

20 A. Yes, that's correct. My wife and I.

21 Q. What do you do when you discuss the Constitution
with your
22 son? Do you have any books that you use, or is it a
matter of
23 discussion?

24 A. Well, generally we have copies of the Constitution.
There
25 are some with -- what do they call it? -- annotations
as to

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1 what experts feel certain passages mean; and we sort of
agree

2 or disagree with the experts and discuss it.

3 Q. Do you find that you and your son generally agree
or

4 disagree about what the experts say?

5 A. Generally I think we agree.

6 Q. His Honor asked you this morning about the fact
that you

7 follow some Supreme Court cases. I was wondering if
that was

8 one of the things that you discussed with your son.

9 A. On occasion, yes. He's pretty cognizant of what's
going

10 on, also; so, yes, we do discuss these.

11 constitutional

12 particularly

13 conversation

11 Q. Are there any recent cases or any other

12 issues that you recall talking about that made a

13 deep impression on you or that caused a lot of

14 with your son?

15 was

15 A. No, we just generally -- since my son at that time

16 course on

16 being home-schooled -- this was part of a home-school

17 generally

17 the Constitution and American government and was just

18 details

18 discussed and touched on. We didn't really go into any

19 or any certain case.

20 were

20 Q. So this was one of a number of subjects that you

21 teaching your son as part of home schooling?

22 A. That's correct.

23 Q. How long was your son in home schooling?

24 time until

24 A. He was in home schooling from fourth grade full-

25 taking

25 he was a sophomore in high school, when he started

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1 half-time classes. And this year he's full-time at the

2 Woodland Park High School.

all, to 3 Q. What prompted your decision to start -- first of
the high 4 start the home schooling and then to have him attend
5 school?
son was 6 A. There were mainly health reasons at the time. My
improving 7 very sickly in first and second grades, and he wasn't
the 8 health-wise; and we felt that there were conditions at
illness 9 school, environmental factors, that were causing his
protection 10 and that he would be better off at home and under
correct. His 11 from allergies, basically. And it proved to be
much more 12 health improved dramatically, and his education was
Woodland 13 concentrated; and he is currently, I believe, in the
highest SAT 14 Park High School, considered the student with the
15 score from last year. It wasn't official. It was just
16 something he decided he should take as practice; and I
think he 17 came in possibly with one or two errors in the entire
test.
18 Q. So obviously the home schooling was successful?
19 A. I believe so.
school 20 Q. And he's doing -- health-wise he's doing okay at

21 now?
22 A. He's having problems once again. And we're not
considering
23 taking him out of the school. We're considering
improving
24 medication for him, but he does seem to be having some
serious
25 respiratory problems again. But he is still
maintaining an A

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1 average in all of his classes.
2 Q. Sir, let me ask you about a different subject that
you
3 discussed with his Honor this morning, and you covered
it for
4 the most part. There are just a couple of questions I
wanted
5 to ask you, if you don't mind, about the sleep disorder
that
6 you mentioned.
7 You've obviously been dealing with this and
8 successfully for quite some time. I think you said 25
years?
9 A. Actually much longer than that, but it was about 25
to --
10 yeah, about 25 or 27 years ago that we discovered there
was a
11 problem and finally determined what the problem was.

So for

12 about two or three years, the problem existed; but we
didn't
13 know what was causing it. And we tried various methods
of
14 vitamin therapy, things of that nature, to combat it,
and then
15 medication. Finally we went to see a neurologist, and
he
16 determined what the problem was right away. Well,
actually, I
17 did some reading and came across what the problem was
and
18 presented my analysis to him. And said, yes, that's
it.

19 Q. So you found it, and the doctors had missed it; and
since
20 then you've been dealing with it?

21 A. Yes, that's correct.

22 Q. The question I had, sir -- and I know nothing about
this,
23 so forgive my ignorance -- does a change in routine
have any
24 effect on the condition and the amount of medication
you need
25 to take?

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1 A. In the past in some cases it has, yes.

change in 2 Q. Is there a period of adjustment -- if there is a
is it 3 routine -- where you have to figure out, you know, how
4 affecting me and what level of medication do I need?

knows 5 A. Generally, no. There's -- the doctor pretty much
additional 6 what should be prescribed, and if there's any
me to 7 pressure or something of that nature that might require
an 8 adjust the medication, I discuss it with my doctor at
to 9 appointment, and he determines whether or not it's wise
10 increase or to withhold medication.

about the 11 Q. Sir, I just have a couple of questions finally
death 12 last subject you discussed with his Honor, which is the
you said 13 penalty. You mentioned the JonBenet Ramsey case, and
believe 14 that's something -- from what you believe now -- you
correct? 15 death would be the appropriate punishment; is that

16 A. Yes.

where 17 Q. Are there any other cases that you can think of
thought death 18 you've thought about the death penalty where you
19 was the appropriate punishment or was not?

in the 20 A. Not in general, although I believe in a case like
21 assassination of President Kennedy, that would have
been a case 22 where the guilty murderer would have -- should have
been 23 considered for the death penalty.

24 And I don't know that much about the Manson
situation.

25 As I understand it, Mr. Manson, who was involved in --
had a

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1 cult following that committed murderers, that he told
them to 2 do it. I don't believe there -- has there ever been a
trial 3 that has judged him to be guilty of . . . ? Somehow
I heard 4 that there wasn't but that he was still incarcerated
and that 5 after more than 20 years, he's still incarcerated and
6 considered to be very dangerous and so he's still in
prison.

7 Q. But that's another case where you thought death
penalty 8 should be considered?

9 A. If he were actually actively involved, if it were
found

10 out, if he suddenly came out and said, Yes, well, I did

commit

11 that murder, myself, and it was -- well, any of those
crimes

12 were very seriously -- you know, crimes against all
mankind, in

13 my opinion. And they deserve the death penalty.

14 MR. ORENSTEIN: All right. Well, sir, I thank
you.

15 You've been answering a lot of questions this morning.
I know

16 that there are probably a few more questions for you
yet, but I

17 thank you for answering my questions and participating
in this

18 process.

19 JUROR: Thank you, sir.

20 THE COURT: Mr. Tigar.

21 MR. TIGAR: Yes, your Honor, thank you.

22 VOIR DIRE EXAMINATION

23 BY MR. TIGAR:

24 Q. Good afternoon, sir.

25 A. Good afternoon.

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1 Q. I wanted to go over some of the things that were in
the

2 questionnaire, and I promise to try not to repeat what
the --

one of
Nichols.

3 what others have asked. My name is Michael Tigar. I'm
4 the lawyers asked by the court to represent Terry

5 Have you had any farming experience, yourself?

relatives
or two,

6 A. I have been on a farm for a very short time, have
7 that own a farm in Sedalia, Missouri; so I spent a day

8 I'd say, with them. And it was very enjoyable.

they raise

9 Q. Do you know how -- how their farm works or what
10 there?

11 A. Mainly poultry and some cattle, I believe.

12 Q. So do you know whether they use fertilizer in their
13 operations?

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

15 Q. With poultry and cattle --

16 A. I assume that they might, in some cases.

as a

17 Q. I want to talk to you a little bit about your job

18 detention hall supervisor. If one of the people that's
19 assigned to you acts up, if there's some problem in the
20 detention hall, how do you go about deciding who's at
fault,

them?

21 you know, who did it, and what should be done with

try to

22 A. Generally if there is a student that acts out, I

where 23 discuss the situation with them and calm them down to
do what 24 they will again sort of continue with their studies and
over. 25 they should be doing until their time in detention is

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that 1 If the student acts out belligerently, I find
individual 2 sometimes just going and standing very close to that
3 will cause them to settle down.

have, 4 I haven't had any problems where the students
area and 5 you know, openly and belligerently left the detention
6 started causing more trouble outside of the room.

believability 7 Q. Have you ever had to resolve a question of
and you 8 where there's some disturbance, somebody makes a noise
that, and 9 ask a student and the student says, Well, no, she did
10 then the person says, No, he did that, one of those
questions?

11 A. No, I don't believe I have had to do that.

understand the 12 Q. How would you resolve a believability -- you
13 reason we'd be asking because if you're selected as a

juror,

14 there will be witnesses here; and I'm just trying to
get an

15 insight as to how you -- how you resolve these
questions of who

16 to believe.

17 A. Well, usually I would -- I'm assuming I would think
that I

18 would determine if this was a problem, and the problem
is what

19 I'm concerned about, not necessarily who caused the
problem,

20 and try to determine that that activity would stop.
And that

21 would be more important to me than who did what,
basically.

22 Q. Now, you mentioned, when Judge Matsch was asking
questions

23 and again when the prosecutor was talking, that you had
some

24 interest in what the United States Supreme Court had
been

25 doing. And I think I heard you say, when Judge Matsch
was

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1 talking to you, that there were some areas in which you
had

2 disagreed or had concerns about the direction the
Supreme Court

3 was taking. Can you share with me your thoughts about
that?

4 I'm not asking you about specific cases. This is not
some sort

5 of a law case. But could you share with me your
feelings about

6 that?

7 A. Well, I do disagree with the rulings on the, oh,
8 religion -- prayer in the schools for one thing. When
I was in

9 school one year, something like third grade, we had
prayer in

10 schools, and it was just a very short activity at the
beginning

11 of the day. And if I recall correctly, there were some
prayers

12 given over the speaker system, you know, the intercom.
And

13 there were things that we could do in class. I
memorized one,

14 one of the Psalms in third grade, and we did -- looked
at other

15 scriptural statements in fourth and fifth grade and
sixth

16 grade.

17 Then seventh grade came around, and all the
Supreme

18 Court had said that this was unconstitutional, no one
should be

19 praying in school, no one should be looking at
scripture, and

20 suddenly all that activity stops. And it was brought
into

or the 21 question whether activity such as observing Christmas
I was 22 Thanksgiving holidays should be observed in education.
before, 23 only a seventh-grader, but I know what I had enjoyed
24 and suddenly there was this void; it was not allowed.
people 25 And I felt that this was wrong, that a lot of

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will 1 have been harmed by this. And I think possibly history
in 2 prove out that the acting-out students have increased
or 3 dramatically from that time to present. I don't recall
in 4 school students running around and cursing at teachers
this in 5 striking other students right -- just for the fun of it
6 front of teachers ever happening before. But I've seen
7 grade school and in middle school and in high school.
you can 8 Q. Is there any other area, other than that, in which
Supreme 9 think of in which you have some concern about what the
10 Court is doing?
11 A. I heard a recent decision. I can't recall what it

was at

12 the moment, but I felt that it was slightly . . . it
was wrong.

13 But I'm sure there was legal technicalities that I'm
not aware

14 of that caused the court to support --

15 Q. Please let us know. You couldn't possibly say
anything

16 more about it than other members of the Supreme Court
say about

17 each other, so share that with me.

18 A. No, I just heard a short news statement about it
and

19 thought that it -- that it was incorrect, that they
should not

20 have -- I had hoped that they would have gone the other
way in

21 their decision on whatever the subject was.

22 Q. Do you remember what it was?

23 A. No, I don't.

24 Q. Did it have to do with Proposition 2? Was it the
Colorado

25 constitutional provision?

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1 A. No, it was the . . . it was something national,
nationwide,

2 although the constitutionality of amendment -- I
believe it was

on that 3 amendment -- I'm glad they made the decision they made
4 one.

about 5 Q. Well, you said at page 2 that you have no opinion
6 marriages between people of different racial or ethnic
and the 7 backgrounds. Now, I wasn't sure what you meant there,
8 reason I ask is Mr. Nichols is married to a woman of a
9 different race. There are children of that marriage.

Would 10 that cause you any problem being a juror in a case in
which 11 Mr. Nichols is involved?

man is 12 A. No. I have many friends, ones who -- there's the
and 13 black and the wife is white, and they have children,
14 they're great and wonderful family. And vice versa. I
have 15 several friends, you know, of -- my brother-in-law
married a 16 young lady from the Philippines, and it's a beautiful
family. 17 Proud to be a member of it.

correspondence 18 Q. You mentioned that you have an extensive
19 with a friend in Kansas City. I wonder, is that the
same 20 person that you referred to as a former chaplain's
assistant

21 with whom you correspond, or are those two different
people?

22 A. Those are two different people. I don't know if I
23 mentioned in here about the chaplain's assistant that I
24 correspond with now, too. It's not that -- that strong
a
25 correspondence, unfortunately. But occasionally, I
think about

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1 once a month, one of us will pick up on the fact that
2 somebody -- the chaplain's assistant will determine
that got
3 some unanswered correspondence and then write to the
other
4 individual. And then a couple weeks later, an answer
starts
5 going the other way.

6 Q. Now, your friend, then, in Kansas City with whom
you have
7 corresponded about Waco, there were a couple of phrases
that I
8 thought I heard that I wanted to ask about. You said
that you
9 hadn't corresponded with him about hate crimes. Or has
the
10 subject of militia movements, Klan, right-wing
organizations,
11 have those issues come up in your correspondence with
that

12 person?

13 A. Not very much. Occasionally some have. It's
usually he

14 writing to me about his opinion. I don't usually
answer in any

15 great extent. Maybe just make a comment or maybe write
a

16 paragraph in the letter to him about my feeling about
it.

17 Usually, unfortunately, my correspondence to him has
been in

18 much less detail and much less proficiency than his.
He writes

19 to me about two or three times a week and maybe gets an
answer

20 maybe once or twice a month.

21 Q. Is he one of those people who have very strong
opinions

22 that he just will not hesitate to share with anybody
that he

23 thinks should hear them?

24 A. He usually keeps his opinion to his close friends,
I'd say.

25 He does not usually go out and, you know, broadcast it
to

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1 others.

2 Q. And you have your own opinions; right?

3 A. That's correct, yes.

4 Q. Now, when a jury that considers a case, that's 12
people
5 all with -- who may have different views of the
evidence, who
6 may remember things differently, how would you describe
7 yourself in a situation like that? Are you somebody
who would
8 hold his ground, or would you want to listen to what
other
9 people say? How would you want to participate in that
process?
10 A. I would say that I would be a participant and I
would try
11 to weigh the evidence; and if I felt very strongly that
I was
12 right and they were wrong, I would do my best to sway
their
13 opinion. If it were a situation where I would be the
only one
14 holding that opinion, I think possibly I might hang up
the
15 jury. But if it -- it would depend on the evidence
especially,
16 you know.

17 Q. I'm not asking for a commitment from you to do any
18 particular thing. Every person is entitled to
participate in
19 the process, and of course Judge Matsch will instruct
how the
20 deliberations go forward.

21 A. Uh-huh.
22 Q. So let me move on to the last area here, and that's
this
23 question of punishment. Now, Mr. Nichols, as he sits
there, is
24 presumed innocent. So we may never get there. I mean
that's
25 our -- that is to say we may never get to a punishment
phase.

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1 And are you clear in your mind that you can afford him
the
2 presumption of innocence if you're a juror?
3 A. Yes, I believe so.
4 Q. Now, on this question of punishment, again we don't
know
5 the facts of this case. And, you know, it's going to
unravel
6 in front of the jurors who will decide it. So let me
ask you
7 about a hypothetical case, as it were, and see if we
can
8 understand a little more about your feelings about
this.
9 Suppose that a former student at your high
school with
10 a terrible grudge against someone came into the school
grounds
11 and with a gun and opened fire and killed a few people.

All

12 right? Having purchased the firearm and having planned
the 13 event in advance.

14 Now, would you -- and suppose you were judging
that 15 case. You probably wouldn't because it's your school,
but 16 suppose you were judging that case. Would you be able
to think 17 about the whole range of possible punishments for the
person 18 that did that; that is, life without any possibility of
release 19 as well as a death sentence?

20 A. I believe so, yes.

21 Q. And would you consider and give effect to, if the
judge 22 instructed you that you should consider them, and if
there was 23 evidence to support it, something about that person's
24 background, what kind of a home life that person had
had, what 25 kinds of other influences in that person's life, and so
on;

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1 that is, factors about that individual human being as
well as

caused? 2 about the evident carnage, the damage that had been

3 A. Yes, I'm sure I could.

4 MR. TIGAR: Thank you, very much, sir. We appreciate

5 the chance to talk with you.

6 JUROR: Thank you, Mike.

7 THE COURT: And we're not making decisions day by day

8 as we go along here as to who will serve and who will not

9 serve; so you're excused now. And we'll be in touch with you

10 as we proceed, but you'll have to go away from here assuming

11 that you will indeed be on the jury; and accordingly, just as

12 you remember when you left the Jefferson County Fairgrounds, I

13 cautioned you to be careful in conversation, in watching

14 television, listening to the radio, reading, staying away from

15 anything that could influence you as a juror. Will you do

16 that?

17 JUROR: Yes, your Honor, I will.

18 THE COURT: All right. You're excused now, and we'll

19 be in touch with you.

20 JUROR: Thank you.

21 THE COURT: Thank you.

22 We have 493.

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

24 oath from the clerk here.

25 (Juror No. 493 affirmed.)

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1 THE COURTROOM DEPUTY: Thank you.

2 THE COURT: Please be seated there in the
chair by the

3 microphone. It swivels around so that you can adjust
it in any

4 way that you find comfortable.

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q. You recall receiving the summons that notified you
that

8 your name had been selected through a chance system as
a

9 possible juror in the case of United States against
Terry Lynn

10 Nichols.

11 A. Yes.

12 Q. And you mailed in a short questionnaire, and then
you

13 received a notice on the -- to appear on the 17th of
September

and 14 at the auditorium in the Jefferson County Fairgrounds,

15 indeed you came out there.

16 A. Yes.

sides 17 Q. At which time I was there as were lawyers for both

And I 18 and Mr. Nichols, and I introduced myself and also them.

19 want to do that again so that you know who's here in

the 20 courtroom today.

here at 21 You recall meeting Mr. Lawrence Mackey, who's

the 22 the first table, and Miss Beth Wilkinson, attorneys for

the 23 Government. Not there then but now appearing also for

Wilkinson, 24 Government, Mr. Patrick Ryan, who is next to Miss

25 and Mr. James Orenstein next to him.

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Woods, 1 You did meet Mr. Michael Tigar and Mr. Ronald

2 attorneys for Terry Lynn Nichols; and Mr. Nichols was

about 3 Now, and at that time, I explained some things

4 the background of the case, the procedural history of

the case,

5 including charges filed in Oklahoma City and the move
of the

6 case from Oklahoma City to Denver and the separation of
trials;

7 that the charges in the case, which I sort of described
in a

8 general way being a conspiracy charge, charging that
Terry Lynn

9 Nichols here, the defendant, and a man named Timothy
James

10 McVeigh and other persons not named in the indictment
were,

11 according to the Government's allegations, in a
conspiracy or a

12 plan to bomb a building in Oklahoma City and to kill
and injure

13 the people in there, being a federal office building;
that also

14 the charges being that they played roles in that and
carried it

15 out and that there was a plan and indeed a murder of
eight law

16 enforcement agents in the building. You remember that

17 description?

18 A. Yes.

19 Q. And of course I also mentioned that the trials were

20 separated, there were differences between the two
persons,

21 differences in the cases, and therefore they should not
be

22 tried in the same case before the same jury and that

there has

23 already been a trial of the charges relating to -- as
they
24 related to Mr. McVeigh who was found guilty and
sentenced to
25 death; that that has no effect on the trial of Terry
Nichols;

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1 that in a very real way we start over and the jury now
to be
2 selected must consider the evidence as it relates to
Terry
3 Nichols separate from any decision that another juror
has made
4 with respect to Mr. McVeigh; you recall that?

5 A. Yes.

6 Q. I mean I told you that. And also told you that Mr.
Nichols
7 is presumed to be not guilty and that that presumption
of not
8 guilty which is true not only with respect to him but
it's the
9 same constitutional protection that is given to any
person
10 charged with a crime in the United States, no matter
who that
11 person is or what the crime charged is because the
Constitution
12 says that before a defendant can be found guilty, the

jury has

13 to hear evidence and decide whether the evidence shows
him
14 guilty, but he's presumed to be not guilty and starts
the trial
15 with that presumption and that carries throughout the
trial,
16 entitles him to acquittal, a verdict of not guilty,
unless the
17 evidence proves to the satisfaction of the jury that he
is
18 guilty as charged. You heard me say that.

19 A. Yes.

20 Q. And also that what that presumption means in real
terms is
21 that a defendant in a criminal case, again no matter
what case
22 or who the person is, does not have to prove anything
at trial,
23 does not have to prove himself or herself not guilty,
but it's
24 up to the Government who's prosecuting the case through
its
25 attorneys representing that level of government to
bring in the

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1 evidence and to see if the jury is satisfied by that
evidence,
2 and the defendant doesn't have to produce any witnesses

and

and 3 doesn't have to testify, has the right to remain silent
and 4 simply challenge the Government's evidence through
objections 5 under rules of evidence and also through cross-
examination.

6 And then at the end of the trial the jury is
asked:

7 Well, does this evidence prove the case? And the court
gives

8 instructions about what has to be proved for the
particular

9 offense charged, and then it asks the jury to decide.
And in

10 making that decision, the jury can, first of all,
consider only

11 the evidence that they heard at trial and disregarding
anything

12 that they may have heard elsewhere, focusing only on
the

13 evidence at trial and follow the law as it is given in
the

14 instructions and then determine whether the case is
proved

15 beyond a reasonable doubt, which means in another way
that

16 after considering it all, that if the jurors have a
reasonable

17 doubt as to whether the evidence proves the crime, they
must

18 give the defendant the benefit of that doubt and find
him not

19 guilty.

just
20 I reviewed that, I think, in a general way and
what
21 call it to your attention now again. And you've heard
22 I've said.

23 A. Yes.

24 Q. Yes?

25 And then we asked you to complete a
questionnaire,

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And I
1 which you have done and which you have now with you.
taken
2 invite your attention to it as we go along; but we've
the
3 that, as I told you we would, made copies of it. We,
given it
4 lawyers here and I, have those copies, but we haven't
have
5 to anybody else, and won't. And the answers that you
private in
6 given us relate to some things that are personal,
identify you
7 nature, and we recognize that. We're not going to
your
8 here by name. And we're not going to give out publicly
here and
9 answers, but we ask you to answer a few more questions

10 perhaps for some explanation of some of your answers.
11 This of course is public in a courtroom, but
people
12 out there don't see you; and we arrange a way for you
to get in
13 and out of the building without being photographed or
anything
14 like that. So that's simply a matter of protecting
your
15 privacy, you understand.

16 A. Yes.

17 Q. Okay. Now, I want to go over with you some of the
things
18 that you have told us in your answers; and I understand
that
19 you live now in Denver, but you were born in Colorado
Springs
20 and then your father was in the Air Force?

21 A. Yes.

22 Q. And you moved around a bit, including outside the
United
23 States, I assume because of the changes in his station.

24 A. Yes, uh-huh.

25 Q. And now you are -- you're in Denver and have a
business

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1 which I understand -- and I'm looking at page 9 -- that

you

2 work for a company -- and we're not identifying the
company --

3 but this is in the food brokerage business. Now, does
this

4 mean food going to retail stores or restaurants or
combination?

5 A. Retail stores.

6 Q. Retail stores?

7 A. Uh-huh.

8 Q. And you've been in this work for a number of years.

9 A. Yes.

10 Q. With the same company?

11 A. Yes.

12 Q. And is this something where you work on commission?

13 A. I do work on some commission, yes.

14 Q. And also a base salary?

15 A. And also a base salary.

16 Q. And you have a young child who's in a child-care
facility?

17 A. Yes.

18 Q. And your husband is self-employed --

19 A. Yes.

20 Q. -- in investments?

21 A. Yes.

22 Q. Working out of the home?

23 A. Yes.

the
your
24 Q. And your concern, as I understand it, here, about
25 effect on family and on the child care and perhaps on

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Juror No. 493 - Voir Dire

1 business of your serving on the jury; is that right?

2 A. I don't understand your question.

in this
3 Q. Yes. Well, if you were to be selected as a juror
4 case, obviously you'd be with us --

5 A. Yes.

however
6 Q. -- here 9 to 5 essentially day in and day out for
7 amount of time it took to try the case, which could be
8 several
9 months.

9 A. Yes.

been
10 Q. A matter which would impact on your life as it has
11 going along.

12 A. Yes.

ability to
13 Q. And one of the things that would impact is your
14 get your youngster in and out of the day-care facility?

15 A. Yes, it would. Yes.

16 Q. And have you talked with your husband about that?

17 A. Have I talked to him about being on the jury?

18 Q. Yes.

19 A. Yes.

20 Q. And have you discussed with him that you'd have to
have

21 help with -- as I understand it, you take --

22 A. I take him in and I pick him up.

23 Q. Pick him up.

24 A. He doesn't have that freedom to do that.

25 Q. Why not?

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1 A. Because his work requires him -- his time in the
morning

2 and in the evening. That was one of our agreements to
our --

3 to run our family.

4 Q. Now, he has to follow the market?

5 A. Yes.

6 Q. Does he?

7 So that he has to follow -- does he -- you
know, I'm

8 not trying to intrude into his business operation, but
does he

9 follow markets globally, not only New York, but foreign

10 markets?

11 A. Yes. Uh-huh.

12 Q. You have in your responses here expressed some
strong
13 opinions that you say you have come to about this case;
is that
14 right?

15 A. I have to read them again.

16 Q. Okay.

17 A. But my opinions were

18 Q. All right. Well, let's talk about them. Page --
let's get
19 to the pages.

20 I want to address page 37. Question 160. You
have
21 previously in the questionnaire -- and you can feel
free to
22 look anywhere on the questionnaire. I'm not trying to
limit
23 you. But you have seen quite a bit of publicity
relative to
24 this -- what may be referred to as the Oklahoma bombing
case so
25 that we include both Mr. McVeigh and Mr. Nichols and
the event

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1 itself.

2 A. Uh-huh.

3 Q. And then you have here, "If asked what opinions
have you
4 formed and on what they are based," and you say,
"Media," and
5 then you express an opinion.

6 And is that your opinion now?

7 A. I think my opinion, if he was a partner within the
crime,
8 he should pay the consequences for his crime.

9 Q. But this says that you have an opinion that he was
indeed a
10 partner; and that's what I'm exploring with you. Now,
I'm not
11 trying --

12 A. I guess from what the media has presented to the
public,
13 that he was a partner within the crime, from what I've
14 understood from the media and from radio and TV.

15 Q. And then on --

16 A. Talking to everybody.

17 Q. -- on the same page as 162, that's what you're
saying, that
18 you read or heard that they were partners in the crime.

19 A. Uh-huh.

20 Q. Now, of course that's the charge --

21 A. Uh-huh.

22 Q. -- in the case. And the -- to that charge, he
entered --

23 and to all of the charges -- he entered pleas of not
guilty,

the 24 and that's why we're going to have a trial, to see if
25 Government can prove that charge; do you understand?

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1 Yes?

2 A. Yes.

I can 3 Q. I'm sorry, you have to answer yes or no out loud.
4 see you nod, but it doesn't go into the record.

guilty, 5 But the presumption is therefore that he's not
6 no matter what the media says about him or anybody else
7 about him, including conversation or what people may
8 think

can set 9 preconceived notions or opinions or things that the
media has 10 reported aside and deal with the issues on the

evidence. Can 11 you?

12 A. I'm not sure if I can or if I can't.

can turn 13 Q. Now, another thing that you said in here -- if you
Question 14 to it, please -- page 38. Please read your answer to

15 164.

16 A. Okay. That I have a child and that life was taken
away

17 from children --

18 Q. You don't need to read it out loud. We've read it.

19 A. Okay.

20 Q. I just want to ask you to expand on that a little
bit

21 because that is suggesting to me that you've made up
your mind

22 here that not only are you sensitive to the loss of
life of

23 children, but that you say something about Mr. McVeigh
and then

24 Terry Nichols is one and the same.

25 Now, what are you telling us there?

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1 A. What I had said earlier; that I feel that they were
2 partners in it, in the crime.

3 Q. And again, that's based on --

4 A. -- what I've heard through the media.

5 Q. -- what you've read or heard.

6 Just give me a moment, please, so that I can
look at a

7 reference here.

8 You apparently listen regularly to certain

programs,

9 radio programs.

10 A. Yes, uh-huh.

11 Q. I'm looking over on page 17. And talk shows.

12 A. Uh-huh.

13 Q. And is that like when you go in to work in the
morning?

14 A. No. I drive around in my car a lot, and I listen
to the

15 radio as I'm going to my different calls.

16 Q. You move around a lot visiting outlets?

17 A. Yes. Uh-huh.

18 Q. And are there particular shows that you listen to
regularly

19 or almost daily?

20 A. Yes, uh-huh.

21 Q. Which ones?

22 A. Well, I listen to 630 on the radio. There are talk
shows

23 that are --

24 Q. Is that like an all news?

25 A. Yes, all-news radio station.

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1 Q. Which includes talk shows relating to news?

2 A. Yeah, it's pretty much news and relating to news.

3 Q. Has the -- have you listened to those when the
subject has
4 been the trial of Timothy McVeigh, for example?
5 A. Well, when that was on, yes, uh-huh.
6 Q. How closely did you follow the news reports of that
trial?
7 A. I listened to it -- as I was riding around in my
car, I
8 would listen to it as it was being presented on the
radio.
9 Q. And what do you remember from it? I don't mean all
the
10 details, but what stands out in your mind as it may
relate to
11 Terry Nichols?
12 A. As how it relates to Terry Nichols?
13 Q. Yes, if it did. Or how you related it to him.
14 A. Well, just that he was part -- he was part of the
setup of
15 the crime.
16 Q. And what part is it that you understand he played?
17 A. I don't know. I guess in planning the -- in
planning the
18 crime and getting the equipment together for the crime,
and I
19 guess that's where I feel that he was part of it.
20 Q. Okay.
21 A. The planning and -- the planning. Maybe not being
there at
22 it, but the planning.

trial as 23 Q. Did you talk with your husband about the McVeigh
24 it was going along?
25 A. Yeah.

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1 Q. And about the outcome, the verdicts?
2 A. Yeah. Uh-huh.
3 Q. And did you pretty much agree, the two of you, as
to what
4 you thought about it?
5 A. Of him being guilty?
6 Q. Yes.
7 A. Yes.
8 Q. And of the sentence?
9 A. Yes. I don't know if we agreed upon that, but I
mean we
10 both understood what the sentence was.
11 Q. Well, I -- you know, I recognize obviously you
cannot speak
12 for what your husband's views might be.
13 A. But I can speak for my own.
14 Q. Yes.
15 A. And my own are that maybe we didn't agree on what
the
16 verdict was, but we did agree of what the verdict was.

17 Q. I didn't understand what you said, so --
18 A. Okay. We agreed upon what the verdict was, that it
was a
19 death sentence. He agreed upon that it was okay. I
didn't
20 agree upon that it was okay.
21 Q. The death sentence?
22 A. Right.
23 Q. What is your view? I mean what disagreement did
you have?
24 I guess that's what I'm trying to ask.
25 A. Well, I don't know if I could put someone -- I
couldn't put

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1 someone to death. I couldn't do that. Maybe somebody
else
2 could. And obviously other jurors did do that.
3 Q. Okay. Well, that's another subject that we'll come
back
4 to, if we may.
5 You have some opinions about other things in
here that
6 I'd like to talk with you about a little. And please,
you're
7 not on trial for your opinions. Don't become defensive
about
8 it; we simply want to know some of the things that have

9 happened in your life and some of the views that you
have.

10 That's why we ask the questions in this way.

11 You traveled around a good deal, as you
already said,

12 when your father was in the Air Force.

13 A. Uh-huh. Yes.

14 Q. And then you came to Colorado to live -- I'm sorry,
I'm not

15 remembering when.

16 A. I was born in Colorado Springs, and then my father
was

17 transferred probably every three years out of Colorado
and then

18 back into Colorado again.

19 Q. Then did he retire here?

20 A. He retired here, and I went to college here.

21 Q. Okay. So I think you've lived -- you've shown that
on and

22 off you've been in Colorado during your lifetime --

23 A. Yes.

24 Q. -- and you've been here continuously, I guess, for
the past

25 15 years?

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1 A. Yes.

2 Q. And living near at least where you are now?

3 A. Yes.

4 Q. You say -- please turn to pages 4 and 5. Bottom of
4,
to
time,
services

5 Question 19, top of 5, Question 20. Now, I'm not going
6 intrude on this very much, but are you now, at this
7 obtaining services of the type mentioned -- receiving
8 of the type mentioned in Question 20?

9 A. No. Huh-uh.

10 Q. How long ago was that that you sought support of
that

11 nature?

12 A. About 12 years ago.

13 Q. Okay. And the matter -- on page 19, is this
something that

14 affects you in your work?

15 A. Do I get a -- are you asking me does this happen to
me when

16 I work?

17 Q. Yeah, I'm sure there's some stresses and strains in
the

18 work you do.

19 A. Certainly.

20 Q. Sure. And some days are worse than others or
hopefully

21 better than others.

22 A. Certainly.
23 Q. Do you have this type of reaction to days when
they're
24 unusually stressful?
25 A. Yes, uh-huh.

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1 Q. And is that such that it's temporarily disabling?
2 A. Yes, uh-huh.
3 Q. I mean do you need to go lie down?
4 A. Yeah.
5 Q. Or take medication?
6 A. No, huh-uh. But I say I need to relieve stress,
yes.
7 Q. Do you see that as a potential problem for what --
you
8 know, to the extent that you know about it, of being on
a jury?
9 A. Yes, I think it would be very stressful.
10 Q. You've never been on a jury, have you?
11 A. No.
12 Q. Now, I didn't say that to quarrel with you, you
know,
13 you're not sure about what the feeling is when you
haven't done
14 it.
15 A. Uh-huh.

16 Q. But your notion is that it would be difficult,
given your
17 general reaction to stress; is that what you're saying?
18 A. Yeah. It would be hard, I think.
19 Q. You also show on page 6 that a near relative of
yours here
20 has a health problem. Page 6, Question 31. Is that
something
21 that involves the need for you or your husband to
provide some
22 care and assistance?
23 A. Yes.
24 Q. Does she come to your home, live in your home?
25 A. Yes, uh-huh. She'll be here for the whole --
she'll come

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possibly
1 here in November. And she'll stay probably till,
2 February, March.
3 Q. Does she need daily support?
4 A. Yes. She does.
5 Q. And so is that an additional problem for you,
serving on a
6 jury?
7 A. Yes, it is.
8 Q. What -- has this happened before, that she spent

extended

9 time with you?

10 A. Yes.

11 Q. And how have you managed to do your job and assist
in her

12 care?

13 A. I manage to do it. It's hard to do, but I manage
it. It

14 gets harder and harder as her capabilities get less and
less.

15 Q. So she has some progressive condition that is --

16 A. Yes.

17 Q. -- deteriorating?

18 Now, you're out and about, as I understand it,
in your

19 car.

20 A. Yes, uh-huh.

21 Q. With cell phones and --

22 A. No.

23 Q. But so you're able to go, if necessary, back to
your home

24 to do things --

25 A. Yes.

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1 Q. -- and --

2 A. I can pick her up and take her to the hospital.
Then I can
3 go back to doing what I'm doing and then go and pick
her up and
4 bring her home.

5 Q. With respect to page 11 -- on page 11 -- and we
asked you
6 to list there or to mark organizations or type of
employment
7 that you or members of your family have been in. And
you
8 marked state, county, or city law enforcement. What
are you
9 referring to there?

10 A. That my brother-in-law works in Sterling, Colorado,
as a
11 warden.

12 Q. In a jail or -- county jail?

13 A. Yes, in a jail.

14 Q. Or in a state -- I can't remember if there's a
state
15 institution there.

16 A. It's -- he just moved from Limon to Sterling.

17 Q. So he works for the state department of
corrections?

18 A. He works for the state, uh-huh.

19 Q. How long has he been working with -- in the
corrections
20 field?

21 A. He's been working in it, oh, I'd say, for at least
20 years

22 or more.
23 Q. You visit with him about that?
24 A. Sometimes I do.
25 Q. Discuss it?

1004

Juror No. 493 - Voir Dire

1 A. Uh-huh.
2 Q. He tell you about particular people there and
problems that
3 he may be having with them and that sort of thing?
4 A. He doesn't refer to them; he may say something of a
person,
5 but he doesn't refer to a person individually. I mean,
I would
6 never know --
7 Q. -- who it is?
8 A. Yes.
9 Q. But when there are problems with people in custody,
he
10 talks about what the problems are? Does he, or not?
11 A. No, I would say it would be more general. You
know, just
12 problems.
13 Q. Okay. And then the next page, you've got a
television or
14 radio station. What does that refer to?

15 A. I'm sorry. What page was that?

16 Q. 12.

17 A. 12.

18 Q. The next page.

19 A. And what question are you --

20 Q. Yes. You marked somebody has had some employment
with a

21 television or a radio station, and I'm asking you who.

22 A. My sister was working for the radio station up in
Fort

23 Collins.

24 Q. Doing what kind of work?

25 A. She was the director of the radio station.

1005

Juror No. 493 - Voir Dire

1 Q. Had general management responsibilities?

2 A. General management of the radio station.

3 Q. How long ago was that?

4 A. About a year ago.

5 Q. Is that station affiliated with a network, if you
know?

6 A. I'm not sure. I think it's private owned. It's
with the

7 school. College.

8 Q. With the university there.

9 Now, under "religious," you marked "a

combination";

10 and I'm not sure whether you're talking about at
different
11 times, or whether that describes your religious views
today. I
12 mean, there's a comma in between, suggesting that it
may be at
13 different times, and I'm just confused.

14 A. I guess we practice both.

15 Q. And the "we" being you and your husband?

16 A. Uh-huh.

17 Q. Do you come from differing backgrounds --

18 A. Yes.

19 Q. -- in religion?

20 A. Yes. Uh-huh.

21 Q. And which background was yours? I mean, were you
raised in
22 the Catholic Church?

23 A. Yes.

24 Q. And he in the Jewish faith?

25 A. Yes.

1006

Juror No. 493 - Voir Dire

1 Q. And so now you've sort of made your own
combination?

2 A. Yes. Uh-huh.

3 Q. Do you attend services --

4 A. Yes.

5 Q. -- of both religions?

6 A. Yeah. Not every Sunday.

7 Q. No, no --

8 A. But yes.

9 Q. Well, you know, there's no religious test here,
obviously;

10 but the combination is one that we don't see very
often. I'm

11 sure you recognize that.

12 A. I see it more and more.

13 Q. Is that right? And are you doing this planning on
sort of

14 this combination of faiths with your child?

15 A. Yes. Uh-huh.

16 Q. Now, your view with respect to the death penalty:
Does

17 that come in part from your religious convictions?

18 A. No, huh-uh.

19 Q. How did you -- we're going to talk about that a
little

20 more; but just tell me the origins of that as you
understand,

21 yourself.

22 A. That I think that -- morally don't believe in the
death

23 penalty. It's not my religious belief; it's my
personal

24 belief.

25 Q. How long have you held a view like that?

1007

Juror No. 493 – Voir Dire

1 A. Ever since I've been a child.

2 Q. And is there some particular event or some
particular case

3 or something that affects it, or is this just an
evolving view

4 of personal morality?

5 A. It's just my personal belief. It's been with me
for all of

6 my life.

7 Q. All right. Page 20, Question 90. Here again,
we're not

8 exploring this to cause you to be uncomfortable; but as
I

9 understand it, this family member was charged and
convicted?

10 A. Yes. Uh-huh.

11 Q. And how long ago was this?

12 A. 15 years ago.

13 Q. And was it here in Colorado?

14 A. Yes.

15 Q. And in a state, or a federal court?

16 A. State.

17 Q. And your answer on B is that it wasn't, in your

opinion,

18 fairly done; is that right? The conviction?

19 A. I don't think that he had a good lawyer. I think
that he

20 went in there very empty-handed.

21 Q. Do you think he was not guilty?

22 A. I don't know if he was guilty or not.

23 Q. Did it go to trial?

24 A. No, I don't think it did.

25 Q. Was it a plea bargain --

1008

Juror No. 493 - Voir Dire

1 A. Yes.

2 Q. -- as you understand it?

3 A. Yes.

4 Q. And you think it was a bad bargain; is that what
you're

5 saying?

6 A. You know, I just don't think it was -- I don't
think he had

7 a good representation of himself.

8 Q. Because of the lawyer?

9 A. Because of the lawyer.

10 Q. You tell us on page 21 that you know -- on Question
96, you

11 know at least one defense lawyer or public defender,

someone

12 involved in defending criminal cases because of your
husband's

13 friendship with the person?

14 A. Yes, uh-huh.

15 Q. And have you talked about criminal defense work
with this

16 person?

17 A. No. Huh-uh.

18 Q. Okay. So the fact that he or she's a friend of
your

19 husband really doesn't mean anything in terms of what
you have

20 learned about the criminal justice system or anything
like

21 that?

22 A. No, huh-uh.

23 Q. You know apparently on the next page, 22, line --
Question

24 99, there was years ago a lawsuit about workplace. Was
that an

25 injury, or what kind of a dispute was that, if you
know?

1009

Juror No. 493 - Voir Dire

1 A. From what I remember her telling me, it was a
dispute over

2 a man getting paid more than her and the man moving up
the

3 scale much faster than she was.

4 Q. So a gender discrimination --

5 A. Right.

6 Q. -- issue?

7 A. Discrimination.

8 Q. Did that go to trial?

9 A. Yes, it did.

10 Q. And was it in federal court?

11 A. You know, I don't know that.

12 Q. Was it in this state?

13 A. No.

14 Q. Do you know whether this came out with some remedy
for her?

15 A. Yes. Uh-huh.

16 Q. And was she satisfied with the outcome, as she told
it to

17 you?

18 A. Yes, I think she was satisfied.

19 Q. Do you know if there was --

20 A. I don't think she was satisfied because of the
wrongdoing

21 towards her, but I think she was satisfied because
something

22 was done for it.

23 Q. Okay. Was there a jury in that case, if you know?

24 A. I don't know.

25 Q. Now, on page 24, the questions on 109 and 110: Are

these

1010

Juror No. 493 - Voir Dire

talked 1 yes answers something different from what we've already

2 about?

3 A. No, these aren't any different, huh-uh.

4 Q. I'm sorry. I didn't hear.

5 A. From what we've already talked --

6 Q. Yes.

7 A. -- this is what that is.

8 Q. This is the same thing?

9 A. Yes, uh-huh.

10 Q. Same case?

11 A. Uh-huh.

Tell 12 Q. How about next page, please, 112. Question 112.

when I 13 me -- tell us what you're referring to there. I guess

friend. 14 read this, I thought this was probably your husband's

15 A. I have a girlfriend that's studying law right now.

things in 16 Q. Okay. And she's talked to you about some of the

17 the case books or the materials she's studying?

18 A. Yes, uh-huh.

19 Q. You talk with her about the death penalty?

20 A. No, huh-uh.

21 Q. You -- on page 30 -- I'm sorry to jump around like
this,

22 but it's sort of the way I have my notes.

23 On page 30, Question 129, where it asks you
about the

24 importance of following the court's instructions, and
you say

25 you don't agree or disagree and no explanation. Could
you

1011

Juror No. 493 - Voir Dire

1 explain that for us?

2 A. 129?

3 Q. Yes.

4 A. I mean, I don't disagree not to follow their
instructions

5 or -- I mean I'm not going to not follow them. I don't
know.

6 I guess maybe I didn't understand the question.

7 Q. Okay. Perfectly good answer. Well, let me expand
on it a

8 bit by suggesting to you going back to when I was
referring to

9 how a criminal trial goes, you know, referring you back
to the

10 general explanations given at Jefferson County.

with a 11 A. Uh-huh. I mean, I know that you said don't discuss
disagree 12 lot of people. I mean that I agree with; I wouldn't
13 with that.
14 Q. Well, what I'm about to get to is the rest of it.
15 A. Okay.
the 16 Q. And what this is referring to is instructions at
what 17 trial -- I mean in part. It's all instructions. But
presented, 18 happens at a trial, again, is that the evidence is
19 there are two sides in the case. Witnesses are called,
20 exhibits; and then at the end of the trial, the court,
the 21 judge, instructs the jury about the law and also about
some 22 things concerning how they must analyze the evidence,
how they 23 can consider the credibility of witnesses when they're
in 24 dispute, and that sort of thing. And we call those
25 instructions on the law.

1012

Juror No. 493 - Voir Dire

1 And it's the jury's obligation to follow those
2 instructions, including what I've mentioned about the

Those are 3 presumption of innocence and the burden of proof.
4 instructions within the meaning of this question. And
they must 5 therefore, before a jury can find a defendant guilty,
then 6 follow those instructions, analyze the evidence, and
shows 7 determine whether under the instructions the evidence
understand? 8 guilt beyond a reasonable doubt. Now do you

9 A. Uh-huh.

those 10 Q. Now, do you agree that you as a juror should follow
11 instructions?

12 A. Yes, I agree.

them in 13 Q. Well, let me ask you about your ability to follow
that gets 14 this case, if you were to serve on this jury, because
15 to the central focus here.

presumption 16 Are you prepared to give Terry Nichols the

17 of innocence?

in the 18 A. I don't know. I think I've heard a lot of things
I've 19 media, so I don't know if I'm tainted some about what
20 heard.

have seen, 21 Q. Well, the instructions would say that which you

22 read, and heard outside the courtroom, you must set
aside.

23 A. Uh-huh.

24 Q. And you must focus and consider only the things
that were

25 evidence, that came in as evidence.

1013

Juror No. 493 - Voir Dire

1 A. Uh-huh.

2 Q. Now, you know, I'm not trying to pressure you into
any

3 answer, but the real question is: Given the amount
that you've

4 heard, given the discussions that you've had and the
views that

5 you've formed and told us, could you do it in this
case?

6 A. I don't know if I could. I think it would be
awfully hard

7 to do it. I don't know.

8 Q. So, you know, you have that in your mind coming
into the

9 case, if you were -- if this were the day that we swore
the

10 jury and started the trial?

11 A. Uh-huh. That would be in my mind. I mean, I would
have,

12 you know, thoughts in my mind about it already.

13 Q. And, of course, I guess it comes down to how

indelible that

14 impression is, whether you can erase it and take it
away and
15 focus simply on the evidence. Only you can answer this
16 question. And we understand the answer, whatever it
is. So
17 what do you think?

18 A. I think I do have a . . . I think I already have
feelings
19 about what I think if he's guilty or not.

20 Q. And hard to put it aside?

21 A. Uh-huh, it is hard to put it aside, from what I've
heard
22 and what I've thought about, what I've seen.

23 Q. Okay. Well, I want to get back to the issue of the
penalty
24 again; and in doing so, I want to be clear. As this
25 questionnaire made clear before the questions on page
28 and

1014

Juror No. 493 - Voir Dire

1 29, there was an explanation. We ask about these
questions and

2 your views not because anybody involved in this case
thinks

3 that, you know, in advance that the jury is going to
find

4 Mr. Nichols guilty; it is simply that we can't ask in
the

5 middle of trial if there's a guilty verdict, you know,
what
6 your views are before we go on with the rest of the
case. But
7 you understand that the question of punishment is
different
8 from the question of whether the evidence proves guilt.

9 A. Uh-huh.

10 Q. Do you?

11 A. Yes.

12 Q. So first we'd have a trial to determine whether the
13 evidence shows guilt to the satisfaction of the jury
beyond a
14 reasonable doubt. If the answer is no, then it's not
guilty
15 and that's the end of it. But if the answer is yes,
there then
16 has to be the question of punishment. Unlike cases
that don't
17 involve the death penalty, in cases where that is the
18 possibility, where the question is really on
punishment;
19 because of the offenses charged and the statutes that
govern
20 them, whether the defendant so convicted should be put
to death
21 or put in prison the rest of his life. That's the
question.

22 We don't leave that to a judge; that goes to a jury.

And the

23 jury has to listen to more, receives other information,

a 24 different and additional information at what amounts to
25 second trial.

1015

Juror No. 493 - Voir Dire

1 A. Uh-huh.

2 Q. And then they have to -- the jurors have to
consider what
3 the government lawyers bring in to -- we call them
"aggravating
4 factors," to suggest that the punishment for this
defendant on
5 trial and found guilty should be death. And the
defense has
6 the opportunity and would be presenting information
about the
7 defendant, his own unique characteristics, background,
beliefs,
8 conduct in other respects, work history, all these
things that
9 are unique to a defendant; and we call those
"mitigating
10 factors." And then the jury has to consider all that
they have
11 heard and seen and decide the question of whether the
defendant
12 should live or die. That's the issue that's presented
in a
13 sentencing phase.

14 And what you told us here a little while ago
is that
15 you are opposed to the death penalty; so the question
that I
16 have of you now is that if you had the responsibility
as one of
17 the jurors to make the decision on life or death based
on the
18 trial and the penalty phase hearing, if there is one,
would you
19 be able to set aside your own moral view about the
death
20 penalty and make a decision on the factors that are
outlined by
21 the Court as mitigating and aggravating facts?
if other
22 A. No, I wouldn't be able to set that aside. I mean,
believe in
23 people want to sentence him to death, you know, they
death,
24 the death penalty and they want to sentence somebody to
25 and that's what they want to do, then they can do that.

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Juror No. 493 - Voir Dire

1 Q. But you won't do it?
2 A. But I don't want to do it.
3 Q. But you -- and this isn't argumentative, please.
I'm not
4 trying to argue with you; I'm only exploring your
answers. And

5 you have on page 28 said that as at least a matter of
policy,
6 you can recognize that there can be a penalty of death.
7 A. I can recognize that; that other people can do
that, such
8 as Timothy McVeigh was sentenced to death. I would not
want to
9 partake in that.

10 Q. Because of your moral view?

11 A. Yes.

12 Q. All right.

13 THE COURT: We have questions from counsel.

14 MS. WILKINSON: Just a few, your Honor.

15 THE COURT: All right.

16 VOIR DIRE EXAMINATION

17 BY MS. WILKINSON:

18 Q. Good afternoon.

19 A. Hi.

20 Q. As the Judge told you, my name is Beth Wilkinson;
and I'm
21 one of the prosecutors responsible for presenting the
evidence

22 against Mr. Nichols. You've answered a lot of
questions, and I

23 don't want to take up too much more of your time; but I
just

24 want to be clear on your views and make sure I didn't

25 misinterpret anything.

Juror No. 493 - Voir Dire

1 I think it's fair from reading your
questionnaire and
2 seeing your responses to the Judge that you don't want
to be
3 here today, do you?
4 A. Tell me who would want to be here today.
5 Q. I'm not trying to accuse you of anything. As you
said,
6 there's probably lots of people that don't want to be
here.
7 But I'm just sensing from you that you don't want to be
here
8 answering these questions. Is that true?
9 A. I think there's many more things I'd rather be
doing.
10 Q. And you don't want to serve on this jury, do you?
11 A. It's probably not the top of my list of things to
do.
12 Q. When you told us in the questionnaire and told the
Judge
13 that you thought Terry Nichols was guilty, did you do
that or
14 do you believe that based solely on what you've read in
the
15 media and heard in other sources in the media?
16 A. Yeah, I guess, from what I've read and seen and
heard.

17 Q. Do you have any knowledge of the facts of the case?
18 A. I have some. From what I've read and heard of what
the
19 media presents and gives to you.
20 Q. What is it that makes you think that Terry Nichols
is
21 guilty of the crime?
22 A. From what I've heard from the media, it just has
pointed
23 that he's part of the crime.
24 Q. If you could turn to your questionnaire on page
160, No. --
25 I mean page 37, Question No. 160. When you answered
this

1018

Juror No. 493 - Voir Dire

1 question, you said that you thought that Mr. Nichols
deserved
2 death; is that right?
3 A. If he's part of the crime, that's what he -- if he
deserves
4 it, yeah.
5 Q. Well, I guess maybe I'm not clear. Do you think
that he
6 deserves the death penalty? Is that what you're
saying?
7 A. I think that he deserves what anybody -- if he's
guilty of
8 the crime, that he deserves what he deserves and what

the jury

9 will give him. I won't be one of the people deciding
on a
10 death penalty.

11 Q. Okay. And you've made up your mind about that?

12 A. Yes.

13 MS. WILKINSON: Thank you very much.

14 JUROR: Uh-huh.

15 THE COURT: Mr. Woods.

16 MR. WOODS: Thank you, your Honor.

17 VOIR DIRE EXAMINATION

18 BY MR. WOODS:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. My name is Ron Woods, and I'm one of the lawyers
that was

22 asked by the court to represent Terry Nichols in this
case. We

23 have to go last, so we're not going to have many
questions

24 inasmuch as they've already been covered. I want to
thank you

25 for being frank and honest with us in stating what you
feel

1019

Juror No. 493 - Voir Dire

1 under oath and sticking with your beliefs under all

this

2 questioning from both sides.

3 You initially advised us back in July when you
sent in

4 the summons -- you know, you got your original summons
and you

5 had to fill out just a few questions, and you sent that
back in

6 to the court on July the 28th. And that's probably not
there

7 in your folder; but in the summons, there was a
question: "Is

8 there any other reason that would prevent you from
serving on

9 this jury?"

10 And you stated, "I think Terry Nichols is
guilty."

11 And then you signed your name. "I declare under the
penalty of

12 perjury that all answers are true and correct to the
best of my

13 knowledge and belief," and you signed that.

14 A. Uh-huh.

15 Q. And that was your belief?

16 A. Uh-huh.

17 Q. And you stuck with that today under all this
questioning?

18 A. Uh-huh.

19 Q. Is that correct?

20 A. Uh-huh.

21 Q. Now, you also stated as to the questions about your
source
22 of news on this case and how you got your news about
this case,
23 you listed just about all of them there were: The
radio news,
24 TV news, newspapers, hearing other people discuss a
case. And
25 then you also said that you went out of your way to
seek out

1020

Juror No. 493 – Voir Dire

1 news about this case, because there were about four
different
2 blanks, and --

3 A. I said I seeked out news?

4 Q. Let me refer you to the question. It's on page 33.
And
5 it's Question 145.

6 A. Okay.

7 Q. "How would you describe the amount of media
coverage you've
8 seen about the Oklahoma City bombing?"

9 And you checked off very much, parentheses,
went out
10 of your way to read about it and watch news accounts
about it.

11 And in the question right above it, 144,
"Please

12 indicate where you heard or read about the Oklahoma
City
13 bombing case," you checked off TV news, radio news,
newspapers,
14 magazines, books, conversations, and heard other people
15 discussing the case. I guess the only one that's
missing is
16 the Internet --

17 A. And on-line.

18 Q. Are those pretty much the same?

19 A. No, I haven't gone to them.

20 Q. Okay. But you pretty much sought out information
about the
21 case, I take it?

22 A. I don't think a person would really have to seek
23 information. Information was just exploding all over
the
24 place.

25 Q. I couldn't agree with you more, it's impossible to
avoid.

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Juror No. 493 - Voir Dire

1 A. Right.

2 Q. But based on that publicity you've been exposed to,
you've
3 been very frank with the Court and said, "I've reached
the
4 opinion that Mr. Nichols is guilty"; is that right?

5 A. Yeah.

6 Q. And if you were on trial such as Mr. Nichols is,
would you

7 want somebody that was on the jury that had your
feeling about

8 the guilt in the case?

9 MR. MACKEY: Objection.

10 THE COURT: Sustained.

11 BY MR. WOODS:

12 Q. But is it true, as you've stated, that you've made
up your

13 mind about the guilt of Mr. Nichols in the case?

14 A. Have I made up my mind that he's guilty?

15 Q. No, have you made up your mind -- do you have an
opinion

16 based on everything that you've read that he is guilty?

17 A. I have an opinion --

18 MR. MACKEY: Judge, objection; we've covered
this

19 extensively.

20 THE COURT: Overruled. You may answer.

21 BY MR. WOODS:

22 Q. You may answer.

23 A. I have an opinion.

24 Q. And I take it it would take some convincing of you
to

25 overcome that opinion?

Juror No. 493 - Voir Dire

1 A. Yeah.

2 Q. All right.

3 MR. WOODS: Thank you very much, and we really
do
4 appreciate you being frank with us.

5 JUROR: Thank you.

6 MR. WOODS: It helps our job.

7 THE COURT: You're going to be excused now.
We're not

8 making the decisions about people as we go along.
We're

9 talking to people, as you can understand here, and
we'll be

10 back to you with respect to the decisions and whether
you'll be

11 asked to serve; but please conduct yourself on the
assumption

12 that you will be, so continue to follow the same
cautions that

13 I gave you when you left out there at Jefferson County.
Will

14 you?

15 All right. You're excused.

16 (Juror out at 3:15 p.m.)

17 MR. MACKEY: Excuse me, your Honor. May I
just make a

18 generalized objection? Mr. Woods' repeated

editorializing,

19 yesterday it was about facts concerning search
warrants, today

20 it's expressions of feelings of personal confidence,
and I
21 think it's inappropriate.

22 THE COURT: Yes, I agree, and the expressions
of
23 gratitude for their being honest and your -- you know,
that
24 involves your statement that they're honest. Please
avoid it.

25 MR. WOODS: Yes, your Honor, I will.

1023

1 THE COURT: I think we'll take the recess
before we

2 go -- now, I have 699 next. Is that the right order to
go
3 here, I think?

4 MR. MACKEY: Yes.

5 THE COURT: 699, 945 and 484. Okay. 20
minutes.

6 (Recess at 3:17 p.m.)

7 (Reconvened at 3:35 p.m.)

8 THE COURT: Be seated, please.

9 All right. 699.

10 If you'll please raise your right hand and

take the

11 oath from the clerk.

12 (Juror No. 699 affirmed.)

13 THE COURTROOM DEPUTY: Thank you.

14 THE COURT: Please be seated.

15 VOIR DIRE EXAMINATION

16 BY THE COURT:

17 Q. We've kept you waiting all day, and a long day to
wait.

18 A. Yes, it is.

19 Q. But we appreciate that, and I hope you understand
that we

20 can't go according to a certain schedule. We don't
know how

21 long we'll be with particular persons.

22 A. I understand.

23 Q. You recall taking an oath like that earlier;
indeed, on

24 September 17, when you and others came to the Jefferson
County

25 Fairgrounds' auditorium building and were given such an
oath

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Juror No. 699 – Voir Dire

1 and filled out a questionnaire.

2 A. Yes, I do.

3 Q. And you have that questionnaire, your completed

4 questionnaire in front of you now?

5 A. Yes, I do.

6 Q. And here we are asking you to come back and answer
some
7 more questions, so -- but this will be it. I mean, the
8 questioning taking place here is that which we need
before
9 making the selection of the jurors for the trial of
this case.

10 And you understand this case is United States against
Terry
11 Lynn Nichols.

12 A. Yes.

13 Q. And that when you did come out to the auditorium
building
14 there, I explained -- well, first of all, I introduced
myself
15 and I introduced some other people who were with me.
And
16 they're here now, too. And I want to reintroduce the
people
17 who were present and some who weren't.

18 You'll recall Mr. Lawrence Mackey right here
at the
19 first table and Ms. Beth Wilkinson were there as
attorneys for
20 the Government.

21 Additionally appearing for the Government now
are
22 Mr. Patrick Ryan and Mr. James Orenstein.

23 You recall meeting the attorneys for the
defendant,
24 Mr. Michael Tigar, Mr. Ronald Woods; and Terry Lynn
Nichols,
25 the defendant, who was present and is again now.

1025

Juror No. 699 - Voir Dire

1 Now, I -- I'm going to repeat some of the
things that
2 were repeated out there, and it isn't because I don't
think you
3 can remember a couple of weeks ago, but I think to sort
of
4 establish the foundation for some of the questions that
we need
5 to ask you, I want to repeat the things about where we
are in
6 this case.

7 You'll recall that I outlined for you and the
other
8 members of the jury panel the background of the case;
that
9 there was an explosion in Oklahoma City, Oklahoma, on
April 19,
10 1995. A building was destroyed and people killed and
injured.
11 And then there was an indictment in Oklahoma City in
the
12 Federal Court charging Timothy James McVeigh and Terry
Lynn

13 Nichols -- Mr. Nichols here -- and then other persons
not named
14 in the indictment with a conspiracy to plan and carry
out such
15 a bombing and that charging Mr. Nichols and Mr. McVeigh
with
16 activities in connection with that and also with the
murders of
17 eight law enforcement agents in the building; that both
18 defendants pleaded not guilty; that the case was
transferred to
19 Denver from Oklahoma City and separate trials were
ordered so
20 that we would have separate juries considering the
evidence as
21 it may relate to Mr. McVeigh and another jury as the
evidence
22 may relate to Mr. Nichols; that Mr. McVeigh was already
tried
23 by another jury and what the results were; now we're
preparing
24 for the trial of Mr. Nichols and that the results of
the trial
25 of Mr. McVeigh have nothing to do with this case
because it's

1026

Juror No. 699 - Voir Dire

1 to be separately considered. You recall all of that?

2 A. Yes, I do.

3 Q. And that I explained as a fundamental principle of

our

4 Constitution that Mr. Nichols, just as much as any
other person
5 charged with any crime, no matter who that person may
be or
6 what the crime may be, is presumed to be not guilty and
that
7 this presumption of innocence carries throughout the
trial and
8 entitles him to an acquittal, a verdict of not guilty,
unless
9 the case against him is proved by evidence.

10 And it is not his duty or burden to prove
anything.
11 He doesn't have to call any witnesses, he doesn't have
to
12 explain anything, and he doesn't have to take the stand
as a
13 witness himself.

14 The Government having made the charges, it's
up to the
15 Government's lawyers to come in with the evidence, the
16 witnesses and the exhibits to try to prove them. And
they must
17 not only prove the case in terms of probabilities or
anything
18 like that, they have to convince a jury of 12 fair-
minded
19 persons that the evidence shows the defendant guilty of
what
20 they say about him beyond a reasonable doubt.

Understand that

21 principle?

22 A. Yes, I do.

23 Q. And as I said, you know, not only does the
defendant not

24 have to explain anything or produce any evidence or be
a

25 witness, the jury may not in any way consider the fact,
if it

1027

Juror No. 699 - Voir Dire

1 be a fact, at trial that a defendant doesn't testify or
offer

2 any evidence. They can't consider that. And in fact,
what we

3 tell juries regularly in cases where the defendant
doesn't

4 produce any evidence or testify is you can't even talk
about

5 it, because it's not a relevant consideration in
deciding

6 whether the evidence establishes the crime beyond a
reasonable

7 doubt.

8 And "beyond a reasonable doubt" means that
after

9 hearing it all, considering it all and discussing it
among

10 themselves, if the jurors have a reasonable doubt as to
whether

11 the case is proved, they must give the defendant the

benefit of

12 that doubt and find him not guilty.

you, I

13 You heard all that before. It's not new to

14 take it.

15 A. No, it isn't.

16 Q. And do you accept that --

17 A. Yes, I do.

follow it if

18 Q. -- as the law and agree to be bound by it and

19 you were to serve on the jury?

20 A. Yes, I do.

you're

21 Q. So as he sits here today, you look at Mr. Nichols,

22 able to give him the presumption of innocence?

23 A. Yes, I can.

are in

24 Q. Now, I want to go through some of the things that

reassure you

25 the questionnaire; but before doing so, I want to

1028

Juror No. 699 - Voir Dire

is why

1 once again about our concerns for your privacy. That

courtroom

2 your name is not used here. You're in an area of the

out and

3 that's somewhat sheltered here. We brought you in and

can't 4 will take you out of the courthouse in ways so that you
a matter 5 be photographed or you be identified. And that's just
on. And 6 of, you know, so that your privacy is not encroached
public and 7 these answers that you gave us have not been made
you are 8 will not be; but, of course, you understand that now
in 9 answering questions that we ask of you here in the open
10 public.

may be 11 So as we go through some of these things, we
these 12 careful about, you know, asking you to explain some of
where 13 things but in ways that won't clearly identify anything
you. 14 it might be a matter of intense personal interest to

15 Understand?

16 A. Yes, I do.

your 17 Q. Then I want to ask you a few things beginning with
near 18 background. You were born and raised on a farm in Iowa
19 Sioux City?

20 A. Yes, I was.

21 Q. And you grew up on the farm?

22 A. Yes, I did.

do as 23 Q. And undoubtedly had some work to do, some chores to
24 you grew up, as most farm kids do?
25 A. Yes, I did.

1029

Juror No. 699 - Voir Dire

1 Q. And do you have family still on the farm?
2 A. I have a sister that lives on a farm in Iowa.
3 Q. A different farm?
4 A. A different farm.
5 Q. Is the farm you grew up -- is that still in the
family?
6 A. No, it has been sold.
7 Q. Sold. Voluntarily?
8 A. Yes, voluntarily.
9 Q. Okay.
10 A. My father retired.
11 Q. And what, did he move into Sioux City?
12 A. No, he moved into a small town in Iowa -- and my
mother.
13 Q. All right. And your sister is -- you said your
sister,
14 didn't you?
15 A. Yes.
16 Q. Is she in the same county?

17 A. Yes, she is.

18 Q. The farm?

19 A. Yes, she is.

20 Q. And she and her husband are working the farm?

21 A. They did. He is seriously ill right now, so he's
unable

22 to.

23 Q. Oh, I'm sorry.

24 The farm that you grew up on: How big? How
many

25 acres?

1030

Juror No. 699 – Voir Dire

1 A. It was 240 acres.

2 Q. With cash crops like corn, soybeans?

3 A. Soybeans and wheat.

4 Q. Wheat.

5 A. And some corn.

6 Q. And some corn. I guess we think of Iowa, we think
of corn.

7 And you were out there with the tractor and
those

8 things as need be?

9 A. I used to detassel corn, I used to hoe beans, I
used to

10 pick up corn, we called it. I did a lot of work with
the

things 11 cattle. I helped my dad with his cattle and all the
12 that girls do on farms.
girls and 13 Q. Well, there aren't too many differences between
14 boys on farms anymore.
15 A. Not anymore.
answers, 16 Q. Okay. And you then, as I understand it from your
there for a 17 went to Sioux City, worked in a television station
18 year?
19 A. Yes, I did.
20 Q. Now, is that after high school? When was that?
didn't 21 A. I got married very shortly after high school and I
22 work for several years after I was married. And then I
did 23 take a job in the TV studio.
24 Q. What did you do there?
25 A. I was a secretary, a clerical-type person there.

1031

Juror No. 699 – Voir Dire

1 Q. So you -- and this was a local television?
2 A. Yes.
3 Q. Did it have a connection with one of the networks,
if you

4 remember?

5 A. I can't remember. I can't remember.

6 Q. You moved on to another job after that?

7 A. Yes, I did.

8 Q. And what did you go to work doing then?

9 A. I went to work for the Woodbury County Farm Bureau
as an
10 office manager.

11 Q. That is the county in which Sioux City is located?

12 A. Yes, it is.

13 Q. Now, talking about Sioux City, you have something
here that

14 I wanted to ask you about. Page 24. Actually, it may
also be
15 page 23. I'm looking at Question 104 and 105.

16 A. Okay.

17 Q. Are these related, this Question 104 and 105? Is
this
18 talking about the same event?

19 A. Yes.

20 Q. And this related to your husband?

21 A. Yes, it did.

22 Q. Were you married at this time?

23 A. Yes.

24 Q. Now, let's see. Is he from the same -- did you go
to high
25 school together?

Juror No. 699 - Voir Dire

1 A. Yes, we did.

2 Q. So were you going together when you were in high
school?

3 A. We didn't go to the same high school, but we
started dating

4 when I was 16.

5 Q. All right. And then you married shortly after high
school,

6 as you already said. And can you tell us in a general
way what

7 this was all about?

8 A. Yes. My husband became associated with some people
in

9 Sioux City that were not of good character; and
unfortunately,

10 he did get involved in a criminal activity there. He
was

11 charged with a crime. The FBI did interview me. We

12 successfully resolved the situation; but in a small
town like

13 Sioux City, we felt that we were harassed by -- not by
the FBI

14 but by the local police departments there.

15 Q. Was the charge in the local court, or the federal
court?

16 A. I can't remember for sure.

17 Q. Did it relate to a business -- his friendship, or

his

18 acquaintances? Were they business, or social?

and I

19 A. He was charged with conspiracy to commit a crime,

All I

20 don't remember whether it was a federal crime or not.

21 remember is the FBI. This has been over 20 years ago.

22 Q. Yes, I know.

23 A. It's kind of hard to remember.

can

24 Q. And we don't want to dwell on it, but obviously you

25 understand our interest in it.

1033

Juror No. 699 - Voir Dire

1 A. Absolutely.

2 Q. Well, you know, was it like a business deal or some
3 fraudulent matter, something like that?

want

4 A. I think, as I remember it, the people that he was
5 associated with stole some -- some kind of equipment or
6 something. And my husband knew about it, and he didn't

didn't want

7 to -- he didn't want to tell anybody about it. He

8 to tell on his friends.

9 Q. Right.

was moved

10 A. And so that's how this -- I think this equipment

11 across a state line.

12 Q. Was it farm equipment, or technical, electronic
equipment?

13 Do you remember anything about the nature of the
equipment?

14 A. It may have been farm equipment. I'm a little
fuzzy on

15 exactly what it was now.

16 Q. You said it was resolved. Did he plead to
something?

17 A. I think he pled guilty to conspiracy. And he was
given a

18 sentence of probation.

19 Q. And maybe a fine, or order of restitution?
Something like

20 that?

21 A. Well, there was no restitution because he didn't
take

22 anything, but he just knew that the others had.

23 Q. And didn't -- didn't -- he helped them in the sense
that he

24 helped them cover it up?

25 A. Yeah, I think -- that's a fair statement.

1034

Juror No. 699 - Voir Dire

1 Q. Okay. Well, let's move on. But you expressed the
opinion

2 that he was abused or harassed by the police. And just

tell me

3 in what form that was.

4 A. They would follow him around the city. They would
--

5 Q. Stop him for any failure to signal or something?

6 A. Anything. They would stop him. They would send
police

7 units out and they would sit in front of our house or
down the

8 street.

9 Q. How long did that go on?

10 A. It went on for about a year. And in 1975, we moved
to

11 Denver. One of the reasons we moved was that we felt
like in a

12 small town like that that we just needed to get away
from it.

13 Q. Yeah.

14 A. So we moved.

15 Q. Because you just couldn't get away from the
problem.

16 A. Uh-uh.

17 Q. Did people in town, the people you knew, your
acquaintances

18 or church members or somebody, turn on you, too?

19 A. No. I never felt that.

20 Q. Or act differently in interacting with you because
of this?

21 A. There were some people who, I think, probably
changed their

22 attitude towards us, but not on the whole.

23 Q. Okay. So then you came to Denver.

24 A. Yes.

25 Q. And you've lived in the Denver area ever since?

1035

Juror No. 699 - Voir Dire

1 A. Yes, we have.

2 Q. And you, as I understand it -- and I'm looking at
your

3 employment here. You work for a large company. Page
9. And

4 in that company, you, what, supervise the insurance
coverage

5 for the risks that the company is involved with? Is
that it?

6 A. That's part of my responsibility, yes.

7 Q. And so you sort of make sure there is coverage for
the

8 things that need coverage and do a little shopping
among the

9 carriers to see where you can get the best cost-benefit
deal?

10 A. Yes, I do.

11 Q. And to do that, you have to know something about
what their

12 risks are and what kinds of coverage is available in
the

13 industry.

14 A. Yes, I do.

15 Q. And have you learned that by doing it -- I mean on
the

16 job -- or did you have some special training in that?

17 A. I learned it on the job.

18 Q. And this company has sort of had its ups and downs,
as many

19 companies have, particularly in the line of work this
is, the

20 industry.

21 A. Yes, they have.

22 Q. So they've had layoffs and they've added people.

23 Now, I take it from what you say here, you
weren't the

24 subject -- you weren't involved in any of those
layoffs. They

25 kept you on?

1036

Juror No. 699 - Voir Dire

1 A. That's correct.

2 Q. And you've been there continually, then, for 16
years?

3 A. Yes, I have.

4 Q. In the same part of the business?

5 A. My original position when I went to work there was
6 secretarial, and I advanced beyond that into my present
7 position.

8 Q. Okay. The -- before you went to work in that
company, you

9 were a realtor.

10 A. Yes, I was.

11 Q. And did you have a license to buy and sell real
estate as

12 an agent?

13 A. Yes, I did.

14 Q. Were you in commercial, or residential, or both?

15 A. Residential.

16 Q. In the Denver metropolitan area?

17 A. Yes.

18 Q. Now, your husband has his own business?

19 A. Yes, he does.

20 Q. And this is restoration of older vehicles and also
parts --

21 A. Yes.

22 Q. -- where the vehicle -- it's hard to get parts for
some of

23 these older vehicles.

24 Are these mostly pickups, that type of truck?

25 A. That's his specialty, is old trucks.

1037

Juror No. 699 - Voir Dire

1 Q. But like --

2 A. Pickups.

3 Q. As opposed to larger trucks.

4 A. Right. That's correct.

5 Q. You were on a jury before out in Jefferson County.

Page 26. The -- this was back in '78 or '79.

6 26. The -- this was back in '78 or '79.

7 A. That's correct.

8 Q. And so it was shortly after you got to Colorado, I
guess.

9 A. Yes, it was.

10 Q. You lived, then, in Jefferson County and your
number came

11 up. You went into the courthouse and you got -- went
through a

12 process something like this --

13 A. Yes.

14 Q. -- of questioning and then you served. The charge
was

15 drunk driving?

16 A. Yes, it was.

17 Q. Were there any injuries or accidents -- any -- you
know,

18 was it a stopping a motorist or was there an injury or

19 accident --

20 A. There was an accident. I don't remember if there
were

21 injuries.

22 Q. Okay. And you remember that the trial, of course,
took

and the 23 place with lawyers on both sides and witnesses called
24 like?
25 A. Yes.

1038

Juror No. 699 - Voir Dire

that I 1 Q. So you've been directly exposed to these things
and -- 2 talked about in generality about the burden of proof
3 A. Yes.

4 Q. -- and all that.
5 And you remember something about the
instructions, no 6 doubt.
7 A. Yes, I do.

8 Q. Not in detail, but these fundamental things.
9 And then the jury reached a verdict. What was
the 10 verdict?
11 A. Guilty.

12 Q. Of drunk driving?
13 A. Yes.

14 Q. Were there several levels of that? Was it like
driving 15 under the influence, too, as something you could
consider or

remember?

16 was it just yes or no on drunk driving? Do you

17 A. I believe it was yes or no on drunk driving.

beyond a

18 Q. It was just one charge to consider either proved

19 reasonable doubt or not guilty.

20 A. Yes.

You

21 Q. Were you -- you weren't selected as the foreperson.

22 know what we mean here by foreperson?

23 A. Yes, I do. No, I was not.

whatever.

24 Q. Sometimes called the chairman or the foreman or

25 A. No, I was not.

1039

Juror No. 699 - Voir Dire

deliberations

1 Q. Well, we're not going to ask you about

process

2 because we respect the secrecy of the jury deliberation

long the

3 no matter where it takes place. But do you recall how

4 trial was?

5 A. Essentially, it was one day.

6 Q. And how long the jury deliberated?

7 A. About an hour.

8 Q. Pretty clear-cut case?

9 A. It was very clear-cut.

10 Q. And any major disagreement among the jurors?

11 A. None.

12 Q. As these lawyers have heard me before with people
who have
picked
you in
in this
different in
same.
saying, no
book or
that book?

13 been on jury service, I'm always tempted to ask how you

14 a foreperson, but I'm not going to ask that.

15 Now, anything from that jury experience that

16 any way see as carrying over to service again on a jury

17 case?

18 A. It would seem to me that they would be very

19 what would be considered. The principles would be the

20 Q. Exactly. The principles are the same, as I was

21 matter what the charge is or who the accused is.

22 Page 16 tells us that you have just read a

23 recently read a book called Runaway Jury.

24 A. Yes. It's been several months.

25 Q. Several months. You remember the story line of

tobacco
several
remember.
I've heard
me when
follow
something
for a
On page

1 A. As I recall it, I believe it has to do with the
2 industry. It's a John Grisham book, but it has been
3 months since I read it.
4 Q. Okay. Well, this isn't a test about what you
5 I've never read it, so what do I know about it? But
6 it mentioned before; and of course, the title intrigues
7 we're talking about picking a jury that's supposed to
8 the law and not run away with it.
9 A. Of course.
10 Q. Have you read other John Grisham books?
11 A. Yes, I have.
12 Q. Let's see where the -- well, mystery novels are
13 that attract you for reading.
14 A. Yes. I love mysteries.
15 Q. Okay. Now, the -- back to your husband's body shop
16 moment. Does he have employees with him, too?
17 A. Yes, he does.
18 Q. And varies according to how much business he has?
19 A. And who shows up for work.
20 Q. Okay. I understand that.
21 The -- yeah. Here's what I was looking for.

22 18, you -- Question 83 is asking you about reading
books, and
23 you show books by John Grisham and also by an author
named
24 Scott Turow.
25 A. Yes.

1041

Juror No. 699 - Voir Dire

1 Q. And have you read many of his books?
2 A. I think I've read two books by Scott Turow.
3 Q. Do you remember what they are? Titles?
4 A. Something about innocence -- I can't remember.
5 Q. Okay. And is it because these books are about
lawyers and
6 courts, or because they're about mysteries, or just
good reads?
7 What attracts you?
8 A. Usually, I read books that are recommended by
friends, and
9 I have a friend that gives me paperback books, and this
person
10 seems to like this kind of book, so I --
11 Q. You follow along?
12 A. I guess. I don't have a lot of time to read.
That's the
13 problem.
14 Q. Okay. Also, in addition to your having been on the

jury in

15 that case out in Jefferson County, on pages 22 and 23,
we

16 got -- let me go to 23 first, Question 103. You've had
some

17 cases in some claims court where your husband was
collecting

18 bills. Is that what that's about?

19 A. Yes.

20 Q. And it says you've been a witness there. Do you do
21 anything with his business, like keep the books or
something

22 like that?

23 A. At one time, I did keep his books. And when I was
a

24 witness for him, it involved the bookkeeping procedure
at that

25 time.

1042

Juror No. 699 - Voir Dire

1 Q. To prove the bills --

2 A. Exactly.

3 Q. -- that were being collected.

4 A. I no longer keep his books.

5 Q. And this -- when it says "small claims court,"
you're

6 talking about a court where lawyers are not involved;
the

7 people just come in and present their problem and their
8 relative positions on a dispute to a judge or a
referee.

9 A. That's correct.

10 Q. You got on page -- on page 22 -- excuse me -- and
Question

11 102, A and B there, the first one is this robbery --
was that

12 your husband's business?

13 A. When we first moved to Denver, he worked for a gas
company,

14 a gas station.

15 Q. Uh-huh.

16 A. And he was working in the gas station and he was
robbed and

17 injured at the same time.

18 Q. By somebody who came into the station?

19 A. Yes.

20 Q. Well, I'm a little confused because under Item 5
there,

21 it's talking about a car broken into.

22 A. Okay. I see that.

23 Q. I'm confused about whether this is two things --

24 A. Well, I remembered the robbery situation after I
had

25 completed this. I had forgotten about it at the time I

Juror No. 699 – Voir Dire

1 completed it.

2 Q. All right. So there were two events?

3 A. Exactly.

4 Q. What kind of injury did your husband sustain?

5 A. The person hit him over the head or tried to hit
him over
6 the head and hit his shoulder instead.

7 Q. With a weapon?

8 A. We presume it was a weapon. He doesn't know what
it was.

9 Q. Was he rendered unconscious?

10 A. He fell to the floor, as I remember it. I wasn't
there --

11 Q. No, I understand you weren't there. It's what you
12 understand from what you've heard?

13 A. He fell to the floor. He was injured. The person
did get
14 some money and escaped from the station.

15 Q. To your knowledge, was there a person ever caught
and
16 charged?

17 A. Not to my knowledge.

18 Q. Okay. And then with respect to this break-in of
the car,
19 something separate --

20 A. Yes.

21 Q. And as far as you know, nobody ever charged with

that.

22 A. We never found out who did it.

23 Q. How long ago was your husband working at this
station, gas

24 station?

25 A. It was right after we moved to Denver. It was
probably

1044

Juror No. 699 – Voir Dire

1 1975 or '6.

2 Q. 20 years ago. And then you had an incident here
where

3 somebody pointed a gun at you and your husband out on
the road?

4 A. Yes. It was very frightening.

5 Q. When did that happen?

6 A. That happened about four years ago.

7 Q. Were you on a highway? Where were you?

8 A. We were on U.S. 36 going south into the Westminster
area,

9 and a van pulled up alongside of us; and the person in
the

10 front seat on the passenger's side started gesturing
wildly at

11 us and yelling at us. And we didn't know what was
wrong or why

12 he was doing that. And then he pulled a gun out and
pointed

13 the gun at us.

14 Q. Handgun?

15 A. It was a very large gun. That's all I remember.

16 Q. But I mean one you would hold in your hand?

17 A. Yes, it was a handgun. My husband speeded up, and
the van

18 chased us all the way into Westminster; and we pulled
in -- we

19 got off the road and went to the Westminster Police
Department

20 and the van got away.

21 Q. The van didn't come in behind you to the police
department?

22 A. No. No.

23 Q. Well, I'm not making fun of it. That would be a
very

24 frightening experience.

25 A. It was very frightening.

1045

Juror No. 699 - Voir Dire

1 Q. And was this in the daylight? Daytime?

2 A. It was early evening.

3 Q. Very light yet?

4 A. It was very light, yes.

5 Q. How many people appeared to be in the van, if more
than

6 one?

7 A. We know that there were at least three people.

8 Q. Did you make an estimate of their age -- ages?

9 A. They were young people.

10 Q. Like teenagers, or --

11 A. I would have guessed maybe 17 or 18 years old.

12 Q. Okay. And that was -- I'm sorry; if you told me,
I've

13 forgotten. About how long ago?

14 A. I think it was about four years ago.

15 Q. So would it be that you then went in and reported
this to

16 the police?

17 A. Yes, we did.

18 Q. All right. Let's talk a bit about the role of the
jury, of

19 course, you know, not only from what we've talked about
but

20 from your own experience in a case.

21 A. Yes.

22 Q. And do you know in the case in which you -- the
jury on

23 which you served found somebody guilty of drunk
driving, what

24 the sentence was?

25 A. The gentleman lost his driver's license for an
extended

Juror No. 699 – Voir Dire

1 period of time, and he was given a fine.

2 Q. How did you find that out? I mean, did the judge
sentence
3 him right then and there?

4 A. I think so. Because I knew what his sentence was.

5 Q. I mean, with you there? I mean, with the jury in
the box?
6 Sometimes it happens that way.

7 A. We must have been, because I do remember that he
lost his
8 license.

9 Q. Well, now, ordinarily sentencing decisions don't
involve
10 the jury, as I trust you may be aware. And when the
jury has
11 reached its decision -- of course, if it's not guilty,
that's
12 the end of it. But if it's guilty, then ordinarily the
matter
13 is turned back to a judge for deciding the sentence.

The jury
14 goes home. And then before the judge determines the
sentence
15 appropriate to the particular person, more information
is
16 collected about the circumstances of the offense and
also about

17 the defendant, things that relate uniquely to the
defendant
18 concerning his or her life, where born and raised,

general

19 background, employment history, actually some of the
same
20 things we ask of jurors and -- because all of us have
21 differences and those things that make us unique
individual
22 human beings.

23 And then all that is presented to the court
along with
24 arguments by the prosecution and the defense, and the
judge
25 makes a decision that is particular to that person and
that

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1 offense. And that becomes the sentence.
2 And as I say, the jury is not involved in that
3 normally in criminal trials. The jury is told that you
may not
4 consider punishment in any way in deciding whether the
evidence
5 shows guilt beyond a reasonable doubt. You follow me
on that?
6 A. Yes, I do.
7 Q. Now, it is different in a case under federal law --
and
8 that's where we are here, in the Federal Court, under
federal
9 statutes, because with the crimes charged in this case

under

10 the statutes that are involved, the possibility of a
sentence
11 to death or a sentence to prison for life without the
12 possibility of ever being released is available. And
that's a
13 decision that we don't leave to judges. That's a
decision that
14 goes to juries under the Federal Court system.

15 But, of course, the jury can't consider that
in
16 deciding the question of whether the evidence shows
guilt
17 beyond a reasonable doubt, because this case and cases
like it
18 are no different in that respect. You can't consider
19 punishment in deciding whether the evidence proves
guilt.

20 Accepted?

21 A. I do.

22 Q. Okay. But then if there is a guilty verdict,
punishment

23 has to be considered and even decided by the jury. And
it is

24 for this reason that we ask you questions in the
questionnaire

25 about your attitudes and opinions concerning the
possible

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of
you will
1 punishment of life in prison without the possibility
2 release and death, and that's on pages 28 and 29. If
3 turn to those pages and please review what you wrote.

4 Do you have it in mind?

5 A. Yes.

answer to
6 Q. And there is -- page 29, there is your one-word
7 the question over there.

you a
8 Okay. Now, I want to review with you and ask
9 want to few questions to expand on these answers; and then I

10 talk with you about the procedure that's involved in a
11 talking with punishment decision, penalty decision. But before

what you
12 you about the law at all, we want to talk a bit about

first
13 think coming in, so to speak. And as I understand it

religious
14 because of the answer on page 29, you don't have any

your
15 beliefs or political or moral beliefs that would affect

life in
16 ability to make a decision about the death penalty or

17 prison.

18 A. That's correct.

19 Q. And then we asked you on page 28 in these four

questions, A

20 through D, to tell us something about your view about
when the

21 penalty of life in prison without the possibility of
release

22 should ever be imposed. And you gave us an answer,
"Depending

23 on the crime."

24 A. Right.

25 Q. Now, tell us what you mean. Well, first of all,
are your

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1 answers today the same here? Maybe you've thought
about this

2 some more since that time, but is this essentially what
you're

3 thinking right now?

4 A. I still feel the same.

5 Q. Okay. And where you say, "depending on the crime,"
are

6 there certain categories of crime that you believe
should be

7 punished with such a sentence to life without release?

8 A. Yes, I do.

9 Q. And what -- please tell us in your own words what
types of

10 crime you think about for that sentence.

life 11 A. For punishment -- you're speaking of punishment for

12 without possibility of release?

13 Q. Yes. That's the question.

or 14 A. I think when a criminal has a long record of crimes

could hurt 15 multiple crimes where the person is -- could be --

Perhaps 16 someone in society that they should not be released.

I 17 the death penalty is not appropriate in that case, but

appropriate in 18 believe that life sentence without parole is

sexual 19 certain instances. I think some predatory people,

20 offenders, possibly --

from a 21 Q. So that you're thinking about protection of society

22 repeat crime by the same person. Is that --

some people 23 A. That is a lot of my thought process. There are

prison. 24 that a fair punishment is that they should stay in

answers to 25 Q. Okay. Well, please understand when I suggest

1050

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1 you, I'm not trying to put words in your mouth.

2 A. I understand.

ways
3 Q. I'm trying perhaps to help you express yourself in
4 that we can understand and appreciate.

the
5 Well, let's move down to the next one, because
6 next one asked about sort of the same type of thing but
about
7 when the penalty of death should be imposed.

8 A. Yes.

certain
9 Q. And you tell us here, "It is appropriate again for
10 crimes," and then you say, "where there are no
mitigating
11 circumstances."

12 Now, is that an important qualification?

impose
13 A. It's very difficult to answer. I would not easily
14 the death penalty, but I could do it if I felt that the
person
15 or persons had done this very deliberately, with a long
thought
16 process or even a short thought process; that terrorism
might
17 be involved. I guess when I say mitigating
circumstances, I

18 think of situations like crimes of passion, maybe,
where there
19 is some sort of mitigating circumstance involved.

20 Q. And then C and D, I think, simply expand on that;
but it's

crimes 21 basically the same concept: You're looking at kinds of
mitigate 22 and also whether there is anything which you say can
23 it.
24 A. Exactly.
25 Q. Well, let's talk about what the law is.

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1 A. Yeah.
2 Q. And the procedure that is followed in a case where
the jury 3 is asked to make a life-and-death -- -or-death
decision. And, 4 you know, it's awkward to talk about this when we're
also 5 talking about the presumption of innocence; but I hope
you 6 understand the need to do it, because we can't do this
at some 7 later time. We have to select the people for the jury
for the 8 whole trial even if there is a not guilty verdict.
9 A. I understand.
10 Q. All right. So if there is a guilty verdict in a
case like 11 this, then the jury is asked to participate in another
hearing, 12 a second trial, a penalty phase hearing or trial; and

it

13 proceeds much like the trial itself, in that the
lawyers for
14 the Government, the prosecutors, bring in information
about the
15 circumstances of the crime, things that -- and its
effect on
16 people, things that the Government lawyers rely on to
suggest
17 to the jury that death is the deserved punishment for
the
18 defendant for the crime.

19 The defense, on the other hand, produces
information
20 for the jury's consideration in -- and suggests that
death is
21 not deserved, is not a justified punishment for this
defendant
22 for this crime. We call the things, on the one hand,
23 aggravating factors and the things on the other side
mitigating
24 factors, a word that you've already used here,
"mitigating."

25 And the mitigating factors, of course, will
include in

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1 any case where this is an issue, the punishment, the
things
2 that are unique to the defendant, same kinds of things

that I

3 mentioned that a judge considers in deciding a
punishment in a
4 case that doesn't involve a life-or-death decision, so
things
5 about the individual's background, beliefs, conduct as
separate
6 and apart from the particular offense involved, what
value he
7 may have contributed to society, family relationships,
all
8 those things, so that the jury can judge him as a human
being.

9 And then the jury is told in instructions from
the
10 court after all this is submitted that they must
consider the
11 aggravating factors that have been presented and all of
the
12 mitigating factors that have been presented and weigh
them not
13 in the sense of a scale or not in the sense of an
arithmetic
14 value or even any sort of equation. There is no
formula for
15 this, but to decide with open minds and then
considering what
16 they've heard and seen whether the defendant should
live or
17 die. And the issue really is at bottom for each
individual
18 juror a moral judgment as to the defendant and the
crime.

19 Do you follow me?

20 A. Yes, I do.

21 Q. I know you've listened carefully. The question is:
Can you do that in this case?

23 A. Yes.

24 THE COURT: Then we have some questions to be
asked of you by the lawyers. Please listen to their questions
and

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1 respond to them as you have to me.

2 We'll proceed with Mr. Ryan for the
Government.

3 MR. RYAN: Thank you, your Honor.

4 VOIR DIRE EXAMINATION

5 BY MR. RYAN:

6 Q. Good afternoon.

7 A. Hello.

8 Q. Are you tired?

9 A. A little.

10 Q. Hang on for another half hour or so?

11 A. You bet.

12 Q. I understand that you grew up on a farm. You have
an older

13 sister and a younger brother.

14 A. Yes, I do.

15 Q. And he lives in Minneapolis?

16 A. Yes.

Sudden

17 Q. And one of the books you've read recently is called

18 Prey?

19 A. Yes.

name

20 Q. Is that the series of books that all have the last

21 "Prey"?

22 A. Yes.

23 Q. Lucas Davenport is the detective from Minneapolis?

24 A. Yes.

25 Q. Did your brother give you that?

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1 A. No. The friend who gave me all the others.

you made

2 Q. Now, in the course of your employment, I take it

you

3 decisions with respect, among other things -- I realize

assessments for

4 have many roles, but among other things, risk

5 your company?

6 A. Yes.

7 Q. Are those primarily liability risks?

8 A. They're all kinds of risks, not just liability.

9 Q. What other types of risks are there that you would
deal
10 with?

11 A. I deal with employment risks, employment practices,
12 discriminatory risks. I deal with any kind of risk
that
13 affects the corporation that can produce a pure loss.
I don't
14 get into the benefits side and I don't assess financial
risks,
15 such as hedging.

16 Q. When claims are made that involve your employer, do
you
17 become involved with that process?

18 A. It depends upon what the claim would be. Some
claims, I do
19 get involved in; others are -- are handled by our
insurance
20 companies.

21 Q. If it were an insured risk, you would simply send
the claim
22 over to them for handling?

23 A. Generally, we would send the claim into the
insurance
24 company for handling. We might provide documents as
requested.

25 Q. If it were an uninsured risk, you would be more
personally

Juror No. 699 - Voir Dire

1 involved?

2 A. I would be, yes.

3 Q. I'm not to -- I'm not nearly as familiar, as I can
tell his

4 Honor is, with the company, and I don't want you to say
the

5 name of your company; but approximately how many
employees are

6 employed there?

7 A. About 8,000 worldwide.

8 Q. All right. Now, you grew up on a farm and you met
your

9 husband -- did you meet your husband at the feed store?

10 A. Not exactly.

11 Q. Okay. You knew him before. I saw where you had
mentioned

12 in the questionnaire that he worked at a feed store
when he was

13 in school.

14 A. Yes. And right after we got married.

15 Q. Now, I know that there are a couple of topics here
that are

16 a little sensitive, and I'll apologize to you in
advance; but I

17 would like to touch on just a little bit more, if
you'll bear

18 with me.

19 In the matter that you spoke of involving your
husband

20 some 20 or so years ago, you said the FBI was the
investigating

21 agency?

22 A. That's correct.

23 Q. Am I correct in my understanding?

24 A. Yes.

25 Q. Do you have any judgment about whether they acted

1056

Juror No. 699 - Voir Dire

1 appropriately or inappropriately?

2 A. I think at the time, I thought it was
inappropriate; but as

3 time has passed and I have looked back on it, I realize
that

4 they were doing their job.

5 Q. What was it that happened back at the time that
caused you

6 to think that maybe they had done something
inappropriate?

7 A. Well, no one ever likes to have their husband
accused of

8 anything.

9 Q. Of course not.

10 A. And so that was an issue for me at the time. I
felt

were 11 that -- I didn't think that he was guilty of what they
12 accusing him of; and in retrospect and as I have
matured, I 13 understand that he was.

14 Q. All right. Did he cooperate with law enforcement
in that 15 case?

16 A. Initially, he did not want to. After a time, he
did.

17 Q. Did he provide information to law enforcement about
the 18 crime and about his role in the crime in connection
with his 19 guilty plea?

20 A. I think so. It's hard to remember that far back.

21 Q. I understand. I take it the FBI was not in any way
22 involved with this harassment that took place for a
year or so 23 following this event?

24 A. No, I didn't feel that they were.

25 Q. And did all of this harassment occur after the
events we've

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Juror No. 699 - Voir Dire

1 been speaking of?

2 A. I'm sorry? After?

3 Q. Did this harassment by the local police occur after

the

4 event involving your husband?

5 A. Yes, it did occur after.

Question

6 Q. Now, would you be kind enough to turn to page --

7 96 -- it's on page 21.

8 A. I beg your pardon?

9 Q. Page 21.

10 A. Okay.

to try to

11 Q. I don't want to mention any names here, so I want

certain

12 be as circumspect as I can. But you indicate there a

referring

13 specialization of this lawyer. Do you see what I'm

14 to?

your

15 I take it he does not do that type of work for

16 husband.

17 A. No.

18 Q. He represents your husband in his business affairs?

19 A. Yes, he does.

years ago,

20 Q. Okay. You've also related an event about four

21 you've expressed, that was very frightening for you.

22 A. Yes.

23 Q. And I take it your husband was with you in the car?

24 A. Yes, he was.

25 Q. Was anyone else in the car?

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Juror No. 699 - Voir Dire

1 A. No.

2 Q. Is there anything about that experience that would
cause
3 you to not be in a position to judge this case fairly?

4 A. No.

5 Q. Would that be true with respect to all of the
various life
6 events that you've -- many of which you have expressed
here
7 today but perhaps some we haven't talked to you about
-- do you
8 see anything in your background that would cause you
some
9 concern about your ability to be fair to both the
United States
10 and to Terry Nichols?

11 A. It might cause me to be more fair because I have --
I have
12 been through some of the process, so I -- I think about
it
13 maybe more carefully.

14 Q. And you're speaking of your prior jury service?

15 A. I'm sorry? My prior --

16 Q. Are you speaking of your prior jury service?

17 A. And my prior experiences with the FBI, with -- with

the

18 police department in Sioux City.

19 Q. And when you say "be more fair," could you explain
to me

20 what you mean?

21 A. Well, I think I would have to think about this
whole

22 situation very carefully and weigh it, because having
been

23 through some of my past experiences, I know that things
are not

24 always as they appear on the surface; so you really do
have

25 to -- you have to think about it and you have to listen

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Juror No. 699 - Voir Dire

1 carefully, you have to understand what's happening. So
it --

2 it could be beneficial to me.

3 Q. Do you see any of these experiences as favoring one
party

4 or the other?

5 A. I really don't think so.

6 Q. All right. Thank you.

7 Now, if I could, I'd like to talk to you a bit
8 about -- about the death penalty in this case. Judge
Matsch

9 has already gone over it some, and I'm not going to

belabor the

10 point; but you've expressed in your questionnaire some
types of

11 crimes in which the death penalty might be appropriate.

12 A. Yes.

13 Q. I'm paraphrasing a bit: Crimes of terrorism or
14 premeditated or serial murders.

15 A. Yeah.

16 Q. But you've also indicated that -- you have a belief
that

17 there are times in which mitigating circumstances can
alter a

18 decision in a case and make the punishment less harsh.

19 A. Yes.

20 Q. Am I correct?

21 A. That's correct.

22 Q. And you understand -- did you understand the
difference

23 between the way this trial would be conducted and the
DUI trial

24 that you had, in that after the guilty verdict here
we're going

25 to a whole new trial, where new witnesses and new
exhibits will

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Juror No. 699 - Voir Dire

1 be brought forward?

we're 2 MR. WOODS: I object to the statement that
3 "going to" do that.
4 THE COURT: Yes. Sustained.
5 MR. RYAN: Excuse me.
6 BY MR. RYAN:
7 Q. If there is a guilty verdict, that would be the
process.
8 A. Yes, I understand that.
9 Q. And you used the word "mitigating circumstances" in
your
10 questionnaire, and I was wondering -- I mean one of the
11 examples you gave was a crime of passion. Did you have
in mind
12 any other types of mitigating circumstances?
13 A. No, not right now. I can't think of anything, I
guess.
14 Q. But of course, one of the problems with that is
that you
15 haven't been instructed on what they are.
16 A. No, and that's my problem. I don't know what that
is.
17 Q. Can you envision that there might be any number of
18 different types of mitigating circumstances that could
come
19 into play in the case?
20 A. Yes.
21 Q. I believe you indicated in the situation about 20
years
22 ago, your husband was involved in an event in which he

had a

23 relatively minor role?

24 A. That's correct.

25 Q. So can you envision a situation where one
mitigating factor

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Juror No. 699 - Voir Dire

1 might have to do with the type of role the person had?

2 A. Yes.

3 Q. Might have a very major participation or relatively
minor

4 participation.

5 A. Yes.

6 Q. Can you envision mitigating circumstances that
might deal

7 with one's mental capacity?

8 A. Yes.

9 Q. Or his family life?

10 A. Yes.

11 Q. His remorse?

12 A. Yes.

13 Q. Can you see that it would be almost impossible to
determine

14 what a sentence should be in any given case before
hearing any

15 of the evidence?

16 A. Oh, absolutely.

17 Q. Because you don't know what that mitigation will
be, do

18 you?

19 A. No, I don't.

20 Q. And one of the things that has been said in this
courtroom

21 before you came in are that there are people -- some
people at

22 one extreme who would say, I'm going to impose the
death

23 penalty on a person if they commit murder, and I don't
care

24 what the facts are, I don't care what the evidence is,
I don't

25 care what the mitigation is. Okay. That's one
extreme. Would

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Juror No. 699 - Voir Dire

1 you recognize that as an extreme view?

2 A. That would be an extreme view to me.

3 Q. On the other hand, there are people who say, I'm
not going

4 to impose the death penalty, I don't care what it is.
And

5 that's another extreme?

6 A. Yes, it is.

7 Q. And as I understand where you are, is you're
somewhere here

8 in the middle?

9 A. I think that's a fair assessment.

10 Q. Okay. So no matter how heinous the crime, no
matter how

11 many people were murdered, you've got to wait and
listen to all

12 the evidence, both the evidence of aggravation that the

13 Government will introduce but also the evidence of
mitigation

14 that the defense might introduce. Do you see that as

15 important?

16 A. Yes.

17 Q. And can you do that?

18 A. Yes.

19 MR. RYAN: Thank you for answering my
questions.

20 THE COURT: Mr. Woods?

21 MR. WOODS: Thank you, your Honor.

22 VOIR DIRE EXAMINATION

23 BY MR. WOODS:

24 Q. Good afternoon.

25 A. Good afternoon.

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Juror No. 699 – Voir Dire

1 Q. As the Court introduced me, my name is Ron Woods,
and I'm

represent 2 one of the attorneys that was asked by the court to

out at 3 Terry Nichols in this case. We met a couple weeks ago

4 Jeffco Fairgrounds. Is that correct?

5 A. Yes, we did.

to take 6 Q. You grew up on a farm, and you continued apparently

have 7 magazines like Farm and Ranch, Country Living. Do you

8 some desire to return to the farm?

Those 9 A. No, I don't have a desire to return to the farm.

10 magazines are given to me by my parents --

11 Q. Okay.

12 A. -- as birthday and Christmas gifts.

13 Q. Okay. So you're in the city to stay, I take it?

14 A. I think so, yes.

county farm 15 Q. Okay. Now, you worked at the farm bureau, the

years; right? 16 bureau for a short while. Well, actually several

17 A. Yes. Eleven years.

bureau 18 Q. Right. Were part of your duties there at the farm

the 19 assisting the local farmers by providing them with all

publications and 20 information that the government provides, the

21 things like that? Was that one of the natures of the

farm

22 bureau duty?

23 A. No. My responsibilities really centered more on
the

24 insurance side.

25 Q. Okay.

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Juror No. 699 – Voir Dire

1 A. And also, I did help with the administration on the
pure

2 farm bureau side.

3 Q. All right.

4 A. But I don't remember the government publications at
all.

5 Q. That wasn't part of that farm bureau's activities
in giving

6 publications to the farmers who might inquire about
anything

7 farm-related?

8 A. That's the county extension that normally does
that, so I

9 wasn't involved in that.

10 Q. Okay. Okay. When you were on the farm, did you
have any

11 familiarity with fertilizer, growing corn and soybeans,
as I

12 understand it, wheat?

13 A. Only that I knew they put fertilizer on. That was

my total

14 extent.

15 Q. Okay. Was it purchased and brought out in trucks,
or was

16 it -- what kind of fertilizer was used, if you recall?

17 A. I don't recall.

18 Q. Okay. You say you raised cattle?

19 A. Yes.

20 Q. Was the fertilizer from the cattle, or was it
commercial

21 fertilizer?

22 A. I think it was commercial.

23 Q. Okay. Do you know if it was liquid, or solid?

24 A. I honestly don't remember.

25 Q. Okay. Good. It's been a while.

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Juror No. 699 - Voir Dire

1 A. Yes.

2 Q. All right. When you were on the farm, did you have
any

3 experience with either your parents or the hired help
or anyone

4 using small explosives to clear the land of tree stumps
or

5 rocks or anything of that nature?

6 A. No.

7 Q. All right. Have you heard of that being done in
farm
8 country?

9 A. I'm sure it has.

10 Q. Or perhaps laying irrigation ditches? Have you
heard of
11 explosives being used for that in farm country?

12 A. It wasn't on our farm.

13 Q. Okay.

14 THE COURT: They don't do a lot of irrigation
in Iowa,
15 you know. They've got rainfall out there.

16 JUROR: We dug wells.

17 BY MR. WOODS:

18 Q. So then were perhaps ponds built by using
explosives to
19 clear land to gather water for forming ponds? Did you
ever
20 hear of that in your experience at the farm bureau or
on the
21 farm?

22 A. No.

23 MR. WOODS: Okay. Thank you, your Honor. I
wasn't
24 familiar with Iowa.

25 BY MR. WOODS:

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1 Q. I'd like to talk to you now about the publicity
concerning

2 this case. And on page 33 of your questionnaire,
you've

3 indicated on Question 144 -- "If you've heard or read
anything

4 about the Oklahoma City bombing, please indicate where
you

5 heard or read about it."

6 And you gave the sources as TV news and radio
news and

7 newspaper, conversations, and heard other people
discussing the

8 case?

9 A. That's correct.

10 Q. Okay. Can you give me an idea about who you've had
11 conversations with concerning the case?

12 A. Well, I don't know if I can give you anyone
specifically.

13 I mean, this has been going on for a long time. Are we
talking

14 about the whole thing --

15 Q. I don't need names. Right, it's been going on for
16 two-and-a-half years. I don't need names. Was it co-
workers

17 or family or friends?

18 A. I think all of that at sometime was discussed.

19 Q. In your work situation, do you work in an office by
20 yourself, or are you in sort of an area where other

people are

21 around you in cubicles or desks?

22 A. I'm in an office, but I have employees that report
to me

23 that are in cubicles.

24 Q. Okay. Do you recall hearing the verdict on the
McVeigh

25 trial?

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Juror No. 699 – Voir Dire

1 A. Yes, do I.

2 Q. Where were you when you heard the verdict?

3 A. I think I was in my office.

4 Q. And how did you hear about it?

5 A. Someone came into my office and told me that the
verdict

6 had been rendered.

7 Q. Do you have a radio or television in your office?

8 A. I have a radio. It's rarely on.

9 Q. Did you happen to tune into the radio or TV
anywhere else

10 in the office that day to watch the return of the
verdict and

11 the reaction of the people outside the courthouse?

12 A. No, I didn't.

13 Q. Okay. Do you recall seeing the newspaper accounts
the next

14 day and showing all the photos surrounding the
courthouse?

15 A. I remember seeing that -- I don't remember if it
was on TV

16 or if it was on the news, but I did see the
photographs.

17 Q. What do you recall about that?

18 A. I remember the families being jubilant about the
verdict.

19 I remember -- I don't know if it was a jury member. I
remember

20 someone -- I remember the lady had a pink dress on and
she was

21 very happy about the verdict. And other than that, I
don't

22 recall a lot more than that.

23 Q. All right. When you mentioned a juror, did you
happen to

24 see the news conferences that the jurors held after the

25 verdict?

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Juror No. 699 - Voir Dire

1 A. Yes, I did.

2 Q. All right. What impression did you get from that?

3 A. The impression that I got was that they had
deliberated

4 very carefully to reach their decision. Other than
that, I

5 don't remember any other impressions.

with 6 Q. All right. When you had discussions either at --

any 7 co-workers or with your family or friends, was there

appropriate 8 general consensus as to the propriety or the

9 verdict there as to the punishment?

10 A. You mean after the verdict was rendered?

11 Q. Yes, ma'am.

12 A. As to the appropriateness of the sentence?

13 Q. Yes.

was 14 A. Many of my colleagues felt that the -- the sentence

15 appropriate.

of 16 Q. Okay. Did you ever hear anybody within your circle

the 17 co-workers or friends or family say that that was not

18 appropriate verdict?

19 A. Yes.

20 Q. Okay. And was it amongst your co-workers?

21 A. Yes, it was.

22 Q. Anybody in your family have that opinion?

23 A. Yes.

24 Q. That it was not the appropriate verdict?

25 A. Yes.

Juror No. 699 - Voir Dire

got
anybody in
not the

1 Q. All right. Anybody in your friends, your -- we've
2 co-workers, we've got family and friends. Was there
3 your friends' group that had the opinion that it was
4 appropriate verdict?

was not

5 A. I don't recall that any of my friends felt that it
6 appropriate.

Monday -- the
following
shows, you
you
getting up

7 Q. Okay. Did you happen to see on the following
8 verdict came in like on a Friday; and then on the
9 Monday, some of the jurors were on the national talk
10 know, those shows that come on at 7 in the morning. Do
11 watch television then, in the morning when you're
12 and ready to go to work?

13 A. I rarely have time.

America,"

14 Q. I think it's the "Today" show and "Good Morning
15 those type of shows. Do you watch those at all in the
morning?

listening,

16 A. I turn them on, but I don't watch them. I'm
17 usually.

18 Q. Right. Right. Do you recall hearing -- or
appearances by

19 the jurors on those programs that following Monday?

20 A. I don't know if it was the following Monday, but I
know

21 that there was a juror that did appear on a -- some
kind of a

22 news show. I remember seeing that person, and it was a
woman.

23 Q. What do you recall was the substance of her
discussion?

24 A. I remember that she felt that the preponderance of
evidence

25 was clear and that they were very comfortable with
their

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1 verdict. And I don't remember much more than that.

2 Q. Okay. From your exposure over these past two
years, do you

3 recall the number of people that were killed in the
bombing?

4 A. The number 168 is in my mind, and I don't know if
that's

5 correct or not.

6 Q. All right. Do you recall whether or not there were
any

7 children killed?

8 A. Yes.

9 Q. In the bombing?
10 A. I recall that.
11 Q. And do you recall that was -- why there were
children
12 involved?
13 A. There was a day-care center, I believe, in the
building.
14 Q. All right. Do you recall the number of children
that were
15 killed?
16 A. No.
17 Q. Do you recall what type of bomb that it supposedly
was?
18 A. I think it was a bomb made of fertilizer or the
ingredients
19 that make up fertilizer.
20 Q. And you recall how that bomb supposedly was placed
at the
21 building?
22 A. Yes, I think so.
23 Q. What's your recollection from that?
24 A. My recollection is that it was in a Ryder truck.
25 Q. Do you recall anything about the arrest of Tim
McVeigh?

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1 A. He was arrested on a highway. That's -- that's all

I

2 really remember.

3 Q. Do you recall any TV images of him being placed in
federal
4 custody?

5 A. Yes. Leaving something, somewhere with an orange
suit on
6 surrounded by people. That's the only vision that I
have in my
7 mind.

8 Q. Okay. And surrounded by people: Did you notice
any
9 insignia on these people indicating who they were?

10 A. No.

11 Q. What do you recall from the publicity that you
heard and
12 read about where Mr. Nichols was on the day of the
bombing?

13 A. I haven't got a clue.

14 Q. Okay. Do you have any information from what you've
read
15 and heard as to how he went into federal custody, how
he became
16 in the custody of the federal authorities?

17 A. I don't know.

18 Q. Now, you indicated on the same page there, Question
146,
19 about how closely you followed news reports about any
criminal
20 trials or criminal cases or in the last five years; and
you

how
21 just gave O. J. Simpson's case. What's your opinion of
22 that one was handled?
23 A. Poorly.
24 Q. In which -- in what manner?
25 A. I felt that the judge didn't have control over the

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a trial
-- I
but
it.
as to
side?
you like
Jury;
21 courtroom, and I didn't feel that -- I felt that it was
22 that was conducted for publicity, rather than for maybe
23 don't think a fair verdict is the right way to say it,
24 there was way too much entertainment associated with
25 Q. Did you assess any responsibility for that judgment
either side, either the government side or the defense
A. I felt it was the judge's responsibility.
Q. All right. Now, you've related to the Judge that
to read John Grisham books and you listed one, Runaway
and I think you've read other ones, too, you mentioned.
A. Yes, I have.
Q. What opinion have you gotten from those books as to

13 lawyers?

14 A. I think I regard those books as purely
entertainment. I

15 don't think I try to decide anything about an attorney
from

16 reading those books.

17 Q. Not about any particular attorney, but I'm just
speaking of

18 lawyers in general. Have you formed any opinion based
on

19 having read the Grisham books?

20 A. No.

21 Q. Okay. Have you formed any opinion after seeing the
O. J.

22 Simpson trial and watching the lawyers on both sides in
that

23 case? Have you formed any opinion about lawyers in
general?

24 A. Lawyers in general?

25 Q. Uh-huh.

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1 A. Well, I have an opinion about those lawyers in
particular

2 but not lawyers in general.

3 Q. Okay. When you say lawyers in particular, I don't

4 particularly want to address individual names; but do
you have

you saw 5 any particular opinion about prosecutors based on what

6 in the O. J. case?

7 A. Not in general.

you have 8 Q. And the same question as to defense attorneys: Do

what 9 any particular opinion about defense attorneys based on

10 you observed in the O. J. case?

11 A. No.

questions 12 Q. What I'd like to address with you finally is the

And the 13 concerning the death penalty, and that's on page 28.

14 Judge touched briefly on letter B.

15 A. Yes.

circumstances." As 16 Q. But he stopped right after "mitigating

premeditation 17 I understand, you went on to explain that where

that is 18 exists or there is heinous crimes or serial killers --

penalty of 19 in answer to, "What is your view as to whether the

for any 20 death should ever be imposed as a form of punishment

21 crime?"

22 A. Yes.

exists"? 23 Q. Now, what do you mean by "when premeditation

24 A. I feel as though if someone has very carefully
thought out
25 the process and intends deliberately to murder somebody
or more

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1 than one person that that is premeditation very clearly
and
2 that the death penalty should apply to that.

3 Q. All right. And you went on to further define
"heinous
4 crimes" or "serial killers." And I take it "serial
killers"
5 means more than one killing?

6 A. Yes.

7 Q. And would that apply to multiple murders, also,
where there
8 is more than one person killed at one time?

9 A. Yes.

10 Q. Okay. Now, you then distinguish in C and D, "In
what kind
11 of cases is it appropriate," in C, "if ever, to impose
a
12 punishment of life in prison without the possibility of
ever
13 being released?"

14 And you explained that about where the person
has a
15 long record; that is, repeat crimes. But you also say,

"In

16 murder but," parentheses, "(not premeditated)." So you
are

17 making that distinction, there, where there are
murders, where

18 there is not premeditation.

19 A. Yes.

20 Q. Now, was that what you were speaking of earlier,
like

21 crimes of passion?

22 A. Yes.

23 Q. Where someone becomes inflamed because someone has
done

24 something to them, they lash out and there is a murder?

25 A. Yes.

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1 Q. Okay. Sexual offenders, those who cannot be
rehabilitated

2 and are of danger to the public. Those are the kinds
that you

3 feel that life in prison is the appropriate sentence.
Is that

4 correct?

5 A. It could be the appropriate sentence, yes.

6 Q. And then in D, "In what kinds of cases is it
appropriate,

7 if ever, to impose a punishment of death?"

8 And you state, "Terrorism, premeditation
murder, and

9 serial killers."

10 Now, what do you define as terrorism?

11 A. I think of the bombing of the World Trade Center in
12 New York, where there was an obvious intent to murder
people or

13 hurt people.

14 I would say the Oklahoma bombing would be an
act of
15 terrorism in my mind, where if the case was proven to
me, the
16 death penalty would be appropriate.

17 Q. All right. And then you go further and say,
"Premeditation
18 of murder or serial killers."

19 A. Right.

20 Q. Serial killers being more than one.

21 Are you saying that where there is
premeditation
22 involved -- that is, somebody intended the crime, they
thought
23 about it, they planned it and it was deliberate -- are
you
24 saying that in those crimes that the death penalty is
the
25 appropriate verdict?

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1 A. I believe it is.

is that

2 Q. And not life in prison for those type of murders;

3 correct?

think you

4 A. That's a difficult question to answer, because I

that. And

5 have to hear the evidence and you have to understand

6 for me to just say yes or no, it's very difficult.

7 Q. Right.

it is.

8 A. But as a short answer, I would say that I believe

crimes where

9 Q. That it is the appropriate sentence for those

involved?

10 there is premeditation involved or there is terrorism

11 A. Yes.

Center and

12 Q. And you gave the example of the New York Trade

than one

13 the Oklahoma City bombing case, where there is more

14 person killed, obviously.

is

15 A. Well, and if it's premeditation and only one person

16 killed, I think that still that would be an appropriate

17 sentence.

in

18 Q. Okay. The death penalty for that case but not life

19 prison for that case, where there was premeditation and

just

20 one killed?

I think

21 A. I -- again, I would have to hear the evidence; but

the

22 that if it was premeditated and the intent was to kill

is

23 person and it happened, then I think the death sentence

24 appropriate.

there

25 Q. All right. Let me hit it one further question: If

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Juror No. 699 - Voir Dire

1 is a case where it is proven that there was
premeditation and

2 that there was intent and deliberateness in the murder
and it

3 happened to be more than one person killed, are you
telling us

4 that the death penalty is the appropriate verdict, as
opposed

5 to the sentence of life in prison?

6 MR. MACKEY: Judge, objection.

7 THE COURT: Overruled.

8 JUROR: Could you give me your question again,
please.

9 BY MR. WOODS:

10 Q. Sure. Are you saying that in a case where it's
proven that

11 the defendant intentionally meant to kill someone,
there was
12 premeditation, intent, and deliberateness and there was
more
13 than one person killed -- and you gave the examples of
14 terrorism -- where it's been proven and you're in a
punishment
15 hearing of those kind of cases, are you telling us that
you
16 feel that the death penalty is the verdict -- the
appropriate
17 verdict for that type of crime and not life in prison
without
18 release?
19 A. You said that it was proven.
20 Q. Yes.
21 A. Then I believe the death sentence is appropriate.
22 Q. All right. Now, is that to the exclusion of life
in prison
23 without release on those type of crimes?
24 A. If I had to choose between the two and it's been
proven all
25 of the things that you just said, then I believe that
the death

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1 penalty is the appropriate sentence.

2 MR. WOODS: All right. Excuse me one second.

3 BY MR. WOODS:

4 Q. And then one further question. In those type of
cases

5 where there is terrorism involved -- and we've defined

6 terrorism -- would you be able to consider the
defendant's

7 background and would that enter into your decision
about the

8 punishment?

9 A. We're speaking again where it's proven?

10 Q. Yes, ma'am.

11 A. I would certainly listen to what was presented to
me in the

12 sentencing; but if there wasn't a circumstance there
that said

13 to me that I should change my mind, then I would still
say that

14 the death penalty is appropriate.

15 Q. All right. And when you say if there is not a
circumstance

16 there to change your mind, of course, we're
theoretically --

17 we've already gotten past the guilt or innocence. The
jury has

18 found the person guilty of that type of crime,
premeditation,

19 intent, deliberateness, and it's an act of terrorism.
What

20 kind of circumstances are you referring to that might
change

21 your mind away from a death penalty as the appropriate

verdict?

22 A. That's very difficult to answer, because I don't
know what

23 I'm going to hear.

24 Q. Okay.

25 A. I need to hear what it is that you would say to me
to make

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Juror No. 699 – Voir Dire

1 me change my mind; but my attitude would be that with

2 everything that's been proven to me and it is proven,
my

3 sentence would be the death penalty.

4 Q. All right. And can you imagine any type of
circumstance

5 that theoretically someone could bring to you to get
you off of

6 that opinion as to that appropriate punishment?

7 MR. MACKEY: Judge, objection.

8 THE COURT: Let me offer a question or two
that may

9 help.

10 MR. WOODS: Thank you, your Honor.

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. You keep saying "if it was proven," and then
"change your

One 14 mind." Remember, I talked about two different trials.
about 15 would be if it's proven; and by the "it," we're talking
are 16 whether the defendant participated in the events that
17 charged in the indictment.

18 A. Yes, sir.

19 Q. And that's, you know -- you don't ever talk about
doubt. 20 punishment until that's proven beyond a reasonable

are you 21 Then when you say about changing your mind,
result? 22 talking about changing your mind about the guilty

if I 23 A. No. As I understood his question, he was asking me
had gone 24 would change my mind about the death penalty after we
25 through the first phase of the trial.

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Juror No. 699 - Voir Dire

1 Q. Yes.

2 A. And it was proven that the person was guilty.

3 Q. Yes.

guilty of 4 A. My opinion would be if this person was proven

the 5 these crimes that we just talked about, I would impose

6 death penalty; but then he's starting to talk about,
well, what

7 could change my mind; and I'm trying to be fair and
say, well,

8 I would listen, but I really can't think of anything
right now

9 that would change my mind, not having heard it.

10 Q. Well, you know, it is -- we have to be talking in
what-ifs

11 and all that because we don't know what the evidence is
going

12 to be.

13 A. I understand.

14 Q. Even on the guilt phase of the case. And you
recognize

15 that there can be -- you mentioned Oklahoma bombing as
a -- in

16 your view, a terrorist crime.

17 A. Yes.

18 Q. And the kind that justifies death as the
appropriate

19 sentence. That's what you've been saying.

20 A. Yes.

21 Q. And I guess the question is, then, would you -- you
22 recognize there can be differences in roles that people
play in

23 an event like that?

24 A. Yes.

25 Q. Yes?

Juror No. 699 - Voir Dire

1 A. Yes, I do.

2 Q. Is that a factor at all in your mind as to what
role a
3 person played in an event that resulted in that kind of
death
4 and destruction in terms of a major role, a minor role
--

5 A. Yes.

6 Q. -- delivery of the bomb vs. some other aspects of
the case?

7 A. Yes.

8 Q. Would that affect your sentence?

9 A. Yes, it could.

10 Q. And, you know, I guess what we're asking is -- and
there
11 isn't -- maybe we ought to just go to it instead of
going
12 around about it all the time. If you -- if you were on
a jury
13 and the jury found Mr. Nichols had some role to play in
the

14 Oklahoma City bombing, would you say automatically
there should
15 be a death sentence on him?

16 A. Automatically?

17 Q. Yes. I mean, that that's enough -- that crime --
and

crime 18 you've been talking about categories of crime -- that

background or 19 deserves the death punishment regardless of his

question 20 circumstances or the role that he played. Is the

21 clear to you?

22 A. I'm thinking about it.

understood what 23 Q. Okay. Well, I just wanted to make sure you

24 I asked you.

guilty, 25 A. You're saying to me if Mr. Nichols is proven

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Juror No. 699 - Voir Dire

there, 1 irrespective of what percentage of his involvement was

2 would I find him -- would I impose the death penalty?

3 Q. Yes.

4 A. Yes.

question. 5 THE COURT: All right. You answered the

6 MR. WOODS: Thank you, your Honor.

answering the 7 Thank you very much. We appreciate your

8 questions.

on 9 THE COURT: We're not deciding as we go along

bit 10 people and their service in the case, so bear with us a

11 longer, if you will.

12 JUROR: I will.

getting 13 THE COURT: You're excused for now, and we'll

going to 14 back in touch with you with respect to whether you're

understand 15 be asked to serve in the case; and of course, please

the 16 that this means that you have to conduct yourself on

to do 17 assumption you'll have the responsibility. So continue

watching 18 that which you've been doing, being careful about

case and 19 anything, news or otherwise, that could relate to the

20 in your discussion with others.

21 Will you do that for us?

22 JUROR: I will.

23 THE COURT: Thank you. You are now excused.

24 JUROR: Thank you.

25 (Juror out at 5:02 p.m.)

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resume 1 THE COURT: All right. We're at 5:00. We'll

2 at 9:00 tomorrow morning.

3 (Recess at 5:02 p.m.)

4 * * * * *

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REPORTERS' CERTIFICATE

19
transcript from

We certify that the foregoing is a correct

20
Dated

the record of proceedings in the above-entitled matter.

21 at Denver, Colorado, this 2d day of October, 1997.

22

23

24

Paul Zuckerman

25

Kara Spitler