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1211

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9 MICHAEL TIGAR, RONALD WOODS, ADAM THURSCHELL,  
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11 1308, Denver, Colorado, 80203, appearing for Defendant  
Nichols.

12

\* \* \* \* \*

13

PROCEEDINGS

14

(In open court at 1:35 p.m.)

15

THE COURT: Be seated, please.

16

that . . .

Let's see. I have 601 as the next. Is

17

and take

Okay. If you'll please raise your right hand

18

the oath from the clerk.

19

(Juror No. 601 affirmed.)

20

THE COURTROOM DEPUTY: Thank you.

21

move

THE COURT: Please be seated. The chair will

22

you are

around a little, swivel around, so however you're --

23

microphone

most comfortable, you can adjust it. And we have a

24

there, too, but you don't have to speak right into it.

25

Anywhere near it ought to work.

1212

1

JUROR: Okay.

2

VOIR DIRE EXAMINATION

3

BY THE COURT:

4

as a

Q. And you understand that you're here this afternoon

5

result of a summons that you got a while back, which

was as a

6 result of a chance process by a computer where your  
name came

7 up as one who may serve as a juror in the trial to be  
conducted

8 in this courtroom of the United States against Terry  
Lynn

9 Nichols?

10 A. Yes.

11 Q. That case. And after you got the summons, you were  
then at

12 a later time directed to come out to the Jefferson  
County

13 Fairgrounds on September the 17th, you and others. You  
did.

14 And at that time and place, I met with you and the  
other

15 members of the jury panel who were there and introduced  
myself

16 and explained something about what we were doing and  
also

17 introduced the lawyers and Mr. Nichols. So let me do  
that

18 again so you know who's here.

19 You may recall that lawyers for the  
Government,

20 Mr. Lawrence Mackey, who is here again, was there; Ms.  
Beth

21 Wilkinson. And now we have in addition, Mr. Patrick  
Ryan and

22 Mr. Geoffrey Mearns, who are here as additional lawyers  
for the

and 23 Government. You also recall meeting Mr. Michael Tigar  
Nichols. 24 Mr. Ronald Woods, attorneys for Terry Nichols, and Mr.

25 And then we gave you a questionnaire to fill  
out. You

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1 did that. And we have, as I said we would, obtained  
copies of 2 your answers. They have been given to the lawyers and  
to me 3 for the sole purpose of what we're doing now and have  
not been 4 released publicly and your name is not released  
publicly.

5 You're identified here on our record by a number.

6 We also have taken steps to try to protect  
your

7 privacy, knowing that, as you well know, some of these  
8 questions asked things that are quite personal in  
nature. And

9 we appreciate your answering these questions. I'm sure  
you

10 understand why we have to ask them. But, you know,  
we'll

11 protect you as much as we can. That goes even to  
making sure

12 that as you come in and out of the building, you're not  
subject

all by 13 to photographers or people identifying you. So that is  
be 14 way of recognizing that you have personal interests to  
15 protected.

and then 16 Now, we are going to ask you -- first I will  
you 17 the lawyers -- one of the lawyers on each side will ask  
asking 18 some additional questions, some of which will be simply  
already 19 you to explain or expand on some of the things you've  
not going 20 said here. Some may be a little different. So we're  
21 to go through everything all over again.

were 22 Taking you back in memory to the time that you  
I trust, 23 out there at the auditorium building, you will recall,  
including the 24 that I explained the background of the case and  
City, 25 fact that there was the -- an explosion in Oklahoma

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injuries 1 Oklahoma, on April 19 of 1995, resulting in deaths and  
being 2 of people in it and resulting, also, then, in charges

3 filed in the court there in Oklahoma City, Federal  
Court, by  
4 way of what's called an indictment in which the  
Government  
5 alleged that a man named Timothy McVeigh and Terry  
Nichols and  
6 other persons not named in the indictment were accused  
of  
7 entering into a conspiracy or a plan or agreement to do  
that  
8 bombing and that they also did things to carry it out.  
And it  
9 is also alleged that they murdered eight people who  
were law  
10 enforcement agents in the building in the course of the  
11 explosion.

12 Now, I also explained that the case was moved  
over  
13 here to Denver, Colorado; that in addition, separate  
trials  
14 were ordered for both -- for each of Mr. McVeigh and  
15 Mr. Nichols. There has already been a trial of Mr.  
McVeigh.

16 And I explained the outcome of that and then said that  
the fact  
17 that there has been that trial and the outcome of it  
cannot be  
18 considered now in considering the evidence, whatever it  
is, as  
19 it may relate to Mr. Nichols. You understand all that,  
I'm  
20 sure?

21 A. Yes.  
22 Q. And the only reason that I'm repeating it now is so  
we have  
23 kind of a baseline to work from. I also said that you  
must  
24 recognize -- you and all members of the jury panel --  
some  
25 fundamental principles of the Constitution as it  
applies to

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1 criminal trials. And that includes that any person  
charged  
2 with a crime in this country under the Constitution,  
regardless  
3 of who that person may be or what the charges may be,  
is  
4 presumed to be innocent of those charges and that a  
defendant  
5 pleading not guilty is simply saying to the Government,  
Come in  
6 and prove what you've charged. And to the Court. And  
it is  
7 then up to the prosecutors representing the Government  
to come  
8 forward with the evidence that is relied on in support  
of the  
9 charges.  
10 No defendant who is charged has any burden or  
duty of

11 proving anything, certainly doesn't have to prove  
himself or  
12 herself not guilty, doesn't have to offer any evidence,  
doesn't  
13 have to testify as a witness. Can -- a defendant can  
simply  
14 remain silent and challenge the Government's evidence  
in court  
15 by objections to the admissibility of evidence and by  
16 cross-examination of witnesses called. Understand?  
17 A. Yes.  
18 Q. Now, you have to answer aloud so that we --  
19 A. Sorry.  
20 Q. -- can record your answers. And a part of that is  
that, of  
21 course, the Constitution provides that people don't  
have to do  
22 anything to incriminate themselves and they don't have  
to  
23 testify, and no jury can consider that. In a case in  
which a  
24 defendant doesn't testify or even offer any evidence or  
both,  
25 the jury's always instructed they cannot consider that  
fact in

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1 discussing the case. Do you understand that?  
2 A. Yes.

3 Q. And not only does the Government have the burden of  
4 bringing the evidence in, they have to persuade the  
jury by  
5 that evidence, and the jury must limit consideration of  
the  
6 issues to the evidence and the law heard at the trial  
that the  
7 defendant has been proved by that evidence guilty  
beyond a  
8 reasonable doubt, which means more than just, well,  
probably  
9 true, but beyond a reasonable doubt. That's part of  
this  
10 protection under the Constitution. And therefore, what  
it  
11 means in practical terms is that if, after hearing the  
case and  
12 considering the evidence and after discussing it among  
13 themselves, the jurors are left with a reasonable doubt  
as to  
14 whether the evidence shows the defendant guilty of the  
15 particular crimes charged, the duty of the jury is to  
find the  
16 defendant not guilty. Are you clear on that?

17 A. Yes.

18 Q. Do you accept that as fundamental principles of  
law?

19 A. Yes.

20 Q. Are you ready to follow that as the law if you  
served on  
21 this jury in this case?

22 A. Yes.

23 Q. Now, turn, if you will, to the questionnaire. You  
have it

24 there before you, I hope. Do you?

25 A. Yes, I do.

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Juror No. 601 - Voir Dire

1 Q. All right. I want to ask you a few things about  
the

2 answers that you gave. As I understand, you were born  
here in

3 Denver?

4 A. I was.

5 Q. And have lived here ever since.

6 A. The majority of my life, yes.

7 Q. Now, there was a time apparently when you were over  
in

8 Idaho?

9 A. Yes.

10 Q. And have you lived elsewhere?

11 A. No.

12 Q. Now, you were in Idaho for about -- well, nine  
months of

13 last year and some of this year?

14 A. Yes.

15 Q. What were you doing there?

16 A. I moved to Idaho to possibly go to school. That  
didn't  
17 work out for me, so I came back to Denver to try to get  
myself  
18 back on my feet.

19 Q. Your parents live here?

20 A. Yes, they do.

21 Q. And were you living with your parents before you  
went to  
22 Idaho?

23 A. Yes, I was.

24 Q. And was there a particular -- excuse me -- school  
you were  
25 going to go to?

1218

Juror No. 601 - Voir Dire

1 A. In Idaho?

2 Q. Yes.

3 A. Boise State University.

4 Q. So did you go to that campus or --

5 A. I had visited there. I had never actually attended  
school  
6 or applied to go to school there.

7 Q. Did you take a job?

8 A. I had tried to take a job. I worked for a couple  
of

9 temporary services and did temp jobs.

10 Q. And how -- you know, I don't want to get too  
personal, but

11 who did you live with over there? I mean, did you have  
friends

12 or --

13 A. I do have a friend who lives there. She -- I went  
to high

14 school with her, and she moved out there about five  
years ago.

15 Q. So your intention -- well, answer this: Was it  
your

16 intention to be in Idaho for the limited purpose of  
going to

17 school if you could work it out?

18 A. Yes, it was.

19 Q. And to keep your primary residence here in  
Colorado?

20 A. Yes, it was.

21 Q. So you looked at it as a temporary thing to go to  
school as

22 if you would go to school anywhere else?

23 A. Right.

24 Q. Never intending to become a full-time resident of  
Idaho?

25 A. That is correct.

with  
1 Q. And did you have most of your belongings back here  
2 your parents in their home?  
3 A. Yes, I did.  
of the  
4 Q. Okay. Then you came back about two months ago as  
5 time you filled out the questionnaire. Was that right?  
6 A. Two months prior to the jury summons. Back in May.  
in the  
7 Q. To the summons. Oh, that's right. You said that  
8 original.  
9 A. Right.  
little  
10 Q. In the original questionnaire that we sent you, the  
11 one.  
parents'  
12 Okay. Your -- well, you moved out of your  
13 home then; is that right?  
14 A. That is correct.  
understand  
15 Q. And you live now with this person who's -- as I  
16 it, she's a co-worker of yours?  
17 A. Yes, she is.  
you?  
18 Q. And she also has a child who lives with the two of  
19 A. Yes, she does.  
have  
20 Q. Okay. Now, you -- with respect to the job that you  
television  
21 now, you work for some satellite service, satellite

22 transmission service?

23 A. Yes, I do.

24 Q. And your -- you respond to customers' inquiries or  
25 complaints? Is that the kind of thing you do?

1220

Juror No. 601 - Voir Dire

1 A. That -- yes, I do.

2 Q. And you -- how long have you had that job?

3 A. Three months.

4 Q. And when you -- well, when you left out there at  
Jefferson

5 County auditorium, I asked you to be careful about the  
things

6 that you saw on television or read in newspapers and  
the like,

7 and also in conversations to avoid anything about the  
-- about

8 the case and about the questionnaire. And we know that  
it is

9 difficult to do that when things pop up on the news and  
you've

10 been watching the news and so forth. Were you able to  
do that?

11 A. I was, yes.

12 Q. Did you encounter anything at all, you know,  
accidentally

13 or --

14 A. No. I mean, anytime anything on the news would  
come on, my

15 roommate was -- would change the channel for me.

16 Q. Because she knows --

17 A. She knows the situation.

18 Q. -- of that. So I take it you talked about it with  
her,

19 your possible jury service?

20 A. Just the possibility of it, yes.

21 Q. Did she give you any advice about how to handle  
this?

22 A. Not really. She really doesn't have an opinion  
about --

23 anything on this case.

24 Q. Or suggest to you in any way that you don't want to  
do

25 that, you don't want to get yourself tied up in that?

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1 A. She said, "Just be yourself and do the best that  
you can."

2 Q. Did you talk with your parents about possible jury  
service

3 here?

4 A. I informed them that I'm a potential juror for this  
case,

5 yes.

6 Q. What was their reaction to that?

7 A. My father told me to try to get out of it the best  
way that

8 I could, and my mother told him to mind his own  
business.

9 Q. Well, that's obviously a candid response. It has a  
ring of

10 truth to it. Well, did your father suggest ways in  
which you

11 might get out of service?

12 A. Not really. He never really said anything. He  
didn't get

13 the opportunity. I wouldn't let him.

14 Q. Okay. How about where you work? Your supervisor,  
whoever

15 you report to there? Did you talk with that person  
about your

16 work could be interrupted for quite a period of time  
while

17 you're on this jury?

18 A. They are aware of that, yes.

19 Q. And did they say anything to you about what that  
would mean

20 to them and your job?

21 A. They say my job would not be in jeopardy in any  
way.

22 Q. How about paying you when you're not there?

23 A. I get paid for the first five days, the difference  
of what

24 the court pays.

25 Q. And that's it?

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1 A. That's correct.

2 Q. And of course, they can't fire you or anything like  
that.

3 That's -- federal law prevents that, but -- so you  
would be

4 short income if you served on the jury. You wouldn't  
be

5 getting paid.

6 A. That's correct. Yes.

7 Q. And what's your reaction to that?

8 A. It wouldn't put me in any financial jeopardy. Just  
a

9 little less spending money --

10 Q. Okay.

11 A. -- on myself.

12 Q. You're willing to absorb that loss of income?

13 A. Yes.

14 Q. And if need be, you might get some support from  
your

15 family?

16 A. If need be.

17 Q. Your parents?

18 A. Yes.

19 Q. Okay. Well, we're not suggesting you ought to run  
back

20 home to mama and papa again, but we just want to make  
sure that

21 there wouldn't be an extraordinary hardship on you.

22 A. No. None at all.

23 Q. Now, there was a time when you were over there in  
Idaho.

24 Were you a telemarketer part of the time there?

25 A. Yes, I was.

1223

Juror No. 601 – Voir Dire

1 Q. And what kind of thing were you selling or what  
kind of

2 phone calls were you making?

3 A. We would call various types of businesses and offer  
free

4 subscriptions to a magazine which pertained to their  
particular

5 business.

6 Q. And did you get paid on a commission basis for  
that?

7 A. No. I got paid on an hourly basis.

8 Q. Have you been a telemarketer for other goods or  
services?

9 A. No, I have not.

10 Q. That's your only experience with it?

11 A. Right.

12 Q. Now, you got some pretty rude answers sometimes, I

assume.

13 A. Yes.

14 Q. It happens to telemarketers who call some numbers  
that I'm

15 familiar with. That's why I mention it. Well, you  
intend to

16 return to school somewhere?

17 A. Somewhere down the line, I hope to, yes.

18 Q. But you're not ready for that yet? You're doing  
this job

19 that you're in now for the time being?

20 A. Yeah.

21 Q. Is that right?

22 A. That's correct.

23 Q. I don't mean to put words in your mouth.

24 A. No.

25 Q. But some of these things seem apparent to me, and I  
just

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1 want you to confirm them.

2 Now, I would like to ask you carefully about a  
couple

3 of things here. One is on page 22 at Question 101.  
Now, I'm

4 not going to ask you any details about this, but how  
long ago

5 was -- was this one incident?

6 A. It was an nonoccur -- ongoing thing for several  
years.

7 Anything like that hasn't happened within the last ten  
years.

8 Q. All right. So at the time, you were pretty young?

9 A. Yes.

10 Q. And did you -- did you call?

11 A. On one occasion, I do remember calling. Mostly,  
the

12 neighbors did.

13 Q. All right. It was a bad -- bad situation for  
everybody

14 concerned.

15 A. Yes.

16 Q. And is it worked out?

17 A. It has, yes.

18 Q. And no difficulties of that type --

19 A. None.

20 Q. -- since?

21 A. No.

22 Q. Well, now, this is a delicate question, and please  
answer

23 it carefully so that we're not -- was -- did that  
involve any

24 problems with alcohol or drugs or anything of that  
nature?

25 A. No. It did not.

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is one  
review  
line A1,

1 Q. Okay. The next question here also on the same page  
2 that I wanted to again ask you about carefully. Please  
3 your answer there. As I understand it, looking under  
4 you and a friend were on the receiving end of this.  
5 A. That is correct.  
6 Q. Were you injured?  
7 A. A few bruises. Nothing really major.  
8 Q. This was a -- and what about the friend?  
9 A. She was kicked. Just a bruise.  
10 Q. Did it happen in school?  
11 A. It did.  
12 Q. Your age at that time was what?  
13 A. 16.  
14 Q. And the person involved here was shown to be a  
classmate,  
15 also?  
16 A. Yes, it was.  
17 Q. And was there some kind of a dispute going on?  
Some  
18 disagreement about something that precipitated this?  
19 A. It was an ongoing argument about -- which really  
didn't

the 20 pertain to me at all. I just happened to get caught in

21 middle.

22 Q. Was it the friend --

to stick 23 A. It was towards the friend, yes. And I was trying

24 up for her and --

happened, minor 25 Q. Okay. So the situation where this is what

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is that 1 effects, no police action or anything going to court,

2 it?

3 A. That is correct.

school? Was 4 Q. And how about disciplinary action within the

5 there any?

teen 6 A. Within the school, they did start up what we call

within the 7 court where they took him and tried him with a --

of, 8 school; and he did, on their account, have five hours

9 quote, unquote, community service within the school.

the 10 Q. And was that one of those where other students do

11 judging?

12 A. Yes.  
13 Q. Have you done any of that?  
14 A. Not on the judging end, no.  
15 Q. What about on presenting it?  
16 A. No.  
17 Q. Apart from this situation?  
18 A. No.  
19 Q. Did you go before this teen court and explain what  
20 happened?  
21 A. Yes, I did.  
22 Q. Okay. Now, another one that I want to be careful  
about and  
23 you be careful in your response is over on page 24, and  
the  
24 question is 108. Do you see what you've written there?  
25 A. Yes, I do.

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1 Q. Is the -- is this a -- the type of store -- what  
type of  
2 store is that? I don't recognize the name.  
3 A. It's a store similar to Target. Like a  
supermarket,  
4 clothing store.  
5 Q. Selling at what are generally referred to as  
discount

6 prices or --

7 A. Yes.

8 Q. How old were you then? Well, it's 1994. I can  
figure that

9 out. You put the date. And were you with other people  
there?

10 A. Yes, I was.

11 Q. And the suggestion was that you had taken  
something, was

12 it?

13 A. Yes, it was.

14 Q. And did they search you or do things like that?

15 A. They did search me, yes.

16 Q. Well, it says -- apparently, there were some  
charges and

17 they were dropped?

18 A. That is correct.

19 Q. Can you just expand on that a little bit?

20 A. According to the store's cameras, they did not see  
me

21 taking anything, putting anything in my pocket. Just  
the

22 friend that I was with.

23 Q. Okay. But he or she did?

24 A. She did, yes.

25 Q. And were charges pressed against her?

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1 A. No. She ran and got away.

2 Q. I see. And they stopped you?

3 A. Yes.

4 Q. You know, that can be either a minor incident in  
somebody's

5 life or it can be a big thing. What is it for you?

6 A. Minor.

7 Q. Sometimes people react to that, saying, you know,  
"I'm

8 innocent, I've been accused, and the whole system  
stinks," or

9 something like that. Do you have any such reaction?

10 A. I don't know really on that. I guess I was  
innocent; and

11 in the long run, I did get a fair judgment.

12 Q. But at the time, you were pretty outraged by it, I  
assume?

13 A. I was kind of upset.

14 Q. Talk to your parents about that, too?

15 A. Yes.

16 Q. Okay. And did that -- you know, did that result in  
anybody

17 making complaints to the store or anything like that?

18 A. No.

19 Q. So in your mind, this is closed and over with until  
I asked

20 you about it in this questionnaire and brought it up  
today? Is

21 that --  
22 A. That's right.  
23 Q. -- accurate? Well, let me ask you some things here  
about  
24 your understanding of the legal system and the criminal  
justice  
25 system. We've already talked about this burden of  
proof and

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1 the fundamental principles here. Now, we asked you a  
very  
2 broad question on page 22 at Question 100. You marked  
where we  
3 gave you a multiple choice, "It is working adequately."  
Do you  
4 see that?

5 A. Yes.

6 Q. And you say, "There's always room for improvement,  
but I  
7 would not say it is a failure."

8 I'd like you to just expand on that for a  
minute as to

9 when you say "adequately" and you say "there's always  
room for  
10 improvement" and then you say "but not -- "I would not  
say it's  
11 a failure." There seems to me to be kind of a gap  
there

12 between those two, and I don't know what you've  
intended.

13 A. Well, I'd say for any situation that I've come upon  
or read

14 about, there's always been something done correctly.

15 Everything cannot be perfect.

16 Q. How do you measure whether the criminal justice  
system is a

17 failure? I mean, failure with respect to what?

18 A. Well, with respect to, for example, sentencing an  
innocent

19 man to death. That's been done. Or heard of. Failure  
in

20 that.

21 Q. All right. And do you see failures in the other  
direction

22 where -- is there any situation where you think that  
someone

23 was guilty but got off, as people like to say?

24 A. Nothing that I've come upon or read about.

25 Q. Have you followed criminal trials to the extent  
they have

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Juror No. 601 - Voir Dire

1 been reported or on television or something? Any --  
with any

2 particular interest? Any ones?

3 A. No.

4 Q. And how about what we're doing here? Did you  
follow the

5 trial of Timothy McVeigh?

6 A. No. I didn't.

7 Q. We asked you some other very hard questions, and  
that is on

8 page 28. Actually, starting on page 27 with an  
explanation

9 there on Question 124. Do you see where that started?  
And

10 then page 28 and going over onto 29. You may review  
your

11 answers if you wish. Or maybe you have them clearly in  
mind.

12 I do want you to have them clearly in your mind.

13 And the following page, too, you've written  
quite a

14 little there at the top of the page under Item 2.

15 Before you got confronted with these questions  
there

16 and had to answer, had you given much thought to this  
subject

17 of appropriate punishment under the law for different  
kinds of

18 crimes and particularly the punishment of life in  
prison

19 without any chance of being released, and death?

20 A. No.

21 Q. Anything that had ever come up in family  
discussions or

22 your reading or watching movies or anything like that?

23 A. Nothing like that. No.  
24 Q. So would it be fair to say this is the first time  
you  
25 really confronted your own sense of conscience and --  
and views

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Juror No. 601 - Voir Dire

1 about this subject?  
2 A. Yes. It would.  
3 Q. And you may have thought about it some more since.  
Have  
4 you?  
5 A. Yes, I have.  
6 Q. And as you read now, today, what you wrote on  
September 17,  
7 does this fairly say what you think now?  
8 A. Yes, it does.  
9 Q. All right. You haven't changed what you've said  
here in  
10 your own mind?  
11 A. No.  
12 Q. Well, I think you've been quite forthcoming with  
respect to  
13 your views, and I do not want to in any way suggest to  
you --  
14 you know, there are no right or wrong answers to these  
15 questions, this one or any of the rest of them. There

are only

you 16 your own truthful, honest answers about the things that

I want 17 believe and think, to some extent, perhaps, feel. But

you know, 18 to explain why we've asked you these questions. And,

written 19 would it be a fair thing to summarize all that you have

20 here to have you say that it all depends?

21 A. Yes.

22 Q. And it depends on the things that are -- the  
circumstances

23 and the person involved, or would that be a fair  
statement?

24 A. Yes, it would.

25 Q. Now, let me explain why we've asked you these  
things and

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1 also how the matter comes up. First of all, what we're  
talking

2 about here is a trial of the evidence. And in  
considering that

3 and in selecting a jury to do that, we have to make  
sure that

4 the people doing it have a sense of fairness and are  
willing to

5 decide, based not on what they may have seen or heard  
or read

that's  
already  
trial as  
guilty of  
You

6 elsewhere but what happens in court, the evidence  
7 presented and to follow the principles that we've  
8 discussed and then make a decision at the end of the  
9 to whether the evidence shows the defendant to be  
10 whatever crime is charged beyond a reasonable doubt.

I've just

11 follow that, obviously? I mean, you understand what  
12 said?

13 A. Yes, I do.

prison  
jury  
the end  
completed its  
follow up  
decision  
sentencing have  
them

14 Q. And in cases that do not involve the jury's role in  
15 punishment, which is most cases, where death or life in  
16 without release is not the issue, in those cases, the  
17 makes a decision. If it's not guilty, obviously, it's  
18 of the case. If it's guilty, then the jury has  
19 mission and goes home, and it's up to the Court to  
20 and decide the punishment. And judges don't make that  
21 just like that, either, because judges who do  
22 to get a lot more information than what was given to  
23 during the trial. So what happens is information is

collected,

24 more about the offense and more about the person who  
has been

25 found guilty. And with respect to the person who's  
been found

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1 guilty, a lot of things -- really, everything about  
that

2 person, background, you know, family history, events  
during

3 that person's childhood and beyond, work history,  
continuing

4 family relationships, all the kind -- education, all of  
the

5 kinds of things that go to make each one of us  
different from

6 everybody else, the unique and individual factors in  
our lives.

7 And then a judge hears from both sides, the prosecution  
and the

8 defense, and says ultimately, this is the sentence that  
is

9 appropriate for this person and this crime, and it's a  
very

10 individualized judgment.

11 Now, when the issue is because of a capital  
crime, as

12 we call it, and the issue is life or death, we don't  
leave that

13 question to judges. That question goes to jurors who  
come in  
14 and represent the community, the whole community. And  
we speak  
15 sometimes to the jury being the conscience of the  
community.  
16 But just as is true with judge sentencing, jury  
sentencing  
17 requires a lot more than just a guilty verdict because  
there is  
18 another hearing. In fact, it takes on the same  
approach as a  
19 trial and follows the same procedure. And at that  
time,  
20 information is presented to the jury that was not there  
during  
21 the evidence taking at the guilt phase, as we call it.  
22                   And it is at that time that the prosecution,  
the  
23 Government's lawyers, bring in the things that they  
believe  
24 support the view that death is an appropriate  
punishment or a  
25 just punishment for this person and this crime, and we  
call

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1 those aggravating factors. At the same time, the  
defense puts  
2 forward those things that -- much like we've already  
talked

3 about, those things that are unique and individual to  
the  
4 defendant about that person as a human being. And  
also, some  
5 additional factors, perhaps, with respect to the crime  
and role  
6 in the offense and a lot of other things can come in as  
what  
7 are called mitigating factors. And then the Court  
instructs  
8 the jury about what are the aggravating factors that  
have been  
9 presented and what are the mitigating factors and what  
the law  
10 requires them to consider and then tells them through  
sort of a  
11 questioning, analytical process how to approach this.  
But  
12 there's no formula, there's no equation, there's no set  
13 standard that -- at bottom, the thing comes down to the  
14 judgment of each individual juror. And that's a  
judgment that  
15 has to be made really in a sense as a moral judgment  
16 considering everything that's been presented in court  
and then  
17 decide should this man live or die. That is the  
question. And  
18 only jurors can answer that question under our federal  
19 statutes.  
20 You've listened very carefully, I know, and  
have

process 21 followed the law. Do you have any question about this  
22 and the way I've described it?  
23 A. No, I don't.  
for us is 24 Q. Then the question that you must ask for -- answer  
25 can you do that?

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1 A. Yes, I can.  
2 Q. And consider all of the circumstances and  
information and  
3 evidence presented to you?  
4 A. Yes.  
5 THE COURT: Okay. We have counsel for each  
side who  
6 can ask you some additional questions.

7 Mr. Ryan.

8 MR. RYAN: Thank you, your Honor.

9 VOIR DIRE EXAMINATION

10 BY MR. RYAN:

11 Q. Good afternoon.

12 A. Hi.

13 Q. Are you doing okay?

14 A. Yeah.

15 Q. I'd like for you to tell me a little bit about your

family.

16 You have a brother?

17 A. No, I don't.

18 Q. A sister?

19 A. I do have three sisters.

20 Q. Okay. And one of them is a full sister?

21 A. That's correct.

22 Q. All right. Just, if you would, tell me a little  
bit about

23 where you grew up and what your folks do for a living,  
if you

24 would.

25 A. I grew up in Westminster, Colorado. I lived in the  
same

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1 household for the majority of my life until recently.  
My

2 father's a carpenter. My mother is a clerk typist for  
an

3 insurance company.

4 Q. Is your father a self-employed carpenter?

5 A. At different points in time, he has been part of  
the union,

6 carpenter's union.

7 Q. What's he doing right now? What kind of jobs?

8 A. I believe he is working for the union. I'm not

quite sure

9 where or for whom.

10 Q. And do they both work in the -- in the downtown  
Denver area

11 or out and about?

12 A. Yes. They do. In the metro area.

13 Q. Now, what is your brother doing? Is he still in  
high

14 school? Excuse me. Your sister.

15 A. Yes, she is.

16 Q. I apologize for continuing to say that. Where does  
she go

17 to high school?

18 A. She goes to high school at Ranum High School in  
Denver.

19 Q. What grade is she in?

20 A. She's a junior in high school.

21 Q. After you finished high school, you took a hand at  
college?

22 A. I did.

23 Q. And tell us what you were wanting to study.

24 A. I had wanted to study sign language, interpreting  
sign

25 language.

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1 Q. And did you do that?

2 A. I did take a couple classes in that, yes.

3 Q. Do you have -- is there something about your  
background or

4 experiences that provided you an interest in that area?

5 A. No. Nothing in -- within my background. Just  
something

6 that had interested me.

7 Q. But you don't have a family member or a friend who  
is

8 unable to speak?

9 A. No, I don't.

10 Q. Or hear?

11 A. No.

12 Q. Now, after you finished college, is that when you  
went to

13 Idaho?

14 A. It was about nine months after I quit going to  
college.

15 Q. Okay. What did you do after that first semester of  
college

16 then until you went to Idaho?

17 A. I worked.

18 Q. Where did you work?

19 A. I worked for Montgomery Ward.

20 Q. Okay. And what did you do for them?

21 A. I was a customer service associate.

22 Q. Does that mean working inside of a store?

23 A. Yeah.

24 Q. Did you enjoy that?

25 A. I did, yes.

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Juror No. 601 - Voir Dire

1 Q. And what caused you to leave that job and go to  
Idaho?

2 A. I wanted to try something different. Try to  
further my

3 education.

4 Q. But as I understand it, you didn't apply for school  
there.

5 Did you have a job before you went?

6 A. Before I went, no. I went going without a job.

7 Q. Did that scare you a little bit?

8 A. It did, yes.

9 Q. How did you like it out there at Boise?

10 A. It was nice.

11 Q. Did you meet lots of friends and --

12 A. Some.

13 Q. The -- I also wanted you to tell us a little bit  
more with

14 EchoStar -- excuse me, with the company that you're now  
working

15 for.

16 A. I am a customer service representative. I answer  
calls on

17 billing questions a customer may have, activating  
someone's  
18 programming.  
19 Q. And is that an 8-to-5 job?  
20 A. Depending on -- they have various shifts. They are  
open 24  
21 hours a day. I work an 11 -- a 10 to a 7 shift.  
22 Q. 10 in the morning till 7 in the evening?  
23 A. In the evening, yes.  
24 Q. Do you enjoy your work?  
25 A. I do.

1239

Juror No. 601 - Voir Dire

1 Q. Now, if you would, at what point -- in your answers  
to your  
2 questionnaire, you indicated that you had supervised  
people in  
3 the past.  
4 A. Yes. At Montgomery Ward.  
5 Q. And that's your current -- I mean, your employment  
that you  
6 had right out of -- out of college.  
7 A. Right.  
8 Q. And were these other salespeople in the store?  
9 A. Yes, they were.  
10 Q. How did you like that role?

11 A. It was difficult, but I enjoyed it.  
12 Q. In what way was it difficult?  
13 A. Trying to get someone to listen to you, do their  
job,  
14 especially being 18 years old and being in charge of  
somebody  
15 who's 35. They don't really like that thought.  
16 Q. Was it ever necessary for you to have to take  
disciplinary  
17 action against anyone?  
18 A. If there was a matter that required disciplinary  
action, I  
19 would take it to my manager and she would take care of  
it.  
20 Q. Was that ever necessary?  
21 A. No.  
22 Q. Now, you're active in a church, as I understand it?  
23 A. Yes, I am.  
24 Q. Would you tell us about that church.  
25 A. Well, it is a Wisconsin Evangelical Lutheran synod.

I

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Juror No. 601 - Voir Dire

1 really don't know what --  
2 Q. Okay. Let me be more specific. How active are you  
in the  
3 church?

really 4 A. I do try to attend every Sunday, but that hasn't  
5 worked out very well for me with my job.  
6 Q. Are you sometimes required to work on Sundays?  
7 A. Sometimes, yes.  
that 8 Q. What are -- are there any tenets of that religion  
9 relate to the death penalty?  
10 A. None that I know of.  
Sunday? 11 Q. Is that subject ever preached about at church on  
12 A. Not that I recall.  
Honor 13 Q. Now, I would like to go back to an area that his  
14 talked to you about. And again, it's not my purpose to  
15 embarrass you. I hope I don't. I think you can  
appreciate why  
16 we'd like to receive a little bit more information.  
When --  
where she 17 the incident involving your friend on the occasion  
18 ran away, did you know that she had taken something?  
19 A. No, I did not.  
20 Q. You said that they initially thought that you might  
have.  
21 A. Yes.  
had not, 22 Q. But then they searched you and determined that you  
23 in fact, taken anything.  
24 A. That's correct.

25 Q. Was that the end of it?

1241

Juror No. 601 - Voir Dire

1 A. Not then and there.

2 Q. What further happened?

question

3 A. They did, you know, take me to a police station,

about

4 me further. They did not contact me after that until

5 seven months later when they had me come in and make a

charges.

6 statement; and after that is when they dropped all

understanding?

7 Q. Were there charges actually filed, in your

8 A. Yes.

happened to

9 Q. How did you feel about this store after what

10 you?

ever go

11 A. I have no hard feelings toward the store. I don't

12 in there.

to give

13 Q. You don't hold it against them, but you don't want

14 them your business?

might be

15 A. Well, I just -- I guess it's just a fear that I

16 wrongly accused again.

17 Q. When you went down to make your statement at the  
police  
18 department, did they ask you who else was with you?  
19 A. Yes, they did.  
20 Q. Did you tell them?  
21 A. Yes, I did.  
22 Q. Did something happen to that person after the  
23 information -- you gave the information to the police?  
24 A. I don't know. I no longer associate with her.  
25 Q. How did you feel about providing that information  
to the

1242

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1 police about a friend?  
2 A. It was my right to do that. It was wrong of her to  
do what  
3 she did.  
4 Q. She put you in that position?  
5 A. Yes.  
6 Q. Did you feel guilty in any way about giving the  
police her  
7 name?  
8 A. Not really.  
9 Q. Did you feel it was your responsibility to do that?  
10 A. Yes, I did.  
11 Q. You also -- do you have your questionnaire? You

have it in

24. 12 your hand, don't you? Would you please turn to page

there? 13 Question 109. What caused you to mark the yes block

14 A. In reference to domestic violence.

about 15 Q. Okay. It's the incident that you've already talked

16 with his Honor?

17 A. Yes. Right.

18 Q. All right. And with respect to 110, the following

19 question, what caused you to mark that box?

types of 20 A. I have had various friends be arrested for various

21 criminal acts.

22 Q. For example?

23 A. Theft.

the 24 Q. You've told us about the one who was your friend at

25 time who's no longer your friend.

1243

Juror No. 601 - Voir Dire

1 A. Right.

2 Q. What other types of incidents?

3 A. I do know of a few people who were more or less

drugs. 4 acquaintances who have been in trouble for illegal

5 Q. All right. Has anyone in your close circle of  
friends been

6 arrested or accused of a drug-related crime?

7 A. No.

8 Q. So you interpret -- you interpreted this Question  
110 as

9 being a very broadly --

10 A. Right.

11 Q. -- frame of reference in terms of your friends?

12 A. Right.

13 Q. Okay. Are you familiar with the -- you said in  
your

14 questionnaire that you watched quite a bit of  
television. Do

15 you recall that?

16 A. Yes, I do.

17 Q. Did you watch any of the O. J. Simpson proceedings?

18 A. No.

19 Q. Did you read about it in the paper or watch it on  
Court TV?

20 A. Nothing extensively. You know, just the brief  
clips they

21 showed like on the evening news.

22 Q. Did you form any type of opinion as to whether the  
charges

23 against Mr. Simpson were valid or not?

24 A. No.

25 Q. Have you thought about the -- the responsibility as  
a juror

Juror No. 601 - Voir Dire

1 of working with other people?

2 A. Yes.

3 Q. How does that strike you?

4 A. I work with people all the time. It's -- it's something

5 that's not unfamiliar to me. I think making a decision like

6 that would require more than just an individual opinion.

7 Q. If you had a view and other jurors disagreed with your

8 view, how do you think you would approach the task of being a

9 juror?

10 A. Explaining my point of view to the -- you know, to the best

11 way that I could. And if I was able to convince them my way,

12 then that was fine. If not, it's something you have to work

13 with.

14 Q. Yes. Would you be willing to listen to their arguments?

15 A. Yes.

16 Q. Can you conceive of situations in which they might convince

17 you that your point of view might have been mistaken?  
18 A. I really don't know. I don't -- could you  
elaborate more  
19 on that?  
20 Q. Yes. Say you were in a situation as a juror and  
you  
21 listened to a particular piece of evidence and you drew  
one  
22 inference from it and the other jurors felt a different  
way.  
23 All I'm really asking you is would you listen to their  
24 arguments, and do you think that under some  
circumstances, you  
25 could be convinced to change your viewpoint?

1245

Juror No. 601 - Voir Dire

1 A. Yes.  
2 Q. Have you ever spoken to your parents about their  
views of  
3 the death penalty?  
4 A. No.  
5 Q. Do you know how your father feels?  
6 A. I'm pretty sure my father is definitely for it.  
7 Q. Do you know how your mother feels?  
8 A. Not really. She's never really said anything about  
that.  
9 Q. Have you talked to either your sister or two half  
sisters

10 about that?

11 A. No.

12 Q. Was it ever a subject debated at school?

13 A. Not that I recall.

14 Q. Would you turn, if you would, to page 28 of the  
15 questionnaire under paragraph D. Would you take a  
moment and

16 read that to yourself.

17 What do you mean when you say, "Two wrongs do  
not make

18 a right"?

19 A. Two wrongs don't make a right by if -- if I were to  
slap

20 someone, it would not be right for them to slap me  
back. Maybe

21 they could go about it in a different manner.

22 Q. This question where you put the answer, "Two wrongs  
do not

23 make a right," is in reference to types of cases in  
which the

24 death penalty might be appropriate. So in the context  
of the

25 death penalty decision, what do you mean by, "Two  
wrongs do not

1246

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1 make a right"?

for you 2 A. Not always correct and if somebody murders someone

3 to kill them in return by -- by death.

4 Q. Is that how you feel?

5 A. I guess it would all just depend on the  
circumstance.

6 Q. And when you say "depend on the circumstances,"  
what --

7 what are you having in your mind?

8 A. It would just have to be something where the  
evidence would

9 have to be laid out in front of me to make a decision  
like

10 that. I really couldn't elaborate more on that.

11 Q. Well, I mean, the question asks you what kinds of  
cases

12 would the death penalty be appropriate. And do you  
have any

13 particular crime in mind that you think might warrant  
the death

14 penalty, depending on the circumstances?

15 A. I would say, for instance, someone like Ted Bundy  
or

16 Jeffrey Dahmer.

17 Q. And what is it about those two individuals that  
makes you

18 feel like the death penalty could be appropriate for  
them?

19 A. They were premeditated. They knew what they were  
doing.

20 They stalked their victims, harmed them and murdered  
them.

had every 21 They knew the whole time what they were doing. They

22 control over themselves to stop.

today 23 Q. Now, you -- did you think before you came in here

penalty? 24 that you'd be asked some questions about the death

25 A. I had an idea, yes.

1247

Juror No. 601 - Voir Dire

with 1 Q. Okay. And is this something that you talked about

2 anyone prior to coming?

3 A. No.

4 Q. How you felt?

5 A. No.

his Honor 6 Q. Did you give some thought to the fact that either

someone who 7 or one of the lawyers might ask you whether you're

8 could actually impose the death penalty?

9 A. I gave it thought, yes.

that 10 Q. Would you feel that if you impose the death penalty

11 that would be wrong?

12 A. No.

13 Q. And again, I'm drawing on your statement, "Two

wrongs don't

14 make a right."

15 A. It would just all depend on the evidence and the

16 circumstance.

your

17 Q. Are you -- are you -- I don't want to put words in

But are

18 mouth, so correct me if I don't state this correctly.

mind

19 you saying to us that you have to be convinced in your

capital

20 that someone had committed a crime that deserved

21 punishment?

22 A. Yes.

you think

23 Q. But if you were convinced, is that something that

24 that you could deliberate on and return a verdict for?

25 A. Yes.

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verdict

1 Q. Would you have concerns after you returned that

eyes of

2 that you might be punished later in afterlife or in the

3 God for having participated in that kind of decision?

don't feel

4 A. If I'm completely convinced in my mind, then I

5 that somewhere down the line, I would have a guilty

conscience,

6 so to say.

7 Q. Do you think if you were convinced in your mind of  
the

8 correctness of your decision that you're likely to have  
a

9 guilty mind in the future?

10 A. No.

11 Q. You said in response to one of his Honor's  
questions that

12 you had some fear that innocent men -- I may not be  
stating it

13 exactly right -- that innocent men or an innocent man  
has been

14 given the death penalty. Do you recall that?

15 A. Yes.

16 Q. What were you thinking?

17 A. In like a situation -- a particular case or --

18 Q. Yes. I mean, have you read that, or is that a  
movie you

19 watched, or where are you drawing that information?

20 A. Something probably read or watched on television  
where

21 someone was wrongly accused of something and had been  
placed on

22 death penalty. I could not recall that situation.

23 Q. Do you have the impression that that happens often?

24 A. No.

25 Q. Is the situation that you saw on television -- was  
that a

Juror No. 601 - Voir Dire

1 true story or -- or was it a made-up story for  
television?

2 A. To my knowledge, it was true.

3 Q. Was it one person or more than one?

4 A. One.

5 Q. Do you think that the criminal justice system is  
capable of

6 sorting out the guilt or innocence of someone?

7 A. Yes.

8 Q. Do you have confidence in the system?

9 A. Yes.

10 Q. How do you feel about a jury's ability to assess  
the death

11 penalty?

12 THE COURT: I don't understand the question.  
I don't

13 know how she could.

14 MR. RYAN: All right, your Honor. May I  
rephrase?

15 THE COURT: All right.

16 BY MR. RYAN:

17 Q. Do you think that jurors such as yourself should be  
placed

18 in the position under the law to make those kinds of  
decisions?

19 A. Yes.

20 MR. RYAN: Thank you for answering my  
questions.

21 THE COURT: Mr. Woods?

22 MR. WOODS: Thank you, your Honor.

23 VOIR DIRE EXAMINATION

24 BY MR. WOODS:

25 Q. Good afternoon. As the Judge introduced me, my  
name is Ron

1250

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1 Woods. I'm one of the lawyers that was asked by the  
court to

2 represent Terry Nichols, who's been accused of the  
crimes that

3 the Judge has explained to you. We met a couple weeks  
ago out

4 at Jeffco; is that correct?

5 A. That's correct.

6 Q. The other parties have already asked most of the  
questions,

7 so I've only got a few to go over with you. I want to  
discuss

8 the incident at the store with your friend again. As I

9 understand it, you didn't realize what the friend was  
doing and

10 when someone got suspicious, the friend ran away; is  
that

11 correct?

12 A. That's correct.

13 Q. And you were just standing there?

14 A. Right.

15 Q. Did that surprise you about your friend? Were you  
aware of

16 anything or -- like that?

17 A. I didn't realize she had been doing anything, so I  
was kind

18 of shocked when she started running away from me.

19 Q. Okay. Had you known the friend for a while?

20 A. For -- for about a year or so.

21 Q. Okay. Had no idea anything like that was going to  
happen?

22 A. No.

23 Q. Okay. Now, you told the prosecutor that charges  
were

24 filed; is that correct?

25 A. Yes.

1251

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1 Q. They arrested you there at the scene and took you  
downtown

2 and charges were filed?

3 A. That is correct.

4 Q. Okay. And then you mentioned to the Court that,

really 5 eventually, someone reviewed the films and saw that you

6 hadn't taken anything?

7 A. That is correct.

months 8 Q. Now, had they done that before you came back seven

9 later and gave the police a statement?

10 A. Yes.

all? 11 Q. Okay. Had you been to court during that period at

12 A. No.

for you 13 Q. Okay. Had you hired a lawyer or had one appointed

14 during that period?

15 A. No.

film to 16 Q. Okay. And as I understand it, someone reviewed the

police 17 find out you really hadn't done anything and then the

charges were 18 got a statement from you; and at that point, the

19 dropped?

20 A. That is correct.

-- were 21 Q. Okay. Had the charges not been dropped, would you

22 you going to contest the matter and take it to trial?

23 A. Yes.

24 Q. Okay. And why was that?

25 A. I felt I was innocent, I didn't do anything wrong.

I

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Juror No. 601 - Voir Dire

1 wanted to prove to them that I was innocent.

2 Q. Did you feel that it was going to be your burden,  
you were

3 going to have to prove you were innocent?

4 A. Yes.

5 Q. Now, I've noticed that you've been out in the adult  
world

6 since you've been 16, working with adults; is that  
correct?

7 A. That's correct.

8 Q. And as the prosecutor covered with you, you might  
get

9 picked on a jury and all of the 11 other people be  
older

10 people, which is highly likely if it happens.

11 A. Yes.

12 Q. And apparently, you've supervised older people  
before; is

13 that correct?

14 A. That is correct.

15 Q. So I take it that if you had an opinion based on  
the facts

16 you heard, you're not going to be swayed by someone  
just

17 because they're older; is that correct?

18 A. That's correct.

19 Q. Have you been in that type of position before where  
you've  
20 had to stand your ground and discuss matters with older  
people?  
21 A. Well, yes.

22 Q. What's been the history? Have you stood your  
ground, or  
23 older people because they are older made you do things  
you  
24 didn't want to do?  
25 A. I'd say it was pretty equal. Stood my ground in  
some

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1 situations; and in others, I was persuaded by their  
opinions.

2 Q. Okay. By the facts of their opinions, I take it?

3 A. That's correct.

4 Q. Okay. What -- I noticed you mentioned your father  
had one  
5 opinion and your mother had another. Which parent are  
you  
6 closer to or are you closer to either one?  
7 A. I'm not really closer to either one of them.

8 Q. Okay. How would your close friends describe you,  
if  
9 someone went to one of your friends and said, Describe

Miss

10 So-and-So?

pretty

11 A. I'm pretty sure they would probably say I'm a

12 open-minded and honest and trustworthy person.

part of

13 Q. Okay. You stated in your questionnaire that as

time,

14 your recreation or your free time when you do have free

movies;

15 you like watching television and you also like going to

16 is that correct?

17 A. That is correct.

18 Q. What type of movies do you like to see?

19 A. Nothing really particularly. Drama or action, just

20 whatever might pique my interest.

concerning the

21 Q. Okay. What about if they are serious movies

those out

22 death penalty or some overriding issue? Do you seek

23 or do you try to go to a lighter movie?

but . . .

24 A. I would probably choose a lighter movie over that

and

25 Q. Okay. Now, you've stated in your questionnaire --

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1 that's on Question 144, which is on page 33. The

questionnaire

2 asked if you've heard or read anything about the  
Oklahoma City

3 bombing, and you indicate the source of where you heard  
or read

4 about it. And you checked off TV news, radio news,  
newspapers,

5 magazines and conversations. Have you talked about the  
matter

6 at work where -- let's see, in '95 when it happened,  
you were

7 still in high school; is that correct?

8 A. That's correct.

9 Q. But you were working -- well, you were working in  
'94.

10 Were you working right then at that time in April of  
'95?

11 A. No. I wasn't.

12 Q. Okay. Did you talk about it with your parents?

13 A. I don't recall any conversations about it.

14 Q. Okay. Now, it's been two and a half years since it  
15 occurred. Have you had conversations with your parents  
about

16 the case?

17 A. I would say it may have come up in conversation.

18 Q. Okay.

19 A. At one point in time.

20 Q. And you're rooming with a co-worker at this time;  
is that

21 correct?

22 A. Yes.

with 23 Q. Okay. What about her? Have you discussed the case

24 her?

25 A. Not really intensely.

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about the 1 Q. Okay. From what you've seen and read and heard

newspapers 2 case and all these sources, the TV news, radio news,

3 and magazines and your conversations, do you have a

4 recollection of how many people were killed?

5 A. Over 160.

not 6 Q. Okay. And do you have a recollection of whether or

7 there were children killed?

8 A. Yes, I do.

9 Q. And what is that memory?

were 10 A. I'm not really sure. There was a few children who

11 killed by that.

those 12 Q. Okay. Do you -- do you have any information from

building? 13 sources as to why children were killed at a federal

14 A. To my knowledge, there was a day-care that was in

the

15 federal building.

16 Q. Do you remember from those sources how the bomb was  
17 delivered to the building?

18 A. In a -- in a Ryder truck.

of how

19 Q. Okay. Do you have a memory as to the circumstances

20 Mr. McVeigh came into custody?

21 A. No, I don't.

22 Q. Do you have any information from those sources how  
23 Mr. Nichols surrendered to the police?

24 A. No, I don't.

was at

25 Q. Do you have any information as to where Mr. Nichols

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1 the time the bomb went off?

2 A. No, I don't.

the

3 Q. Okay. Do you recall a couple of months ago when

4 verdict came in on the McVeigh trial?

5 A. Yes, I do.

6 Q. And were you working at that time?

7 A. No, I wasn't.

June of

8 Q. Do you remember where you were? This was back in

9 this year, just three months ago, four months ago.

10 A. I was probably at my parents' home.

11 Q. Okay. Do you recall discussing it with anybody  
that was

12 present at that time?

13 A. No, I don't.

14 Q. And I'm talking both about the first verdict, the  
verdict

15 where he was found guilty, and then a few days later,  
there was

16 a death penalty verdict. Were you at home both times  
then?

17 A. Yes, I was.

18 Q. Okay. What kind of reaction did you have on the  
verdict of

19 death at that time?

20 A. Really, I didn't have an opinion either what --  
either way.

21 Q. Okay. What about anybody that was there with you?  
Your

22 father, mother, or your sisters?

23 A. They really didn't say anything about it.

24 Q. Anybody say anything that this is the proper  
verdict or

25 this is an improper verdict?

1 A. Not that I recall.

2 Q. All right. Do you have a feeling one way or the  
other

3 right now as to that verdict of death for Mr. McVeigh?

4 A. No, I don't.

5 Q. Now, in answering the prosecutor's questions, you  
gave a

6 couple of examples of where you thought the death  
penalty was a

7 proper verdict, and you gave Ted Bundy and Jeffrey  
Dahmer. And

8 you stated that you thought those cases were  
premeditated or

9 they had stalked the victims, they knew what they were  
doing,

10 and they could have stopped at any time. Were those  
the words

11 that you used?

12 A. Yes.

13 Q. Can you think -- and those are the circumstances, I  
take

14 it, where, in your mind, you decide where the death  
penalty is

15 a proper verdict on murder cases.

16 MR. MACKEY: Objection, Judge.

17 THE COURT: Yes, you know, I don't want to get  
-- I

18 don't think we should be specific about circumstances.

19 MR. WOODS: Yes, sir. I agree, your Honor.

20 BY MR. WOODS:

21 Q. At any rate, those were the circumstances you  
mentioned  
22 when you discussed a death penalty verdict of someone  
you felt  
23 it was justified; is that correct?  
24 A. Correct.  
25 Q. Okay. Can you think of any other cases involving  
murder

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1 where a death penalty was assessed?  
2 A. Not right offhand, no.  
3 Q. That you either agree with or disagree with?  
4 A. No.  
5 Q. And I take it from the answers on your  
questionnaire that  
6 you're going to base -- if you were on the jury and the  
jury  
7 returned a verdict of guilty -- that is, they found the  
person  
8 guilty of premeditated, deliberate murder -- that if it  
gets  
9 into a penalty stage, you'll base your decision totally  
on the  
10 facts and circumstances of the case?  
11 A. Yes.  
12 Q. You're not going into the hearing with your mind  
made up

13 one way or the other as to what the punishment should  
be?

14 A. No.

15 MR. WOODS: Okay. Thank you very much. I  
appreciate

16 it.

17 THE COURT: We all appreciate your cooperation  
with

18 us, and we're sorry to ask some of these questions if  
they, you

19 know, in any way distressed you. They don't appear to  
have, so

20 we appreciate that. Now, we don't make our choices  
here one by

21 one as we go along, as I'm sure you appreciate, so  
we'll have

22 to leave you with an uncertainty now and even an  
uncertainty

23 about when you will know. So please continue to do  
what you've

24 been doing, being very careful about how you watch  
television

25 news or radio or listen to the radio or read papers or  
the like

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1 so that you can come back to us if called upon and  
decide this

2 case as you said you would on the law and the evidence.  
Will

3 you do that?

4 JUROR: Yes.

5 THE COURT: All right. You can leave for now,  
and  
6 we'll be in touch with you. Thank you.

7 And we have 907.

8 MR. TIGAR: Your Honor, please. Do I take it  
that the  
9 residency issue is now resolved?

10 THE COURT: I think so.

11 MR. TIGAR: That would help us --

12 THE COURT: Government agrees?

13 MR. MACKEY: We agree.

14 THE COURT: It was a very temporary thing.

15 MR. TIGAR: Thank you.

16 THE COURT: All right.

17 MR. MANSPEAKER: It'll be one moment.

18 THE COURT: Thank you.

19 I thought it was 907.

20 MR. WOODS: That's what we have.

21 MS. WILKINSON: Supposed to be.

22 MR. TIGAR: That's what I have, your Honor.

23 MR. MACKEY: As do we.

24 THE COURT: Yeah. We have the wrong person  
here.

25 It's not your fault. Don't worry about it. We're a  
little

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1 mixed up on the order here, but then it's late in the  
week for 2 us, so . . .

3 JUROR: That's fine.

4 THE COURT: Bear with us. Sorry about that,  
sir.

5 We'll probably see you Monday. That's regrettable.

6 If you will please raise your right hand and  
take the 7 oath from the clerk.

8 (Juror No. 907 affirmed.)

9 THE COURTROOM DEPUTY: Thank you.

10 THE COURT: Please be seated. We seem to have  
had a 11 little mix-up here on who was coming in next, so we're  
sorry 12 about that.

13 JUROR: That's okay.

14 THE COURT: Okay. Thank you.

15 VOIR DIRE EXAMINATION

16 BY THE COURT:

17 Q. Now, you know, of course, that you got a summons, a  
jury 18 summons for possible service as a juror in the trial of  
the

19 United States against Terry Lynn Nichols.

20 A. Yes.

21 Q. And when you got that, you filled out a short  
questionnaire

22 and sent it back in to us as we requested. And then we  
also

23 asked of you to come out to the Jefferson County  
Fairgrounds

24 auditorium building with other members of the jury  
panel to

25 answer another questionnaire, and you did that.

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1 A. Yes.

2 Q. And at that time, I appeared there and introduced  
myself to

3 you and the other members of the jury panel and talked  
about

4 the background of the case. And also with me at that  
time and

5 introduced to you and the others were lawyers on both  
sides and

6 Mr. Nichols. And I want to do that again, introducing  
to you

7 the people who are participating this afternoon.

8 You probably remember seeing Mr. Lawrence  
Mackey, who

9 is here at the front table, and Ms. Beth Wilkinson,  
attorneys

Ryan is 10 for the Government here. Additionally, Mr. Patrick  
there at 11 here now and Geoffrey Mearns. They -- they weren't  
12 that time, but they have joined us today.

-- he was 13 Also, you remember meeting Mr. Michael Tigar  
14 introduced -- and Mr. Ronald Woods, attorneys for Terry  
15 Nichols. And Mr. Nichols is here.

eyesight, but 16 There are some other people here within  
17 they don't have speaking parts, and they'll be  
assisting the 18 others so . . .

19 We just want to again let you know the  
circumstances.

20 Also, this questionnaire that we gave you and which you  
filled  
21 out asked some things that are quite personal in  
nature, and we  
22 know that and that you have a privacy interest in some  
of these  
23 things, and we're protective of that. So that's why we  
take  
24 these measures that we have to sort of put you in a  
little  
25 sheltered area here in the room. And also, you  
understand, we

name is 1 refer to you by number instead of by your name. Your  
written 2 not public and your answers are not public on the  
courtroom 3 questionnaire. But of course, now, we're in a public  
4 and what you answer now is public.

5 A. Yes.

from the 6 Q. And we also provide a means for you to come and go  
7 courthouse without, you know, being subject to being  
matter of 8 photographed or identified or that. That's all a  
9 your privacy and our concern for it. Understood?

10 A. Yes.

11 Q. And as we ask you some of these questions, we'll be  
is 12 careful, too, because if there's anything that you feel  
adjust 13 extremely sensitive, you let us know about it and we'll  
14 our approach accordingly.

15 A. Okay.

and 16 Q. Now, because -- you know, you're not on trial here  
are 17 neither are your answers. These are not answers that  
just your 18 subject to some standard of right or wrong. They are  
provided 19 answers. And we need information from you, and you've

20 it. And the reason for that, of course, I explained in  
some  
21 detail when I addressed you and the other members of  
the  
22 panel -- and I'm sure you recall these things, but I  
just want  
23 to make sure that you do by restating them in a way.

24 I told you about that on April the 19th of  
1995, there  
25 was an explosion that destroyed a building in Oklahoma  
City,

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1 Oklahoma, and that people were killed and injured and  
that was  
2 a federal office building and that after that, the  
Government  
3 brought charges in Oklahoma City in the U.S. District  
Court  
4 down there, the Federal Court in Oklahoma, and that I  
described  
5 those charges in a general way as being the allegation  
that  
6 there was a conspiracy between a man named Timothy  
James  
7 McVeigh and Terry Lynn Nichols here and other people  
not named  
8 in the charges and that this was a conspiracy to plan  
the  
9 bombing of a building, the same building in Oklahoma  
City, and

10 that they took steps to carry it out, and included in  
the  
11 charges are allegations of murder, of, in the  
explosion, eight  
12 law enforcement agents of the United States who were in  
the  
13 building. You remember that?  
14 A. Yes.  
15 Q. I explained to you the procedural history, how, of  
course,  
16 Mr. Nichols entered pleas of not guilty. The case was  
moved  
17 from Oklahoma City to Denver, and the cases were  
separated for  
18 trial so that Timothy McVeigh would have a trial in  
which only  
19 he was the subject of the trial and, similarly, Terry  
Nichols.  
20 And now we're here for the trial of Terry Nichols.  
Timothy  
21 McVeigh has already been tried. I explained what the  
jury  
22 decided in that case. That, of course, has no  
influence on  
23 this case. This case is going to concern Mr. Nichols.  
24 And no one can make any assumptions that  
anything with  
25 respect to that case might again be repeated in  
evidence here.

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1 We don't know what the evidence will be in this trial.

2 Understood?

3 A. Yes.

4 Q. And of course, I also explained to you some  
fundamental

5 principles of the criminal law and the constitutional  
law in

6 the United States, which is that -- which are that Mr.  
Nichols,

7 the same as anybody else charged with any kind of crime  
in any

8 court, under the Constitution of this country, is  
presumed to

9 be innocent of the charges made against him. And it's  
a

10 presumption that carries throughout the trial and  
entitles him

11 to an acquittal, a not guilty verdict, unless everybody  
on the

12 jury decides that the evidence showed him to be guilty.  
Do you

13 understand that generally?

14 A. Yes.

15 Q. And under our system, it is the obligation of the  
16 Government lawyers here to come forward with the  
evidence to

17 support the charges that have been made. It isn't up  
to

18 Mr. Nichols or any other defendant to produce any  
evidence at

19 his trial or to testify or to explain anything. A  
defendant is  
20 perfectly entitled to remain silent and simply  
challenge the  
21 Government's evidence through his lawyers by cross-  
examining  
22 the witnesses, objecting to the evidence under the  
rules of  
23 evidence and so forth. And what we tell juries in  
situations  
24 in trials where a defendant does not testify or offer  
any  
25 evidence is, Look, you can't think about that. No  
inference

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1 can be drawn from that. In fact, don't even talk about  
it in  
2 your deliberations. Understand?  
3 A. Yes.  
4 Q. And finally then, what this presumption amounts to  
is that  
5 the Government has a burden to convince 12 jurors  
beyond a  
6 reasonable doubt that the evidence shows that the  
defendant did  
7 what they charged him with doing. And "beyond a  
reasonable  
8 doubt" means that before a defendant can be found  
guilty of any

the 9 charge, everybody on that jury must be satisfied that  
after 10 evidence shows it. And if there is a reasonable doubt  
defendant the 11 considering it all, then they have to give the  
I've -- you 12 benefit of that doubt, find him not guilty. Okay?

13 understand what I've said there?

14 A. Yes, I do.

follow it 15 Q. Do you accept that as the law and agree to be --  
16 and be bound by it?

17 A. Yes, I do.

some 18 Q. Okay. Now, because of the nature of the case and  
and we're 19 other things, we needed to get information from you,

questions 20 going to, if you can believe it, ask you even more

these 21 than you've already answered. But in large measure,

we're 22 questions are sort of generated by your answers, and

these 23 going to ask you to expand your answers on a few of

24 things.

words in 25 Now, you know, again, we're not going to put

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1 your mouth. We may suggest some -- what we understand  
you to  
2 be saying here and ask you to agree or not agree, but  
you're  
3 free to express whatever your answers are. And if you  
have any  
4 explanation on anything that we ask you here, you can  
give it.

5 I mean, don't be -- don't feel that you have to just  
sit there  
6 and say yes or no. That isn't what we're doing. Okay?

7 A. Okay.

8 Q. All right. Now, what I do understand from what  
you've told  
9 us is that you're native to Colorado, born in Denver  
and have

10 lived here in the Denver area and live now in a  
community in  
11 Adams County.

12 A. Yes.

13 Q. And I guess you lived at one time in Boulder?

14 A. Yes, I did.

15 Q. And went to school -- high school in Boulder?

16 A. Grade school, junior high, and part of high school.

17 Q. And that's because your parents were living there  
at the  
18 time?

19 A. Yes.

at an 20 Q. And then you had -- were married and had children

21 early age.

22 A. Yes.

23 Q. You are a very young grandmother.

24 A. Yes.

really 25 Q. And as I understand, the way it is now, you are

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your 1 providing day care for -- for your granddaughter while

2 daughter works?

3 A. Yes, I am.

provide that 4 Q. I mean, that's your occupation, as it were, to

5 support for your daughter who is working?

6 A. Yes.

from 7 Q. And that's -- let's see. And you're separated now

8 your marriage?

9 A. Yes. I have been for eight years.

with 10 Q. Eight years. Is there anything in court going on

11 respect to that?

12 A. No.

the  
13 Q. And is there any ongoing dispute or anything about  
14 arrangements for your separation?  
15 A. No. None.  
16 Q. Okay. Does your husband live here in the area?  
17 A. He lives in Westminster.  
18 Q. And you see him from time to time?  
19 A. I -- he has a house with his mother and she's  
handicapped.  
20 I go up every Friday. I clean. I shop. I do things  
for her.  
21 Q. You're on a very good relationship with her?  
22 A. Yes.  
23 Q. And with him under the circumstances?  
24 A. Yes. Very good relationship.  
25 Q. Sure. Okay. Thank you. Well, you know, again,  
that's not

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1 a matter of our great interest, but I wanted to get  
some -- we  
2 all want to get some sort of idea of your background.  
3 Now, you told us what your last job was here  
before  
4 you took on the responsibility of caring for the  
granddaughter,  
5 and that was -- let's see. I'm looking at -- I think  
it's page

6 questionnaire

6. And you can refer to any -- you've got the

7 But I'm

there. And you can refer to any part of it you like.

8 last job.

looking at page 6 and -- well, that didn't give the

9 place.

I'm sorry. But you worked in a -- in a fast-food

10 A. Yes. I cleaned there.

11 not the

Q. And your daughter works in such a place now, maybe

12 same one.

13 A. It's the same place.

14 Q. It is the same one?

15 A. Yes.

16 during

Q. Okay. I did want to turn to page 6 because I guess

17 one year, you were living in Texas?

18 around for

A. Yes. My husband was in the Air Force. We moved

19 a few years. My daughter was born there.

20 the time

Q. All right. And that's also true with respect to

21 in South Carolina?

22 A. Yes.

23 Q. And Tennessee?

24 A. In Tennessee, he was already out of the service.

25 near

Q. Well, on these other two, he was at Air Force bases

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1 those places?

2 A. Yes.

3 Q. What were you doing in Chattanooga?

4 A. He got out of the Air Force. His parents lived  
there, so

5 we moved there.

6 Q. Okay. Then you came back to Colorado in '81?

7 A. Yes.

8 Q. Been here ever since?

9 A. Yes.

10 Q. Now, you have two grandchildren?

11 A. Yes, I do.

12 Q. Are you taking -- are they from the same daughter?

13 A. No.

14 Q. One --

15 A. One is in Colorado Springs. That's my oldest son's  
16 daughter.

17 Q. Okay. I got it. You were on a jury once before,  
at least

18 you started on a jury.

19 A. Right.

20 Q. And let's turn to that. It's on page 26. This was  
in

21 Adams County and you say Adams County court.

22 A. Yes. In Brighton.

23 Q. In Brighton. Back in 1994. And as I gather it,  
there was

24 a plea bargain accepted?

25 A. Yes.

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1 Q. So the jury never had to reach a verdict?

2 A. No. We were chosen. And when we went back in,  
they told

3 us that he had accepted a plea bargain, so we were sent  
home.

4 Q. Okay. So all you did was go through some process a  
little

5 bit like this, asked some questions, and then, what,  
recess and

6 you came back and find out you don't have to do it?

7 A. Exactly.

8 Q. How did you react to that? I mean, were you  
relieved or

9 were you disappointed or --

10 A. Actually a little bit of both.

11 Q. Uh-huh. And did you wonder, well, if they settled  
this by

12 a plea bargain, why did they go this far? Why did I  
get

13 inconvenienced to have to come in here and then nothing

for me

14 to do? Did you have some thought like that?

15 A. No. I didn't feel inconvenienced. I just figured  
that's

16 the way it went.

17 Q. Were you told anything about what the agreement was  
and

18 what the person was pleading guilty to?

19 A. It was driving offenses, DUI's. And truthfully, I  
do not

20 remember what the plea bargain was.

21 Q. Well, it may be they never told you.

22 A. It might have been because I have a pretty good  
memory and

23 I don't remember.

24 Q. No. I -- it wouldn't -- it would, to be frank,  
surprise me

25 if they told you at that point.

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1 Now, I wanted to ask you about -- you have a  
2 brother-in-law who is an attorney?

3 A. Yes. I do.

4 Q. And is that -- does he practice law here --

5 A. Yes, he does.

6 Q. -- in Denver? And do you know what kind of work he  
does?

7 A. Personal injury.

8 Q. Do you know if he has ever been a prosecutor or  
defense

9 lawyer in criminal cases?

10 A. No, I don't know.

11 Q. As far as you know, he has not?

12 A. As far as I know, he has not.

13 Q. Are you pretty close to him?

14 A. He's on my husband's side, and we get along really  
well;

15 but there's not a real closeness. I mean, we -- we're  
together

16 at family gatherings, but I wouldn't say we're real  
close, no.

17 Q. Okay. Do you talk any at all with him?

18 A. At the family gatherings, but that's not often  
anymore.

19 Q. Sometimes lawyers in family gatherings and other  
social

20 occasions hear a lot about what people think about  
lawyers. Do

21 you have conversations like that with him?

22 A. No. His business never comes into -- if you want  
to talk

23 anything business, we go to his office.

24 Q. Okay.

25 A. It's not a public thing. It's not a family --

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1 Q. No. What I meant -- I didn't make myself clear.  
What I  
2 meant is, you know, lawyers, the legal profession,  
courts, a  
3 lot of people have some things to say about them,  
sometimes  
4 half in jest and sometimes not so much in fun, and have  
5 occasion to say to lawyers what they think about  
lawyers and  
6 courts and the like. That's what I was asking you  
about,  
7 whether you talked about particular trials or outcomes  
of cases  
8 or anything like that.  
9 A. No.  
10 Q. Or this Oklahoma City bombing and the results.  
Have you  
11 ever talked about that with your brother-in-law?  
12 A. No. Never.  
13 Q. Now, one of the things that I asked of you and the  
others  
14 when you left Jefferson County is that you not talk  
with people  
15 about your experience there or the case. Or anything  
about the  
16 case, because we didn't want anything to influence or  
affect  
17 you in your service on the case, and also asked you to  
be

the  
isn't  
across  
out this  
watch the  
daughter

18 careful about watching television news or listening to  
19 radio, you know, avoiding publicity. But we know that  
20 easily done. And let me ask first, have you come  
21 anything in publicity about this case since you filled  
22 questionnaire?  
23 A. No. I very rarely read a paper and I very rarely  
24 news.  
25 Q. And, of course, you probably talked with your

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there with  
to  
her  
possibility.

1 about what it would mean to what you are working out  
2 the child care if you got on a jury and were committed  
3 service here for several months. Have you talked with  
4 about that?  
5 A. About our situation, what would happen?  
6 Q. Yes.  
7 A. Yes.  
8 Q. And she may have been a bit alarmed about that  
9 A. She's not one to be alarmed easily.

that 10 Q. Well, tell me what -- have you got some way to work

11 out?

12 A. Pretty much. She works the late afternoon,  
evening, into

13 the wee hours of the morning. So we discussed that if  
I were

14 picked for the jury, she would just have to go in a few  
hours

15 late.

16 Q. And work that out with the employer?

17 A. Yeah.

18 Q. Is that somebody you know, too, who -- the person  
who runs

19 this particular --

20 A. No, I don't. She just got a promotion, so she's  
next

21 highest, so she can pretty well --

22 Q. She can adjust her schedule, you think?

23 A. -- choose hours.

24 Q. Well, we're just asking whether that would be a  
financial

25 hardship on you or her, or -- that's why I asked.

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1 A. It could be worked out.

2 Q. Okay. On page 22, I think it is. Yes. It is 22,

Question

3 102, there towards the bottom. You see what you wrote?

4 A. Yes.

5 Q. And how long ago did this take place?

6 A. It'll be two years in January.

I'm not

7 Q. And we want to be careful about these questions.

were you

8 trying to, you know, make this awkward for you; but

9 present?

driveway.

10 A. I was in the house. This happened out in our

the

11 Q. And was this someone you had a relationship with at

12 time?

13 A. Yes.

that

14 Q. And what? This was some dispute among friends? Is

15 what happened?

and it led

16 A. It was a dispute between him and another friend,

17 to a fight.

18 Q. Okay.

19 A. And he was injured.

blows?

20 Q. The kind of thing where each of them exchanged some

21 A. Exactly. Yes.

22 Q. And did the police come?

23 A. No, but -- not to the house, because I took my

boyfriend to

24 the hospital; and then they came to the hospital while  
we were

25 there. And then they came over a few times following  
that, to

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1 the house.

2 Q. Did you call them?

3 A. No.

4 Q. The police? Somebody from the hospital?

5 A. Yes.

6 Q. Because of the nature of the injuries?

7 A. Exactly.

8 Q. Okay. And then some charges were filed,  
apparently, and it

9 all ended up with a probationary sentence.

10 A. Yes.

11 Q. And was your friend also charged?

12 A. No.

13 Q. Okay.

14 A. He was taken to jail from the hospital because he  
had an

15 outstanding warrant, but that had nothing to do with  
the -- the

16 assault itself.

17 Q. As you look back on it, do you think everything was  
handled  
18 the way it should have been by those involved with the  
police  
19 and the courts?

20 A. Pretty much, yeah.

21 Q. Okay. Now, you did, up above there, Question 100,  
have  
22 some criticism of the effectiveness of the court system  
as a  
23 whole. And please, you know, we're not putting you on  
the  
24 defensive because you've said that. That's -- we just  
want to  
25 know the background of it. And you said it's not  
working well,

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1 and then you say -- or said, other than getting the  
criminal  
2 off the streets for a while, you don't see that the  
system  
3 works well. Tell us a little more about what you're  
saying  
4 here.

5 A. Well, it seems to me, the people I've known and  
known of or  
6 read about that are in prison seem to keep going back.  
I --  
7 and I know money is a factor there. But as far as

counseling,

8 rehabilitation, I just feel like if there were more of  
that,

9 maybe these people wouldn't keep going back.

10 Q. And do you have in mind that the system needs  
change to

11 provide more in the way of rehabilitation or efforts to  
educate

12 or improve people to change their behavior?

13 A. Maybe I didn't understand your question. I'm  
sorry.

14 Q. Let me say it again. But are you saying that you  
think

15 that one of the responsibilities of the criminal  
justice system

16 is to help people improve, to provide rehabilitation or  
support

17 services that would enable them to lead law -- law-  
abiding

18 lives and not again commit crimes?

19 A. I think that that would help a lot, yes.

20 Q. And do you have any particular programs that you  
know about

21 that you think should be followed?

22 A. No. I just -- you know, maybe the drug rehabs and  
things

23 like that.

24 Q. So they ought to do more than just arrest and lock  
them up?

25 A. I think in a lot of cases, it would help a lot.

## Juror No. 907 - Voir Dire

1 Q. And are you thinking mostly about drug cases?

2 A. No. I just use that as an example.

3 Q. Okay. But across the board, so to speak, the  
system is not

4 working as well as it should because it's just locking  
people

5 up?

6 A. Yes.

7 Q. Is that what you're telling us?

8 A. Yes.

9 Q. See, I'm only assisting, trying to assist you to  
verbalize

10 your views. I'm not trying to speak for you.

11 A. I understand that.

12 Q. Okay. Well, case -- excuse me just a minute. I  
want to --

13 yeah. The role of the jury in a criminal case, we've

14 discussed. And I want to just now talk about the role  
of the

15 jury in sentencing.

16 Normally, the jury is not involved in  
sentencing. In

17 the case that you were on, for example, even though  
there was a

18 plea bargain, there was a sentence decision somewhere  
along the

gone 19 way made by the county court judge. But if you had  
been a 20 forward in there and served on that jury and there had  
then you 21 trial, you would, of course, have heard evidence. And  
apparently, a 22 would have been asked -- whatever the charge was;  
been 23 repeat traffic offender of some type -- you would have  
guilty of 24 asked whether the evidence showed that person to be  
instructions to the 25 that charge as it's defined by the judge in

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1 jury. Do you understand?  
2 A. Yes.  
described: 3 Q. And then the issue would have been just as we've  
answer to 4 Has it been proved beyond a reasonable doubt? If the  
answer 5 that was no, not guilty, that's the end of it. If the  
guilty 6 to that had been yes, then there would have been a  
as the 7 verdict. And that would have been the end of it as far  
back to 8 jury is concerned, because then, the matter would go

a 9 the judge to decide the particular sentence. And it is  
10 particularized sentence, which means that it is  
designed for 11 that individual and that crime.

12 And before a sentencing decision like that  
gets made,  
13 there has to be more information provided than that  
which was  
14 provided by the evidence at the trial. So what happens  
is that  
15 information is gathered, more information about the  
offense and  
16 more information about the offender. And with respect  
to the  
17 offender or defendant who had been found guilty,  
there's an  
18 inquiry into all of his background, where he was born  
and  
19 raised, his family relationships, employment history,  
all of  
20 those things that create an individual life that are  
unique to  
21 each one of us as human beings. And then both sides  
present  
22 that to the judge and the judge makes a decision:  
Well, under  
23 all of these circumstances, what I know, this is the  
sentence  
24 for this person. Understand?

25 A. Yes.

## Juror No. 907 - Voir Dire

1 Q. And the jury doesn't have any role in that. In  
fact, the  
2 jury is told you can't even think about punishment when  
you're  
3 thinking about the evidence and does it support the  
charge.

4 Well, that's true here for purposes of  
determining  
5 whether the evidence that is received at trial proves  
the  
6 defendant guilty beyond a reasonable doubt. If not,  
the  
7 verdict's not guilty and that's the end of it.

8 But if it -- if there is a guilty verdict, the  
jury  
9 then is the -- has the responsibility for sentencing.

10 reason is for, you know, making a binding  
recommendation on  
11 sentencing, really on the question of life or death.

12 that's because we don't, under federal law, give to  
judges the  
13 decision of -- about whether to put a man to death.

You

14 understand?

15 A. Yes.

16 Q. That's something that we leave to the jury. And  
the

any 17 choices given to the jury are life in prison without  
other 18 possibility of ever being released, death, or some  
to 19 sentence, in which case, it would go back to the judge  
20 actually do.

jury. 21 Now, this question of life or death is for a  
in a 22 I'll tell you a little about the process there, but --  
some of 23 minute; but before that, we want to explore with you  
of 24 your views with respect to this issue of the punishment  
reason for 25 death or of life in prison with no release. And the

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big 1 that is, as you well appreciate, I'm sure, there are  
sentence, 2 differences among people in society about the death  
it's 3 those who believe that it should never be imposed; that  
believe 4 wrong for the state to put anyone to death; those who  
automatically be 5 that anybody who commits certain crimes should  
this is a 6 put to death, and people in between. And of course,

7 matter that gets debated publicly; and there are strong  
8 opinions expressed.

9  
opinion coming

10 into the courtroom. And that's why we asked you the  
questions

11 that we did on the questionnaire and which focus on  
page 28 --

12 actually, the -- the explanation for it starts over on  
27. And

13 then 28 is where you wrote some responses and 29, as  
well, if

14 you'll take a moment to review that.

15 A. Okay.

16 Q. Now, let me ask you first whether the subject of  
the death

17 penalty is something that you've thought very much  
about before

18 we asked you these questions.

19 A. Yes.

20 Q. Tell us in what circumstances you've thought about  
it.

21 A. When my sons were young teenagers, they got into a  
little

22 bit of trouble. They were in a program. I believe it  
was

23 Shape Up. I went to the penitentiary with them through  
this

24 program and went to the gas chamber. And that's really  
what

25 got me thinking about it.

## Juror No. 907 - Voir Dire

1 Q. This was done in Caşon City?

2 A. Yes, it was. And it was very disturbing, and I  
thought a

3 lot about it. And at first, after that experience, my  
feelings

4 on it were absolutely not, I couldn't do that. And it  
-- it

5 upset me very much because they -- they opened up the  
chamber

6 and said would anybody like to set (sic) in here.

7 And I sat in the chair, and they closed the  
door and

8 said this is what it sounds like when a man -- this is  
the last

9 thing a man hears before he's put to death. That was  
very

10 upsetting. You know, it shook me very much. And I  
thought

11 about it for a long time; and for a while, I thought  
oh, no, I

12 wouldn't. But as the years went by -- and that's been  
several

13 years -- I've kind of changed my mind on that a little  
bit.

14 Q. In this program with your sons, were -- did people  
who were

15 inmates talk with them, too --

16 A. Yes.

17 Q. -- about what it's like inside?

18 A. Yes. They did.

19 Q. What kind of crimes had they been convicted of, did  
they

20 say?

21 A. One was armed robbery. And -- because there were  
two that

22 were assigned to my son and I. And I really don't  
remember

23 what the other one was.

24 Q. How old were your sons?

25 A. 14 and 15.

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Juror No. 907 - Voir Dire

1 Q. Did it have the desired effect on them, do you  
think?

2 A. Yes.

3 Q. Shook them up?

4 A. Yes, it did.

5 Q. And you, too?

6 A. Oh, yeah. It did.

7 Q. And when the inmates talked, was it pretty  
straightforward

8 and somewhat harsh about what prison life is like?

9 A. It was very straightforward. Somewhat harsh, yes.

thinking 10 Q. Now -- so you came away from this experience  
11 that's not what ought to be done.  
12 A. Yes, I did.  
some 13 Q. And now you've modified that view and -- is there  
you to 14 particular event or some case or something that caused  
15 change your view?  
experience, 16 A. Nothing in particular. Just years after that  
it 17 like I say, nothing in particular, but I have changed  
agree with 18 because I -- I do think that in some cases, yes, I  
19 the death penalty.  
so this 20 Q. Okay. We'll talk a little about that, too; but --  
you? 21 is kind of an evolutionary thing, a gradual change in  
22 A. Yes, it was.  
23 Q. Nothing dramatic about --  
24 A. No one event.  
questionnaire, 25 Q. -- one case. And since you filled out the

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life 1 have you thought more about it, the death penalty and

2 imprisonment also as an alternative?

way I

3 A. I've thought about it, and I still feel the same

4 did --

5 Q. So --

6 A. -- since I filled it out.

questions

7 Q. Would the words that you used in answering these

today?

8 be the -- on September 17 -- be the words you use again

9 A. Yes, they would.

not

10 Q. Have you talked with others about the death penalty

that? It's

11 since you filled out the questionnaire, but before

and,

12 been the subject of very serious discussion between you

13 like, your husband or others?

14 A. Yes.

15 Q. Your husband?

16 A. No. I can't recall discussing it with my husband.

talking

17 Q. Well, without naming them, what are -- are we

people

18 about -- are you talking about talking with friends, or

19 in church, or --

20 A. Friends.

religious

21 Q. In speaking about people in church, you do have a

the page 22 view, do you, that's expressed here? I can't remember  
23 number. Are you a member of a church?  
time and 24 A. I'm not an actual member, but I go from time to  
25 I'm -- I go to some of the seminars when I can.

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punishment 1 Q. Do those seminars include subjects relating to  
2 for crime or the criminal justice system or --

3 A. No, they don't.

4 Q. Okay. So, yes, it's page 12. That's where I was  
5 referring. And you see what you've written there?

6 A. Yes.

doctrines 7 Q. I'm not, as I sit here, familiar with this, the

faith in 8 here. But would it be fair to say this is the kind of

ability 9 which you have a lot of faith in reason and in people's  
10 to reason through situations and problems in life?

11 A. Yes.

religion 12 Q. As compared with and contrasted with the kinds of

to 13 that are sort of supplicant and seeking some solutions

14 problems from other forces or sources? I don't know if

I

15 understand that question myself. I don't think I gave  
you one

16 that you can answer.

17 You know, there are -- there are religions  
that rely a

18 lot on faith, faith in a supernatural or some external  
forces

19 who I turn my problems over to this power, versus a  
view that

20 human beings can work things out by reason and  
application of

21 the powers of the mind.

22 A. Exactly. Yes.

23 Q. That's your view?

24 A. Yes, it is.

25 Q. And the view of those who join with you?

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1 A. Yes.

2 Q. Okay. Anything in connection with those  
discussions, then,

3 with others of like mind that relate to your views  
about

4 punishment?

5 A. I haven't discussed anything about that with them.

6 Q. Okay. Now, you know, I think what you've said here

ask you 7 explains your point of view without the need for me to

8 more about it. It's pretty straightforward.

perspective 9 Let me simply put this into a procedural

involved, were 10 for you so that you can understand what would be

the 11 you to serve with us on the jury. The first thing that

evidence 12 jury will do in this case is decide whether this

know 13 supports the -- the evidence to be heard -- and I don't

you know. 14 what that is. And I want to emphasize I don't know,

McVeigh case, 15 You could sit there and say, "Well, you heard the

something." Well, 16 didn't you?" "Yes, I did." "Well, you know

evidence in 17 nothing in the McVeigh case can be considered as

in this 18 this case, and I don't know what the evidence will be

19 case, just like you.

decide 20 So the jury will hear that evidence and then

understand? 21 whether it proves the defendant guilty. You

22 A. Yes, I do.

matter 23 Q. Beyond a reasonable doubt. And in doing that, this

case, 24 of punishment is not a factor. Just like in any other

25 you can't consider punishment.

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1           If there is a guilty verdict, though, then  
there's  
2           another whole trial; and it's on the question of  
punishment.  
3           And it's at that time that the jury will be presented  
with  
4           information that didn't come out in the evidence that  
would be  
5           information concerning the circumstances of the offense  
and  
6           information about the defendant himself. The same  
thing, the  
7           background information, life history, work history,  
8           relationships with others, all of these things that go  
to make  
9           an individual being and distinct from others. Not as  
presented  
10          as a trial -- as the evidence at trial may be presented  
with  
11          both sides, the prosecution putting in information in  
front of  
12          the jury that suggests that death is deserved, the  
defense  
13          putting in information suggesting that death is not a  
justified  
14          punishment for this person under all the circumstances.

15 And at the end of that, the court gives  
instructions  
16 about how to analyze this in terms of what you have  
heard  
17 constitute aggravating factors that you can consider,  
what  
18 you've heard constitute mitigating factors that you can  
19 consider, poses some questions to help sort through  
that. But  
20 it's up to the jury to decide whether these -- this  
information  
21 shows aggravating or mitigating factors of the type  
that are  
22 then mentioned by the court. And then there's no  
formula,  
23 there's no equation, there's no adding up this and  
comparing it  
24 to that. None of that. What is required of the jury  
to reach  
25 a sentencing decision is considering everything that  
you've

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1 heard and seen, then the question is should the  
defendant live  
2 or die. Each person has to make that decision. Each  
juror.  
3 And in making the decision, you essentially are making  
a moral  
4 judgment about the case and the individual defendant.

5 Understand?

6 A. Yes.

7 Q. And the question that we have of you, of course, is  
will

8 you be able to do that?

9 A. Yes.

10 Q. Okay. We have some questions from counsel in  
addition to

11 what I've asked you. And please give your attention to  
them

12 and answer their questions.

13 Ms. Wilkinson.

14 MS. WILKINSON: Thank you, your Honor.

15 VOIR DIRE EXAMINATION

16 BY MS. WILKINSON:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. Are you ready for a few more questions?

20 A. Yes.

21 Q. You seem like you're pretty comfortable --

22 A. Yes.

23 Q. -- there. Good.

24 I'd like to go back a little bit over your  
background,

25 if we could. I don't want to rehash the issues the  
Judge has

## Juror No. 907 - Voir Dire Examination

1 already raised; but you mentioned that you had gone to  
school

2 in Boulder for a while.

3 A. Yes, I did.

4 Q. What happened after 9th grade? You said your  
family left

5 the area.

6 A. My mother did. She separated.

7 Q. And what did you do?

8 A. We moved to Commerce City. I went to school there  
about a

9 week. That summer -- that was in the -- trying to  
think when

10 that was. In the middle of the year. That summer, I  
got

11 pregnant; and I got married at 16.

12 Q. So as the judge said, you started your family  
young?

13 A. Yes.

14 Q. And then you had another child after that, two  
children

15 after that; right?

16 A. Right.

17 Q. Were you a full-time mother and homemaker at that  
time?

18 A. Yes, I was.

19 Q. Your hands full with three little kids all at once?

20 A. Yes.

at that 21 Q. And did you and your husband live in Commerce City  
22 time while you were raising your children?

had my 23 A. For a few years. He joined the Air Force. And I  
24 daughter when we were in the Air Force.

was in 25 Q. How did you enjoy the time you all spent while he

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Juror No. 907 - Voir Dire Examination

1 the Air Force?

seeing 2 A. It was a little bit difficult; but it was pleasant,  
3 different places and moving around.

4 Q. What was the difficult part?

children and 5 A. Just the picking up and moving and with the  
6 everything. When they started school, it was a little  
7 difficult.

getting 8 Q. So as soon as you got settled, you found out he was  
9 assigned somewhere else and had to move again?

10 A. Basically.

could 11 Q. And is -- why did he get out of the Air Force, if I  
12 ask you?

wish to 13 A. He had a -- he was up in Galena, Alaska, and didn't  
And it 14 reenlist again. He spent six years in the Air Force.  
15 was a real hardship being away.  
Alaska? 16 Q. Was that duty where he had to go by himself to  
17 A. He was in Alaska. The children and I were in South  
18 Carolina.  
it was 19 Q. You stayed where it was warm and sent him to where  
20 cold?  
21 A. Right.  
now 22 Q. And I think you said in your questionnaire that he  
don't want 23 works at -- in the Boulder area; is that right? I  
24 to identify the specific place, but --  
25 A. Right.

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Juror No. 907 - Voir Dire Examination

1 Q. And has he worked there for quite some time?  
2 A. I believe it's been 14 years, yes.  
3 Q. The Judge asked you a little bit about your  
religious or  
4 spiritual beliefs; and I notice that in your  
questionnaire, you  
5 said you also like to read spiritual books or

spiritually

6 uplifting books?

7 A. Yes. I do.

8 Q. Do you have any books that you've read recently or  
any  
9 types of books fall in that category that you like to  
read?

10 A. There's not a lot of time for reading, to sit down.  
We

11 have eight puppies right now, and -- along with my  
12 granddaughter. But do you want me to name --

13 Q. Or just one of your favorite ones. You don't have  
to give  
14 me a laundry list. It sounds like you're pretty busy  
with

15 your --

16 A. I like Louise Hay, and I went to a seminar this  
past summer

17 of hers.

18 Q. I saw in your questionnaire that your dogs were one  
of your  
19 interests?

20 A. Yes.

21 Q. I take it that's where you're raising these eight  
puppies,

22 or at least --

23 A. It just happened.

24 Q. Yes. How is your granddaughter with the puppies?

25 A. Really good.

Juror No. 907 - Voir Dire Examination

1 Q. Doesn't pull their tails, or whatever?

2 A. No. And with eight of them, if they get excited,  
she can  
3 push them down, you know. But she's very kind with  
them.

4 She's always been around animals.

5 Q. What kind of dogs are they?

6 A. Mixture.

7 Q. So, have you ever raised dogs for --

8 A. No.

9 Q. -- sale or for show?

10 A. No.

11 Q. We also asked you several questions about, you  
know, how  
12 you get your news and your information; and it sounds  
like  
13 you're pretty busy raising your granddaughter, helping  
out your  
14 daughter --

15 A. Yes.

16 Q. -- raising the puppies? And you told his Honor you  
don't  
17 see the news a lot; is that right?

18 A. I don't. I can't even hardly watch a program; and  
by the

19 time the news comes around in the evening when I would  
watch  
20 it, I'm showering, getting her to bed. And I really  
haven't  
21 even had a chance to watch TV in the last, I would say,  
five or  
22 six months.  
23 Q. You mentioned that you sometimes read newspapers,  
but not  
24 too frequently.  
25 A. No.

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Juror No. 907 - Voir Dire Examination

1 Q. Can you tell us what -- I'm sorry. I didn't mean  
to  
2 interrupt you.  
3 A. That's okay. I was just going to say, every once  
in a  
4 while, I'll get a Sunday paper and look through it.  
5 Q. Which paper do you choose?  
6 A. The News.  
7 Q. With regard to that, you mentioned when you were  
asked  
8 about the publicity in this case when you had followed  
the  
9 McVeigh case or knew anything about Mr. Nichols that  
you had  
10 read one article about him. Do you recall that?

11 A. About Terry Nichols?

12 Q. Yes.

13 A. I've heard two things. And one was after -- I  
don't know

14 what point in time this was, but that he cleaned up,  
got a

15 haircut and all of that. I mean, just very simple  
something.

16 And then that he had the cell next to him in prison as  
a place

17 to work on his defense, and that's all I know about the  
whole

18 case.

19 Q. Okay. Let's go back to when you first got the  
summons.

20 That day, you went and opened the mail. You didn't  
know what

21 was going to happen to you. And you open up and you  
get a

22 letter from the court saying you're going to be  
summoned to

23 jury service. What did you think?

24 A. I -- it was kind of astonishing, you know. Me?  
You know,

25 I wondered why me, basically.

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Juror No. 907 - Voir Dire Examination

1 Q. And you filled out your questionnaire and sent it  
back into

form. 2 the court, or your summons. Let's call it the short

3 A. Yes.

Judge or 4 Q. Which we've seen. And do you recall in there the

publicity or 5 the Court telling you to try and avoid pretrial

6 publicity about the case?

7 A. Yes, I do.

Nichols 8 Q. Do you know whether the article you read about Mr.

summons, or 9 and his prison cell was after you received that

10 before?

11 A. No. I don't know.

really 12 Q. When you sent in your summons, did you think you'd

very 13 be called and get this far; or did you think it was

14 unlikely?

15 A. Actually, yeah, I kind of did.

16 Q. You did think you would?

17 A. I don't know why; but yes, I did.

what -- 18 Q. Was that based on what you know about yourself or

-- 19 did you just think it would be your luck that you would

thought I 20 A. I -- I wouldn't say luck was in on it. I just

going to do 21 would. I don't know. I just thought, I think I'm

22 that.

23 Q. Did you take precautions then to avoid any  
publicity about

24 the case?

25 A. Yes, I did.

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Juror No. 907 - Voir Dire Examination

when 1 Q. What do you do -- do you keep the TV on sometimes

fixing 2 you're baby-sitting your granddaughter or when you're

3 dinner?

4 A. If it's ever on, it's usually a Disney movie.

this 5 Q. So you don't have to worry about news flashes about

6 case or anything?

to 7 A. No. It's hard to even watch a program that I want

hectic 8 watch. It's just pretty difficult. And it's kind of

program last 9 right now at our house. And I did try to watch a

going on. 10 week, and I just couldn't follow it. Too much was

11 So I really don't even attempt to watch TV.

few 12 Q. If you could turn to your questionnaire, there's a

13 questions I'd like to follow up. Not too many.

a 14 On page 24 is Question 110. If you could take  
15 moment and look at that. Do you see that one?  
16 A. On -- no.  
17 Q. 110, I think down there at the bottom.  
18 A. 110?  
19 Q. Yes, ma'am.  
20 A. Yes.  
21 Q. And you see you answered that question yes?  
22 A. Yes.  
23 Q. Can you tell me just the general circumstances  
surrounding  
24 that incident.  
25 A. Yes. A guy that I was seeing went into his  
mother's house

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eluded 1 without being invited, took her car keys, took her car,  
2 the police, and got caught.  
3 Q. Okay. I take it by what you said that you're not  
seeing  
4 him anymore.  
5 A. No.  
6 Q. Okay. And you said in the next page that you felt  
like he

7 was justly arrested; is that right?

8 A. Yes.

9 Q. So you didn't have any problem with how he was  
treated by

10 the police?

11 A. No.

12 Q. Do you have any other incidents that fall under  
that

13 category that you recall, any other friends that have  
had

14 dealings with the police?

15 A. No.

16 Q. You mentioned -- and I may not have heard you  
right, so

17 stop me if I'm misstating this or clarify it for me --  
that

18 when you had that incident where there was the  
altercation in

19 your driveway that you had to take your boyfriend to  
the

20 hospital.

21 A. Yes.

22 Q. And then that he got taken down to the jail. Now,  
I didn't

23 understand that. You said something about an  
outstanding

24 warrant?

25 A. Yes. He had an outstanding traffic warrant that he

## Juror No. 907 - Voir Dire Examination

1 hadn't -- he hadn't paid.

2 Q. They took him to jail for a traffic warrant?

3 A. They took him to jail from the hospital. Yes. It  
had

4 nothing to do with that, but, yeah.

5 Q. So, what, did he have to pay the fine and then they  
let him  
6 go?

7 A. Well, he went through a court -- couple courts and  
we -- we

8 broke up during that time while he was in jail; so he  
got out

9 about a month later, and then we weren't -- we weren't  
together

10 anymore.

11 Q. Okay. And again, you don't -- nothing about that  
and his

12 interaction with the police affect your feelings about  
law

13 enforcement?

14 A. No.

15 Q. You understand why we're asking you those kind of  
16 questions?

17 A. Yes, I do.

18 Q. His Honor was asking you about your brother-in-law  
and

19 whether you've heard people when you're at family  
gatherings

ask you 20 talk about their opinions of lawyers. I just want to  
what your 21 if you have an opinion about lawyers either based on  
you've seen 22 brother-in-law does or based on what you've read or  
23 on TV?  
person. He 24 A. My opinion is he's a -- he's a very upstanding  
have a 25 never talks about work at family gatherings. If you

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about it 1 problem, he'll say, "Come to my office. We'll talk  
judging 2 there." And that has given me a view that, you know,  
3 from him, because I -- I don't know any other attorneys  
I 4 personally -- I think he's a pretty nice person. I --  
5 respect him very much.  
family 6 Q. You appreciate he doesn't talk about his work at  
7 gatherings?  
that. 8 A. Yeah. I do. He's very confidential, and I respect  
9 Q. Protects your privacy, also, if you --  
10 A. And everybody else's, yes.

death 11 Q. If we could, I'd like to turn to your views on the  
12 penalty, which is on page 28.

one 13 Oh, you know, before we do that, can I ask you  
14 other question?

15 A. Yes.

Question -- 16 Q. Turn to the next page, page 25. I think it's  
17 it's 15 and 16. 115 and 116. They kind of go  
together. If  
18 you could read those.

if yes, 19 Down at 116, the second answer that if you --  
20 are you sometimes persuaded to change your position;  
and you  
21 say no. Can you explain what you meant by that?

22 A. Can I go to 16 and then --

23 Q. Oh, sure.

24 A. 15 and 16.

That's 25 Q. You just want to just explain in your own words?

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1 probably easier than me referring to that.

2 A. Okay. If I feel I'm correct, will I listen to the  
3 arguments of others who do not -- yes. I would listen.

But

4 usually, I'm not persuaded to change my mind. It could  
happen,

5 but usually doesn't.

6 Q. Okay. You know, I asked you that, because,  
obviously, if

7 you're seated as one of 12 jurors, your job at the end  
of the

8 case obviously is to deliberate with those other 11  
people and

9 come to a -- a unanimous decision. You understand  
that; right?

10 A. Yes, I do.

11 Q. And do you think you could exchange views and  
opinions with

12 other jurors and listen to them and either try to  
persuade them

13 or even be persuaded by them to come to some kind of  
decision?

14 A. Yes, I do.

15 Q. You wouldn't be stubborn or kind of -- you know  
what I'm

16 getting at?

17 A. No. I wouldn't be.

18 Q. In terms of -- okay. Now I just want to ask you  
some final

19 questions about the death penalty, which is on page 28.

20 A. Okay.

21 Q. At the bottom there of page 28 is D and F: What  
kind of

22 cases, if ever, you think it's appropriate to give the  
death

23 penalty?

24 A. Pardon?

25 Q. I'm sorry. At the bottom of page 28, the last -- I think

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Juror No. 907 - Voir Dire Examination

1 it's D.

2 A. Yes.

3 Q. They are asking you what type of cases you think are

4 appropriate for the death penalty.

5 A. Okay. I think that cases where someone is tortured,

6 mutilated. I think that would probably be a good reason for

7 the death penalty, in my opinion.

8 Q. Okay. It sounded like when you were responding to the

9 judge's questions that you -- your views have evolved over the

10 years.

11 A. Yes.

12 Q. Has that been based on any cases that you've seen here in

13 Colorado?

14 A. Not any one case in particular. But, you know, just

15 through the time, yes.

16 Q. Okay. Well, you've had a rather unique experience,  
17 obviously, by actually going to the prison --

18 A. Yes.

19 Q. -- and walking into a gas chamber, which I can  
understand

20 why that would make you really think about these  
things. What

21 we need to know is it's one thing to think about what  
your

22 views are -- and it sounds like you've thought a lot  
about it.

23 It's another thing to know whether you could actually  
impose

24 the penalty if it were warranted. And what we want to  
know is

25 if you felt there was sufficient evidence and you had

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Juror No. 907 - Voir Dire Examination

1 considered all the information -- and I'm not talking  
about any

2 specific case now, but assume you believe there's  
enough

3 information and evidence: Could you impose a death  
penalty

4 sentence on another human being?

5 A. Yes, I could.

6 Q. And would you have any difficulty in discussing  
that

7 decision with your family and friends after you made  
such a 8 decision? In other words, would you have difficulty  
explaining 9 it to other people?

10 A. Difficulty explaining why --

11 Q. Or would you feel -- I'm sorry. Go ahead.

12 A. Difficulty in explaining that I did agree on the  
death 13 penalty?

14 Q. Yes.

15 A. I wouldn't have difficulty. I'm sure I would  
discuss it,

16 because I'm sure it would be very -- it would be  
something to 17 deal with.

18 Q. And obviously, a very important decision.

19 A. Yes.

20 MS. WILKINSON: I appreciate you answering my  
21 questions. Thank you.

22 THE WITNESS: You're welcome.

23 THE COURT: Mr. Tigar.

24 MR. TIGAR: Yes, your Honor.

25 VOIR DIRE EXAMINATION

1 BY MR. TIGAR:

lawyers

2 Q. Good afternoon. I'm Michael Tigar, one of the

almost

3 asked by the Court to represent Terry Nichols. We're

4 done.

5 A. Okay.

being a

6 Q. I gather from what you say that you understand that

person is

7 juror in any case where the liberty or the life of a

seriously.

8 involved is very serious and you would take it

9 A. Oh, yes, I would.

in two

10 Q. Now, if -- and from what the Judge said, a trial is

11 parts; right? The first part, the Government presents

evidence,

12 evidence, the defense has an opportunity to present

sits

13 and Terry Nichols is presumed absolutely innocent as he

14 there.

15 A. Yes.

make

16 Q. And you can -- can you respect that idea? You'll

17 the -- you'll put them to their proof?

18 A. Yes.

19 Q. These people over here?

20 A. Yes.

21 Q. You won't make us prove anything?

22 A. No.

23 Q. All right. And if, after all that was over, you  
decided,

24 Gee, I have a reasonable doubt, I acquit Terry Nichols,  
would

25 you have any difficulty going back home to your family  
and

1302

Juror No. 907 - Voir Dire

1 friends and saying, Well, I did that because I thought  
it was

2 the right thing to do?

3 A. No. If I heard the evidence and I truly thought  
that he

4 was not guilty, no, I wouldn't have a problem with  
that.

5 Q. Well, you understand that -- that if you have a  
reasonable

6 doubt, then you're required to come in with a verdict  
of not

7 guilty; right?

8 A. Right.

9 Q. Do you have any problem with that?

10 A. No.

11 Q. Okay. And -- and you understand why we're asking  
these

12 questions; right? That it's a lot at stake here?

13 A. Yes, I do.

14 Q. And is -- if the case came on and the evidence were  
15 presented and the -- Mr. Nichols didn't testify, would  
you be  
16 able to follow the Judge's instruction that you're not  
supposed  
17 to hold that against him?

18 A. Yes, I would.

19 Q. How would you feel about it if you didn't -- if he  
didn't  
20 testify?

21 A. I don't know as if I'd feel any way. I just  
figured he had  
22 his lawyers to do that.

23 Q. Okay.

24 A. Okay?

25 Q. No. Fine. I mean, that -- and I think that's a --  
that's

1303

Juror No. 907 - Voir Dire

1 a great answer.

2 Well, let me ask you some of these things  
about  
3 your -- more about your background. I'm sorry we're so  
4 intrusive about this. For a while, you worked at -- at  
Al --  
5 at a food store. Do you remember that? And you said  
personal

6 problems. Can you share with me what that was or --

7 A. Yes. I worked there. My boyfriend also worked  
there. He

8 was cheating on me with a girl that worked there, so I  
couldn't

9 stay there any longer. I quit.

10 Q. Oh, so it didn't -- all right. It didn't have  
anything to

11 do with the -- with the store management or the kind of  
goods

12 they sell at that rather unusual grocery store?

13 A. No. It wasn't. It was --

14 Q. All right.

15 A. -- strictly personal.

16 Q. Now, you were talking about this newspaper article  
that you

17 read about Mr. Nichols' having a place to work on the  
materials

18 for his defense; right?

19 A. Right.

20 Q. Now, do you remember what paper or magazine you  
read that

21 in?

22 A. It was -- the only thing I've read is the News. It  
would

23 have been the Rocky Mountain News.

24 Q. Okay. And once again, you don't remember when that  
was?

25 A. No.

Juror No. 907 - Voir Dire

1 Q. The article? Okay.

2 Do you remember any quotation in that article  
from

3 somebody from the Government reacting to this event?

4 A. No, I don't.

5 Q. Okay. How did you feel about that information?

6 A. I personally felt like it was a special privilege  
for him

7 to have; that it -- it -- it surprised me that he had  
that

8 privilege of having the separate area to work on his  
defense.

9 Q. Did you think that was something he shouldn't have?

10 A. No. It just surprised me.

11 Q. Okay. Well, I mean, is that -- you understand why  
-- why

12 I'm asking. You know in this case, there are thousands  
and

13 thousands of pieces of paper that the lawyers have been  
14 reviewing?

15 MR. MACKEY: Judge, objection.

16 THE COURT: Overruled.

17 BY MR. TIGAR:

18 Q. And -- and of course, you'd understand that Mr.  
Nichols has

19 an interest in helping his lawyers in the case.

20 A. I understand that.

21 Q. All right. And do you know anything about the size  
of this

22 adjoining room or anything like that?

23 A. Approximately. I forget the exact size, but  
approximately.

24 Q. About what do you remember it being?

25 A. Something like maybe about -- I think this might be  
smaller

1305

Juror No. 907 - Voir Dire

1 than it was. It was like either maybe a 6-by-8. 6-  
by-13.

2 Something like that.

3 Q. Something like that. Okay. Well, whether you  
thought it

4 was unusual or not -- and I'm not permitted to share  
with you

5 whether it's unusual or whether that happens in other  
cases or

6 anything like that. You understand? I just want to  
make

7 double sure. Is there anything about reading that that  
causes

8 you to think that Terry Nichols is getting something  
that's

9 more than he should have?

10 A. Not more than he should have personally. It just

surprised

11 me because I didn't know that was procedure.

12 Q. Okay. And you understand that -- that the -- the  
13 situation -- the rules of -- of this process that we're  
doing

14 here, they are made by the people in charge; right?

15 A. Right.

16 Q. That is, I don't make the rules. Okay.

17 Then on -- your answered also that you read or  
heard  
18 that Terry Nichols cut his hair and cleaned up. Now,  
do you  
19 remember seeing any pictures of Terry Nichols with long  
hair?

20 A. No, I don't. I -- as a matter of fact, I had never  
seen a  
21 picture of him before -- I don't even know as if I'd  
seen a  
22 picture of him or had ever seen him before I went to  
the  
23 Jefferson County building.

24 Q. Okay. Now, could you be confusing -- have you seen  
that  
25 pictures of other people that were involved in the case

1306

Juror No. 907 - Voir Dire

1 had changed their hairstyle?

2 A. No.

3 Q. Okay. So as you sit there today, are you sure that  
whoever  
4 it was that cut their hair was Terry Nichols as opposed  
to  
5 maybe being somebody else that you saw something about?  
6 A. No. It was Terry Nichols.  
7 Q. Okay. Well, put it this way: Is -- are you  
willing to put  
8 out of your mind your view that he cut his hair and  
cleaned up  
9 and listen to the evidence at the trial to see whether  
or not  
10 the evidence shows something about that?  
11 A. Yes. It -- yeah.  
12 Q. Okay. And base your verdict solely on that?  
13 A. Yes.  
14 Q. Okay. And would that apply to everything else that  
you've  
15 heard? That is to say, can you put it out of your mind  
and  
16 just base your decision on what Judge Matsch permits  
the  
17 witnesses to say and what exhibits and so on he lets in  
18 evidence?  
19 A. Yes, I can do that.  
20 Q. Okay. And again, you understand why we're -- why  
we're  
21 asking these questions?  
22 A. Yes, I do.

23 Q. Well, I'd like to turn then to the -- these  
questions about  
24 punishment. You understand, I guess, that Judge Matsch  
said  
25 the first part of the trial is devoted to this question  
of

1307

Juror No. 907 - Voir Dire

1 whether there's a reasonable doubt, and so we may never  
get to  
2 this punishment part.

3 A. Yes.

4 Q. All right. And -- but if we ever did, we couldn't  
stop  
5 everything and start asking more questions of you. We  
just  
6 have to go on, so this is our only chance.

7 A. Okay.

8 Q. Now, in your answer -- could you look at page 28?  
Do you  
9 have it there?

10 A. Yes, I do.

11 Q. You said that "a heinous crime" -- "heinous crime  
or  
12 something outrageous." Can you give me an example of  
what you  
13 mean by "outrageous"?

14 A. Something -- heinous, to me, is something -- okay.  
We'll

15 take murder.

16 Q. Okay.

17 A. Okay. Every -- every case is unique. And there  
are

18 reasons why people do things. Just -- there are crimes  
of

19 passion, protection. Like I said before, if somebody  
is

20 mutilated, tortured, that's a heinous crime to me.

21 Q. Now, if you found that a person had committed a  
heinous

22 crime, would you still be able to consider evidence  
about that

23 person as an individual human being in addition to the  
evidence

24 about the crime?

25 MR. MACKEY: Judge, objection.

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Juror No. 907 - Voir Dire

1 THE COURT: Overruled.

2 JUROR: So I still answer the question?

3 THE COURT: Yes. I'm sorry. I --

4 MR. TIGAR: By the way --

5 THE COURT: Everybody assumes that you know  
what that

6 means, and you don't.

7 BY MR. TIGAR:

It's 8 Q. If you're selected as a juror -- here's the story.

I've asked 9 the prosecutor's obligation to object if they think

obligation to 10 a question that I'm not entitled to ask. It's my

rules and, 11 object if I think they've asked one. Judge Matsch

question. 12 you know, there we are. So yes, you can answer the

13 A. Will you ask it again, please.

had 14 Q. Sure. If you have -- have decided that somebody

crime, 15 committed a heinous crime, what you define as a heinous

evidence 16 would you still be able to consider and listen to

what 17 about them as an individual human being before deciding

18 the punishment was?

19 A. I would listen to it and decide from that, yes.

heinous 20 Q. Okay. That is, do you think that if there's a

would 21 crime, that the death penalty is the only option, or

consider other 22 you -- could you listen to other information and

23 punishments?

death 24 A. It's not the only option, but I think if there's a

Forgetting 25 penalty, a heinous crime would be prime for that.

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Juror No. 907 - Voir Dire

like to 1 the -- death sentence, but yes, I would -- I would -- I  
about a 2 think that I would always be open to listen to anything  
3 case.

4 Q. Okay.

5 A. And judge from that.

-- and 6 Q. And if Judge Matsch at the end instructed you that

decided 7 if you were sitting on a case in which the jury had

said, 8 that somebody was guilty of a crime and if the Judge

however bad it 9 Listen, you have to consider not just the crime,

the 10 was, but you also are required to consider facts about

life, 11 individual human being, their background, their family

to 12 the possibility of remorse and so on, would you be able

a 13 consider and give effect to those things and then make

sentence? 14 choice, death, life imprisonment or some other

15 A. I would always listen and consider, yes.

16 Q. And do you -- is there anything about -- as you sit

there

17 today, you know a lot of people died in Oklahoma City?

18 A. Yes, I do.

19 Q. And do you know some children died?

20 A. Yes, I do.

21 Q. Do you know about how many children died?

22 A. No.

23 Q. Okay. Do you know why there would be children  
killed in a

24 bombing of a federal building?

25 A. Why they would be killed, or why they were there?

1310

Juror No. 907 - Voir Dire

1 Q. Why they were there.

2 A. Yes. I would assume it was day care.

3 Q. Okay.

4 A. For the working parents that worked there.

5 Q. Now, my last two questions. First, if you were a  
juror in

6 this case and you saw some terrible pictures about the  
death

7 and destruction there, would you still, even if you saw  
that

8 evidence, be able to look at and fairly judge the  
question, did

9 the Government prove beyond a reasonable doubt that  
Terry

10 Nichols was criminally responsible for that?

11 MR. MACKEY: Objection.

12 THE COURT: Overruled. You may answer.

13 JUROR: Would you ask it again?

14 BY MR. TIGAR:

15 Q. I'm sorry?

16 A. That always just throws me. I'm sorry.

17 Q. Well, that's okay. If -- if you heard -- if you  
saw in a

18 trial you were a juror all these -- this evidence of  
the

19 terrible destruction there in Oklahoma City and the  
death, and

20 which might have a great impact on you --

21 A. I'm sure it would, yeah.

22 Q. Right. And despite that impact, would you still be  
able

23 fairly to judge the question did the Government prove  
that

24 Terry Nichols, beyond a reasonable doubt, was  
responsible for

25 that?

1311

Juror No. 907 - Voir Dire

1 A. Yes, I could do that.

2 Q. You could do that. And next, if it ever came to  
the

3 question of what penalty to choose, would you be able  
to listen  
4 and give effect to all of the evidence and not -- and  
not just  
5 the evidence of the destruction and the damage?

6 A. I'm not really sure I understand what you're  
saying.

7 Q. Okay. Could you give -- could you consider and  
give effect  
8 to all of the evidence and not just a part of it?

9 A. Yes, I could.

10 MR. TIGAR: Okay. I'm sorry that this has  
taken so  
11 long.

12 JUROR: That's okay.

13 MR. TIGAR: And I thank you very much for  
responding  
14 to our questions.

15 THE COURT: So do we all. And you're now  
excused.

16 And we're not going to be able to tell you now or  
really

17 anytime soon whether you will serve on this jury. As  
I'm sure

18 you appreciate, in the amount of time it has taken here  
and the

19 amount of time you've been waiting, too, this is a  
process that

20 is a human process and it takes time. So as you go  
from here

21 now -- and you're excused now -- please go forward with

the

22 same cautions as you did when I excused you from the  
23 fairgrounds out there. Don't talk about it. Don't  
come into  
24 contact with things in the news or elsewhere. Be very  
careful  
25 so that if called upon, you can come back in here to  
this room

1312

1 and this jury box and decide this case fairly.

2 JUROR: Okay.

3 THE COURT: All right? You're excused for  
now. We'll

4 be in touch with you.

5 JUROR: Bye.

6 THE COURT: Bye.

7 Well, we'll take a bit of a break before we  
talk about

8 the motions to excuse for cause, so how much time would  
--

9 would you want? Do you want 20 minutes before we do  
it?

10 MR. TIGAR: Well, we -- we can -- 15 would --  
would be

11 enough to catch our breath, your Honor.

12 THE COURT: Let's do it.

13 MR. TIGAR: If that's --

14 THE COURT: Well, we'll take a 15-minute  
recess.

15 (Recess at 4:00 p.m.)

16 (Reconvened at 4:17 p.m.)

17 THE COURT: Be seated, please.

18 Before I call on counsel for their positions  
with

19 respect to whether any of these jurors who have been  
brought in

20 for questioning should be excused from service in this  
case, it

21 may be appropriate for a word of explanation about the  
law,

22 since it may be assumed that some of those who are here  
with

23 public interest in mind may not be fully informed with  
respect

24 to it.

25 We're proceeding under a statute providing for  
the

1313

1 selection of juries and establishing a procedure, and  
the

2 statute provides that no -- well, it provides certain  
statutory

3 qualifications for persons to serve on juries and then  
says

4 that no person shall be disqualified, excluded, or

excused or

further 5 exempt from service, except . . . and then makes  
a 6 provision that persons may be excused by the court upon  
that 7 showing of undue hardship or extreme inconvenience to  
excluded 8 person. There is also provision that persons may be  
should 9 on the ground that such person may -- and the emphasis  
service or 10 be on "may" -- be unable to render impartial jury  
proceedings. 11 that his service would be likely to disrupt the

whenever 12 Now, in addition to the statutory provision,

possibility of a 13 there is a capital case, a case involving the  
the 14 sentence to death, there are additional concerns under  
the due 15 Eighth Amendment to the Constitution and indeed under  
Constitution; 16 process provision of the Fifth Amendment to the  
but also 17 and we are dealing, then, with the statutory criteria  
relative to 18 to some case authority, special concerns that have been  
19 expressed by the Supreme Court of the United States  
20 cases involving sentence to death.

motions 21 So I simply want you to understand that these

not 22 to excuse or challenges for cause, as we call them, are  
me to 23 going to be offered here by counsel in any way asking  
not on 24 judge these people who have been brought in. They're  
citizens 25 trial. We're not judging them as human beings or as

1314

1 or the like.  
2 What concerns us is whether anything that we  
have 3 learned from them would cause a concern that a  
particular 4 person may be unable to render impartial service or a  
5 particular person may be unable to serve in the manner  
in which 6 the Supreme Court says is required for purposes of due  
process 7 and to avoid any violation of the Eighth Amendment, of  
course, 8 which the court has expressed itself on many times on  
9 punishment.

10 So I simply mention that so we don't have a  
terms of 11 misinterpretation of what anybody says here, both in  
of those 12 raising issues and in terms of the Court's resolution

13 by rulings.

14 referred to at

15 the

16 them,

17 been

18 sides

19 and

20 notified that they're excused.  
21 raised by

22 the

23 Government.

24 those

25 raised by the Government, simply because, as in  
everything else

1315

1 we do procedurally, we call on the Government first.

2 that I have

So I also want to recognize for the record

3 received and read the written submissions that were  
filed by  
4 counsel for both sides, including a recent one, one  
recently  
5 filed by the Government which raised some concerns  
about the  
6 manner of questioning of two of the prospective jurors.  
So I'm  
7 aware of -- what I'm saying is I'm aware of what you  
submitted  
8 in the papers, and it isn't -- I think I have your  
positions on  
9 what you believe the law requires; and I don't think  
it's  
10 necessary to repeat argument about that.

11 So we're going to, as I see it, be discussing  
concerns  
12 that have been raised by this record.

13 With that in mind, I'll hear from Mr. Mackey  
--

14 Mr. Mackey, are you going to present these?

15 MR. MACKEY: With the Court's permission, your  
16 Honor --

17 THE COURT: You know, I really don't like the  
word  
18 "challenges for cause." It seems to me that what we  
are  
19 talking about are motions to excuse people under these  
20 criteria.

21 MR. MACKEY: With the Court's permission, what  
we'd

22 like to do is each lawyer who is associated with a  
particular

23 juror --

24 THE COURT: That's fine.

25 MR. MACKEY: -- will make that motion. As it  
turns

1316

1 out, the first juror is mine, Juror --

2 THE COURT: You're up first.

3 MR. MACKEY: Yes. Juror No. 58.

4 THE COURT: I have my notes, the  
questionnaire, and

5 the transcript. Go ahead.

6 ARGUMENTS AND RULINGS ON MOTIONS TO EXCLUDE  
JURORS

7 MR. MACKEY: Your Honor, my sense of this  
particular

8 juror -- and the reason we make this motion for cause  
-- is

9 that there are two things that were very central to  
her: her

10 family and her religion. And it's those forces in  
combination

11 especially that I think raise serious questions about  
whether

12 she can sit as an impartial juror.

13 There were early signals about the measure of  
this

14 problem in the preliminary instruction or -- excuse me,  
the  
15 summons. And then as the Court identified in the  
16 questionnaire, in the early questioning, we learned a  
little  
17 bit about her personal situation, specifically a  
marital  
18 situation that was manifesting itself personally or --  
excuse  
19 me, physically.

20           You drew out in early questions that the  
situation is  
21 not resolved. It's being maintained, as she described,  
through  
22 active counseling that's been going on for  
approximately one  
23 year.

24           My concern is this on the first level, and  
that is the  
25 family level. She is a self-employed woman who is  
going to

1317

1 lose, she predicts, a good portion of her client base,  
perhaps  
2 while also having certain fixed income, the rental  
space for  
3 her spot there; and it looks like that you could, quite  
4 frankly, predict that with jury service there may well

be

5 enough loss of income that she will not be able to  
continue

6 what she described as costly counseling. And so  
looking ahead

7 to the prospect of a long-term commitment, there was,  
it seemed

8 to me, an added danger on a hardship level that that  
special

9 problem in her personal situation could be aggravated  
to the

10 point of special stress.

11 I emphasize that not because I think, standing  
alone,

12 it is sufficient grounds for this motion, but I do  
think in

13 combination with the second reason, it would satisfy  
the

14 requirements.

15 Her personal situation, I think, is going to  
be

16 magnified tremendously so, because she is a woman, as I  
read

17 the questionnaire and as I reflect on her answers, who  
is going

18 to face day-to-day apparent conflict between a deeply  
felt

19 religious view and the legal duties that she must carry  
out as

20 a juror.

21 She was asked by this Court, "We need to know,  
ma'am,

22 what influence your religious views might have on  
serving as a  
23 juror." And her words back to your Honor were, "I  
don't  
24 believe that we should judge any man." That was the  
early  
25 testimony from this particular juror.

1318

1 So there obviously is the conflict; and the  
question  
2 of the law, then, is what's the measure, what's the  
degree of  
3 that conflict and is it so great that indeed she could  
not  
4 carry out those in trying to gauge that degree, whether  
it is  
5 so substantial that she should be disqualified.

6 One of the things that I noted, of course, is  
that her  
7 deeply felt religious views are of a small faith. It's  
a tiny  
8 church, obviously, meets in a bank's conference room;  
and she  
9 pointed out there is no one else, in her discussions,  
anyway,  
10 that would ever agree to be summoned as a juror and  
many have  
11 in fact declined. So in her small, closed community,  
Judge, I

certain 12 think it would be fair to say that there will be  
support 13 possible pressure points. At least she will lose that  
religious 14 base if she has to carry out this conflict between  
15 view and legal duties.

to 16 She was asked, "Can you make the moral choice  
I would 17 impose the death penalty?" She said, "I don't know if  
"I 18 feel that it was morally correct." She went on to say,  
19 don't feel like I can make that judgment."

the 20 It's easy, I think, to pick and choose some of  
21 questions and answers --

about 22 THE COURT: I think I understand your position  
23 her.

other 24 MR. MACKEY: All right. Your Honor, the only  
of the 25 point that I would think worth emphasis is she is one

1319

follow 1 rare jurors that in answering the question, "Will you  
than 2 the Court's instructions," answered something other

the few 3 "strongly." She was one of the jurors that -- one of  
Court's 4 jurors that said, "I agree somewhat to follow the  
5 instructions."

reasons, your 6 I think for the combination of all those  
7 Honor, we'd move to excuse her.

view, 8 THE COURT: All right. You have an opposing  
9 Mr. Tigar?

10 MR. TIGAR: Yes, your Honor.

that 11 Starting with the last first, the juror said  
Court has 12 she'd -- she might not agree with the rules but the  
words 13 rules and the rules should be followed. I think her  
14 speak louder than trying to evaluate the meaning of the  
15 checkmark.

your 16 With respect to the juror's family situation,  
ground. 17 Honor, the juror did not seek to be excused on that  
that's 18 She said she thought she could handle it; and I think  
service, 19 the sort of thing that in order to encourage jury  
20 that's a willingness to sacrifice we ought to respect.

respect to her 21 So we come really to the statement with

22 faith. She said it would be difficult for her to make  
the  
23 decision. I think that's the kind of juror we want.  
We don't  
24 anybody who thinks that such a decision will be easy  
and reject  
25 utterly the Government's view that membership in a  
sect,

1320

1 however small, however characterized, should  
automatically lead  
2 one to jump to the conclusion that one follows all the  
doctrine  
3 of that sect or would follow what the brothers think.  
In fact,  
4 the Christedelfians, which is her sect, in their own  
pending  
5 statement of faith, which was adopted in 1917, do not  
prohibit  
6 jury service. They simply advise people that they  
shouldn't  
7 serve; that there -- they reject that they're at  
liberty to  
8 serve in the Army or as police constables or to take  
part in  
9 politics.

10 So so far as the religion of the  
Christedelfians is  
11 concerned, there isn't anything that says, "Don't be a

juror."

12 That would be an individual choice; and as we saw with  
another  
13 juror today, individuals can choose to be jurors, and  
she has  
14 chosen in the past to be a juror, albeit in a civil  
case.  
15 She's a person clearly of independent mind, which we  
think is  
16 something that ought to be recognized, instead of  
lumping her  
17 together with others.

18 This assertedly small sect was founded in the  
19th  
19 century, and it isn't oddball in any way. It's simply  
a sect  
20 that adopts what was a very widespread belief in the  
Catholic  
21 Church in the 4th century; that is, it was called the  
Aryan  
22 Heresy and the rejection of the divinity of Christ and  
the  
23 concept of the trinity. To the extent it's first  
century  
24 Christianity, it looks back to a time when those folks  
were  
25 fully citizens of Rome and vested with all the rights  
and

1321

1 duties of citizens.

2           So there isn't anything in her religion. We  
just have  
3 to look to her individual answers; and there, as I say,  
your  
4 Honor, she was clearly troubled by the kind of decision  
she was  
5 going to have to make. But ultimately, at the end of  
the day,  
6 she said she was willing to sit in a room and to listen  
and  
7 that it would be difficult.

8           We think that's the kind of juror that ought  
to be  
9 encouraged; that we're looking for.

10           THE COURT: Thank you.

11           Well, I've reviewed the material with respect  
to this  
12 person, and I think it is a combination of things. She  
did  
13 make it very clear, here, I thought, that while she did  
not ask  
14 to be excused because of undue hardship on her  
financially, in  
15 the course of the questioning here, she made it clear  
that she  
16 would -- faces the complete loss of her business, a  
business  
17 that is the source of -- the basic source of her  
income.

18           With respect to the religion, there is  
uncertainty

19 about it. Certainly, the fact that a person follows a  
faith  
20 that is not a majoritarian one or even well-recognized  
or  
21 well-established, or one that most people know nothing  
of --  
22 certainly that doesn't disqualify anyone. And there is  
nothing  
23 directly indicated here that a part of her religious  
doctrine  
24 would prevent her service. But taken in the context of  
all of  
25 her answers, I think that there may be a difficulty for  
her to

1322

1 render impartial service.

2 Accordingly, I'm going to grant that motion  
and excuse  
3 that juror.

4 Now, Mr. Ryan, you have the next one?

5 MR. RYAN: Yes, your Honor. No. 795.

6 THE COURT: I have it.

7 MR. RYAN: Your Honor, I know you're familiar  
with  
8 this transcript, and I know your Honor recalls this  
juror. My  
9 comments will be brief.

10 He, along with --

11 THE COURT: Very clear about his position with  
respect

12 to the penalty.

13 MR. RYAN: Right, and that's all I was going  
to say,

14 your Honor, is he made the point clear on both the  
guilt and

15 the penalty. And both, I think, are disqualifying  
factors.

16 THE COURT: Okay. Mr. Tigar, your view of  
this

17 person's position?

18 MR. TIGAR: Your Honor, we come now to the  
Court

19 asking for the Court's guidance with respect to a  
matter that's

20 been briefed, and I won't go much beyond what we said  
in our

21 papers. The act under which we're operating here is  
very, very

22 clear; and it says that each juror shall consider other  
23 factors, and it permits jurors to assign to mitigating  
factors

24 any weight that they choose. And there are some jurors  
who

25 would come to your Honor and say, I won't sit and I  
won't

do it. 1 participate in the process, you know; I just -- I won't

that 2 And there are others, such as this person, who believe

that makes 3 there is something about each individual human being

that as a 4 that person unique and that they would always regard

weight. 5 mitigating factor entitled to great, nay, decisive

relies, 6 Well, the cases upon which the Government

that 7 Witherspoon, Witt, and so on, refer to state statutes

What we're 8 clearly disqualify persons who have certain views.

which is 9 saying here, your Honor, is that under this statute,

know of any 10 not like any other statute ever heard of -- I don't

sovereignty -- 11 other statute that gives jurors this kind of

weight to 12 that the fact that a person would give this decisive

life," 13 the uniqueness, what another juror called "spark of

that 14 because we have several that are in this category, says

15 this juror with respect to these penalty issues is not

16 disqualified.

mind, he 17 Now, with respect to his having made up his

18 was conditioned on that, and we have not challenged him

on that

19 ground. We're focused now on the penalty issue.

20 THE COURT: Yes, I understand.

21 MR. TIGAR: You might ask why in the world  
would the

22 Congress pass a statute in which the Government would  
have to

23 abide the fact that somebody who says I regard this of  
24 dispositive weight would wind up on the jury? And the  
answers

25 are two: If the Government, as it claims, has 20  
peremptory

1324

1 challenges, then Congress perhaps had that in mind.  
And if the

2 answer is, well, the Government doesn't have peremptory  
3 challenges -- and we'll argue that on another day --  
then we

4 find ourselves in that very same position that folks  
found

5 themselves when the country was new. At the time our  
6 Constitution was adopted, there were more than 120  
death

7 offenses in England. There was none of this  
Witherspoon/Witt

8 qualification, and the prosecutors simply had to abide  
the fact

9 that if they were going to seek to shed blood, they

were going

10 to have to find 12 people, all of whom were willing to  
do it.

11 And that's our position.

12 THE COURT: All right. Well, as you mention,  
13 Mr. Tigar, this is briefed extensively in the papers  
filed; and

14 they are public now, so --

15 MR. TIGAR: Yes, your Honor.

16 THE COURT: -- I understand the legal argument  
made  
17 and the precise legal issue that has been presented.

It is

18 that if a person comes in here with all conviction in  
his or

19 her mind that for moral, religious, or other reasons  
that

20 person is unable to consider death as a punishment in a  
capital

21 case, the position taken by the defense here is that  
that's a

22 mitigator and therefore should be -- that person should  
serve.

23 That's my understanding of the argument.

24 MR. TIGAR: Yes, your Honor.

25 THE COURT: And I disagree with it and reject  
it,

as such. 1 because it isn't a question of disobedience to the law

into 2 I think the question is much like the discussion we got

3 here today with a prospective juror about conscientious  
military and 4 objection. When we require people to serve in the

who 5 bear arms for the United States, there are some people

6 cannot do so, and they're exempted from that.

7 And in the same fashion, those people who, for  
consider 8 whatever sincere conviction they have, are unable to

they 9 the alternatives of punishment provided for by the law,

that's 10 are exempt from the service here in a case in which

11 required of a jury.

intent 12 So I do not believe as a question of statutory

13 or statutory construction that that inability to make a  
factor. So 14 decision between those alternatives is a mitigating

other 15 I'm granting the motion to excuse that person and will

16 persons who fit that same pattern.

readdress 17 And I don't think it would be necessary to

across -- it 18 this each time. I mean, that's a ruling that cuts

19 doesn't have anything to do with a particular juror but

is a

20 principle of the law.

21 MR. TIGAR: Yes. Well, your Honor, that was  
what I

22 stood to say, is that we do not intend to take the  
Court's

23 time, then, to be trying to reargue this at each  
instance. We

24 will at each point note our objection on the record.  
Where it

25 comes up again, if the Court will note, yes, continuing

1326

1 objection, and so on, then we can move on to the next  
one.

2 THE COURT: Sure. And I would note it now. I  
mean,

3 this is a matter on which I don't intend to change. I  
think

4 this is a ruling, as I said, on a principle of law and  
a

5 statutory interpretation; and I will abide by it in the  
case.

6 And your record will be preserved without  
having to, I

7 think, address it each time that it comes up because of  
the

8 views expressed by the prospective juror.

9 MR. TIGAR: We'll just note it each time, your  
Honor,

10 and so on.

11 THE COURT: Yes, that's fine.

12 MR. TIGAR: Thank you.

13 THE COURT: The next one, Ms. Wilkinson.

14 MS. WILKINSON: Your Honor, the Government  
moves to

15 challenge Juror No. 681; and this is slightly different  
from

16 the juror we just discussed, in that I think it falls  
more

17 under the juror would be substantially impaired in her  
ability

18 to consider the death penalty.

19 THE COURT: Excuse me just a moment. Let me  
just

20 quickly look at my notes here, because when we move  
from one to

21 the other, I have to do a little adjusting in my  
recollection.

22 Oh, yes. I have it now. Go ahead.

23 MS. WILKINSON: She is the one that you recall  
said on

24 her questionnaire that she had very mixed feelings  
about the

25 death penalty. And when she came in here to discuss it  
with

1 us, she said that she didn't believe that she could  
morally  
2 make that decision; but throughout the colloquy, her  
answers  
3 changed quite a bit. And I think we have to do what  
you  
4 suggested, which is read her answers in totality to  
determine  
5 whether she could, in fact, consider both penalties if  
she were  
6 faced with that decision.

7 On page 667 of the transcript, she said that  
she's  
8 hesitant about answering without qualifying her  
statements and  
9 that she feels uncomfortable with it and she has  
doubts. And  
10 as you might recall, I asked her to take the lunch  
break to  
11 think about whether she could make that type of  
decision; and  
12 as soon as she came back, without virtually any  
prompting from  
13 me, she said, "I'm afraid it would haunt me if I had to  
decide  
14 for the death penalty. I would feel very uncomfortable  
making  
15 such a decision. I suppose anyone can make a decision  
like  
16 that, but I really don't want to be haunted for the  
rest of my  
17 life. If I were to have to make a decision like that,  
I don't

18 feel morally at this time that I could do that."

19           Those words, I think, your Honor, suggest that  
she

20 would be substantially impaired; that she would be  
haunted, in

21 her words, to make this decision, and that morally --  
the term

22 that you suggested to her is the ultimate judgment she  
has to

23 make -- she doesn't feel like it's a morally correct  
decision.

24           She also answered some questions on page 673  
and '74

25 of the transcript that no matter what the facts and

1328

1 circumstances were that she could not fairly consider  
all those

2 and that if given the choice, she would choose life  
3 imprisonment every time. And that's on page 676.

4           THE COURT: This is where I was suggesting  
that

5 "comfortable" was not the word.

6           MS. WILKINSON: Yes. Right. And she said --  
I think

7 on page 676 she was asked, "Even then, are you going to  
feel

8 like it's a morally correct decision?" And she  
answered, "I

morally 9 don't think I could make it. I don't think it could be  
10 correct to put someone to death."

some 11 Now, you went back, your Honor, and asked her  
12 further questions on page 694 and 695. And most  
respectfully,

13 I would suggest that it's in fact because you're asking  
her the  
14 question and it's you and it's not counsel that she  
feels --

15 and many jurors feel this way -- that they have to  
respond to  
16 you that they can carry out their duty and do what  
you're

17 asking them to do. And so when you asked her, she  
said, "I  
18 could consider it. I guess I'm afraid that I would be  
19 haunted." She would tend toward life imprisonment.

"But if I  
20 had to make a decision for death, I would do that."

21 And I'm suggesting when you read all of those,  
your  
22 Honor, she's telling us all along that she's afraid to  
make

23 this decision; and it's only when you ask her and you  
look her  
24 in the eye wearing your robe that she says, "I would be  
25 haunted. But if I had to make that decision, I would."

And I

in here 1 think that's very understandable for a juror who comes  
2 and sees the formality of the court and understands the  
ruling 3 responsibility. So I think this doesn't fall under the  
4 you made on the previous juror.

5 THE COURT: I agree.

6 MS. WILKINSON: But I think it does fall under  
Witt.

7 THE COURT: All right. Mr. Tigar, I think, is  
the 8 individual for this person.

9 MR. TIGAR: Yes.

10 Never in more than 30 years of law practice,  
your 11 Honor, have I heard a federal judge accused browbeating  
a juror 12 so eloquently and yet so subtly.

13 But we return, if the Court please, to  
context. And

14 I'm not criticizing anybody for it. There will be  
cases in 15 here in which your Honor's colloquy with jurors will  
raise 16 questions with us.

17 THE COURT: Yes. You've raised questions  
about the

18 Court's conduct, too, with jurors. So it's comforting  
that the

19 Government feels the same way at times.

20 MR. TIGAR: "That's a tough question," the  
juror said.

21 I would hope so. "I believe I could consider both  
types of

22 sentences," page 664, line 7. "That's what I feel  
comfortable

23 with at this point," 674, going to line 2. "You know,  
I

24 suppose it would depend on the trial and what other  
facts --

25 you know, what facts would come to light or what --  
whatever

1330

1 would -- you know, I don't know what's going to be  
said. I

2 don't know what's going to come up. It would depend."  
This,

3 from a juror who had not expressed absolute opposition  
to the

4 death penalty but who had said that it would depend on  
5 circumstances.

6 676: "I am sure that I could, you know. I  
imagine I

7 could do it. I don't want to do it."

8 Beware the juror who wanted to do it.

9 688. "What kinds of cases is it appropriate  
to impose

reminded 10 the punishment of death?" And you stated -- she was  
11 of what she had said before.

12 691, "That's basically my bottom-line question  
to you,  
13 is, as a reasonable person, can you sit on a jury and  
consider  
14 both ranges of the punishment?"

15 "Answer: Yes." That was your Honor's  
question.

16 "That's what I'm reaching for." That's 694.  
"I could  
17 consider them. I could consider them."

18 "Well, if I had to make a decision, I would  
make a  
19 decision. I'm afraid that it would haunt me at some  
point.

20 That's my doubt. But if I were in that position, I  
would have  
21 to make a decision. I would have to consider and I  
would have  
22 to make a decision."

23 Statements that the Government took, your  
Honor,  
24 beginning on page 673, I regret to say, were taken out  
of  
25 context because if we read over to 674, we see that  
language

1 where the juror says, "It would depend."

2           So I recognize, your Honor, that there are  
concerns  
3 here; but this is a juror who, it seems to me, thought  
about  
4 this question, agonized about this question, and came  
into  
5 court and said, "All right."

6           And the interesting thing about this juror,  
your  
7 Honor, is that maybe we can take heart from the fact  
that she  
8 listened to your Honor and said, "All right. Yes, I'll  
-- it  
9 won't be easy, but I will listen to everything the  
Court says  
10 and I'll -- I'll follow that."

11           THE COURT: Well, I remember this person very  
vividly,  
12 her testimony, and I watched her carefully as she gave  
us her  
13 responses. You know, it's sort of like judging  
witnesses'  
14 demeanor and manner and not just the words that came  
through.

15 And I've also reviewed the transcript here.

16           This comes down to something of a judgment  
call with  
17 respect to this person's ability to render impartial  
jury  
18 service.

19                   And with respect to the black robe and that  
and the  
20                   criticisms that have come up and will come up by both  
sides  
21                   with respect to leading or steering or attempting to  
influence  
22                   the jury, it is my view that one of the  
responsibilities of a  
23                   judge is to let prospective jurors know that it is  
something  
24                   special to serve on a jury and that this is not an  
ordinary  
25                   place and they're not being asked questions that are  
easy, will

1332

1                   not be asked to make decisions that are easy; and some  
of them  
2                   will be haunting. And that isn't just the question of  
death  
3                   sentence. That can be true in any case, can be true in  
denying  
4                   a person liberty.

5                   So I think it is -- and I don't -- and I'm not  
6                   embarrassed about it or bashful about it. I think I do  
have a  
7                   responsibility to cause people to recognize the special  
role  
8                   that juries play in our society and the heavy  
responsibility

9 that is placed on citizens to serve on juries.

10 Now, obviously, there can be times when, for  
one  
11 reason or another, the Court pushes too hard. And I'm  
sure  
12 counsel will let me know each time that may seem right  
to them;  
13 but in this case, I don't think it's true. I think  
that we got  
14 involved, perhaps, with more discussion than necessary  
because  
15 of that word "comfortable."

16 I'm not criticizing you, Ms. Wilkinson, for  
using it;  
17 but, you know, I agree: People should not be  
comfortable on a  
18 jury and they should recognize that they are making  
awesome  
19 decisions with awesome consequences.

20 My view of this person, all things considered,  
is that  
21 she can serve. The motion to exclude her is denied.

22 Next?

23 MR. TIGAR: I think -- is No. 52 -- it's the  
same -- I  
24 think it's the same issue, your Honor, as the one on  
which you  
25 previously ruled. Am I right?

1 THE COURT: Well, I have to look. I think  
that's true

2 that this --

3 MR. MACKEY: It's a Wit/Witherspoon issue.

4 THE COURT: Yes. This is the "too easy; death  
is too

5 easy."

6 MR. TIGAR: It's the same argument, your  
Honor.

7 THE COURT: So I grant the motion with respect  
to her.

8 MR. MACKEY: Thank you.

9 THE COURT: She's excused.

10 763, Mr. Ryan? I guess this is a special  
case.

11 MR. RYAN: Yes, your Honor. I know again you  
recall

12 this juror quite well --

13 THE COURT: Yes.

14 MR. RYAN: -- I'm confident.

15 We believe it's a combination of three matters  
that we

16 would call to your Honor's attention; and again, I know  
that

17 you recall all of them well.

18 I believe this juror expressed perhaps some  
stoicism,

19 but I think she has a real hardship. She's with a  
company that

has at 20 is not producing anything right now, no income. She  
been cut 21 least one child, I believe two. Her child support has  
company while 22 in half. She doubts she'll receive pay from her  
some 23 she's doing jury service; and she, I think, will suffer  
24 economic hardship by virtue of her service.

potential, at 25 Second, I think she presents us with the

1334

the 1 least, for some disruption. I know your Honor recalls  
and the 2 testimony with respect to messages that she may receive  
the 3 psychic energy that she feels; and while she did advise  
messages, 4 Court that she would tell you if she received clear  
5 at least this raises the potential in our mind for some  
6 disruption of jury service.

for our 7 But our primary reason, your Honor, for the --  
clearly 8 challenge to this juror is that, you know, she did very  
the 9 express to your Honor that she could not participate in

10 death penalty decision. She thought the death penalty  
was a  
11 valid measure of punishment in our society, but she  
personally  
12 could not participate in that decision, could not make  
that  
13 type of decision. Your Honor put it to her very  
clearly at  
14 page 752 and 753.

15 THE COURT: Mr. Tigar?

16 MR. TIGAR: It took me a while, your Honor, to  
17 understand what this juror was talking about and what  
her inner  
18 feelings were, and it was at the end of my discussion  
with her  
19 that I raised the idea of her jury summons not being a  
20 coincidence; that is to say, she doesn't believe in  
21 coincidence. She has a view of the world in which  
things are  
22 related to each other. And with that in mind, we then  
talked  
23 about her service. And so I think it's fair to say  
from that  
24 exchange that if she is selected as a juror, she  
doesn't  
25 believe that's a coincidence, either; that is, she's  
there and

1 that that would mean that she'd have to deal with these  
2 financial issues.

3 But here's the answer at page 774, beginning  
at line  
4 13, your Honor: I asked her, all the facts put to her,  
the  
5 situation about hearing the evidence and the  
involvement and  
6 background of the person and then hearing the lawyers  
argue and  
7 then said, "Would you then be able, it not being a  
coincidence  
8 that you found yourself there, to listen to the Judge's  
9 instructions and to make your choice?"

10 "Answer: Yes."

11 So I think, your Honor, that although there  
is, as  
12 there always is, the possibility that the juror might  
hear  
13 something or come into some information, which is not  
at all  
14 unusual in long trials, that this is a juror who at the  
end of  
15 the day said, "I can do it."

16 THE COURT: Well, I puzzled about this one.  
Again  
17 I -- you're right, Mr. Ryan: I remember her well and  
the  
18 exchanges, colloquy that all of us had with her. I  
want to  
19 make clear that I respect her views, as I'm sure you  
do. I

20 don't make any value judgments about them.

21                   It does concern me that a person would have  
the view

22 that she's here other than by chance or coincidence. I  
have a

23 concern that the rules of evidence would not be  
limiting for

24 her, and I've thought about -- she was very sincere in  
saying

25 that, well, if some sort of energy emanation or  
something came

1336

1 to her in the course of the trial, she would let us  
know about

2 it. But I've thought about that; and I thought, all  
right, if

3 that happens, what will I do about it? And I don't  
know what I

4 would do about it. And it's on that basis that I think  
that

5 there is enough of a possibility of disrupting the  
proceedings

6 that I'm going to grant the motion with respect to her.

7                   Also, as a part of that, I believe that there  
would be

8 some extreme hardship for her, the dimensions of which  
she

9 might not even now be aware of herself, because it  
depends upon

10 how that new business works out.

11 So that, I believe -- those, I believe, are  
the ones  
12 presented by the Government.

13 MR. MACKEY: Yes, your Honor.

14 THE COURT: And, Mr. Tigar, you have several.

15 MR. TIGAR: Yes, your Honor. Juror No. 143,  
Call  
16 No. 4.

17 THE COURT: Okay.

18 MR. TIGAR: This is a very difficult  
challenge, your

19 Honor. And it concededly lacks the clarity of some of  
the

20 other challenges that we have made. However, as we  
point out

21 in our brief this morning, the question here is whether  
a juror

22 is substantially impaired in considering alternatives  
to a

23 death sentence. And the Court at page 237, lines 8 to  
10, did

24 remind the juror that the law is that you have to  
consider what

25 the role was; and then the Court made the distinction  
at page

1 237 between the person pulling the trigger and the one  
who may  
2 be involved in the crime but does not pull the trigger  
and  
3 continued on in that vein on into the next page.

4                   However, the juror had said in the  
questionnaire  
5 that -- and then in initial questioning at pages 234,  
for  
6 example, and 233 and 231 that the death penalty is the  
7 appropriate verdict for multiple murders, for mass --  
i.e., two  
8 or more -- murders, and so on, and then reaffirmed that  
"I  
9 believe in the death penalty."

10                   So what -- we need some clue as to what the  
juror is  
11 really saying here and whether the juror, whose manner  
while he  
12 was being interrogated was sometimes not as serious as  
seemed  
13 to fit the questions being asked -- I'm not going to  
say any  
14 more about that because I don't want to engage in --

15                   THE COURT: But don't you think some of that  
was sort  
16 of nervousness, anxiety that's manifested in that  
behavior  
17 response, which seems inappropriate?

18                   MR. TIGAR: I --

19                   THE COURT: I noticed the same thing, but I  
thought

20 that's probably attributable to some nervousness.

21 MR. TIGAR: I concede that some of that is  
22 attributable to that, your Honor; but the -- I don't  
think that  
23 that really answers the mannerisms that we saw when he  
was  
24 answering the key questions here. For example, when  
asked  
25 about situations, killings in which he would not impose  
the

1338

1 death penalty, he gave the example of a bus that  
accidentally  
2 ran into a bunch of people, not grasping the idea that  
we  
3 weren't really asking him to judge the crime; we were  
talking  
4 about under what -- asking him under what circumstances  
could  
5 he look to the factors individual to this defendant.  
And even  
6 a rehabilitation question that asks can you consider  
degree of  
7 participation isn't really a rehabilitation question  
addressed  
8 to whether he could consider the circumstances of this  
9 individual.

10 And so we have, "Well, isn't that the right

number --

11 that isn't the right number, but there were multiple  
deaths."

12 This is 237. "You know, but I think that's a pretty  
steep

13 thing to send somebody to jail over, you know. I  
believe in

14 the death penalty."

15 Under those circumstances, your Honor, we  
respectfully

16 suggest that the juror is substantially impaired with  
respect

17 to giving realistic consideration to a sentence other  
than

18 death.

19 THE COURT: Thank you.

20 Mr. Ryan, was this your --

21 MR. RYAN: Yes, your Honor.

22 THE COURT: -- juror?

23 MR. RYAN: Again, I'm sure your Honor recalls  
this

24 juror. He's the auto mechanic, has two children, his  
wife

25 works, and his parents agreed to help him out if it was

1339

1 necessary for him to perform his civic duty.

2 Your Honor, I think the consideration of this

juror

3 should begin with his questionnaire, because unprompted  
by any 4 question of the Court or by the parties, he stated with  
respect 5 to the death penalty that it depends on the crime and  
depends 6 on the criminal history; so he was already thinking  
7 considerations beyond the crime before asked any  
questions by 8 the parties.

9 And when the Court asked him the question, he  
agreed 10 with the statement that of course it depends on the  
crime, the 11 circumstances of the crime, background of the  
defendant, why 12 the crime was committed. He added a factor that no  
other juror 13 stated, I don't think, as to an absolutely open-ended  
question. 14 On page 209, he stated again, "It depends on the type  
of crime, 15 the person committing the crime."

16 At 210, he stated, "I couldn't make a death  
penalty 17 decision until I listened to all the evidence. That's  
fair."

18 He stated on Question 23 -- on page 239 that  
-- again, 19 he states, "It would depend on the person, the criminal  
20 history, his background, the person's circumstances."

21                   And when your Honor suggested that the role  
might make  
22                   a difference, as Mr. Tigar has already raised, said, Of  
course  
23                   it makes a difference whether he is the shooter or  
another  
24                   participant in the crime.  
25                   Clearly, this juror should be entitled to  
serve.

1340

1                   THE COURT: All right. I have reviewed this  
-- these  
2                   answers; and, you know, this was the first day and we  
were sort  
3                   of settling in as to how these questions were going to  
get  
4                   asked, not to suggest we've resolved that; but I think  
this --  
5                   I think this young man got asked from every angle that  
anybody  
6                   could think of about his views with respect to the  
death  
7                   penalty; and to the extent that he showed some  
confusion there,  
8                   I think it's a justified one. But my view of it is  
that he is  
9                   open to impartial consideration of the alternatives in  
this  
10                  case; and accordingly, I'm denying the motion on him.

11 MR. TIGAR: No. 583, your Honor, No. 5.

12 THE COURT: Thank you.

13 MR. TIGAR: This is a juror who, if we're  
going to

14 refer to questionnaires, was what can only be called  
brutally

15 frank. She said she had some preconceived ideas. She  
said

16 that she had hardship with respect to her condo and  
that her

17 parents could help out, but she never identified  
exactly how

18 her parents -- you know, how much of a sacrifice that  
would be

19 or whether they'd even be able to make it. And she did  
not

20 indicate that she had a relationship of any other kind  
that was

21 going to help her there.

22 Then on her -- in addition, her company had  
provided

23 canned foods and supplies to the victims in Oklahoma  
City. And

24 then at page 37, she said, "He must be guilty --  
haven't heard

25 much evidence, but he must be guilty. The Government  
must have

1 some evidence to proceed." Her views have become  
stronger as a  
2 result of the -- hearing the evidence with respect to  
the -- or  
3 hearing about the evidence with respect to the McVeigh  
trial.

4 So that -- those were the opinions that she  
was  
5 stating.

6 Then she thought that life in prison without  
7 possibility of parole is a waste of taxpayers' money.

8 THE COURT: Yes. This is the cost-benefit  
analysis.

9 MR. TIGAR: It's the cost-benefit analysis,  
yes, your

10 Honor. And the other automatic -- what we'd say  
automatic or

11 "death penalty in every case" kinds of views.

12 Well, then she got here; and we filed a brief  
with

13 respect to your Honor's questioning of her and in which  
the

14 Court invited her to amend her answers, which she did,  
saying

15 that some of them had been made under the pressures  
that she

16 felt and out of perhaps a desire not to serve on the  
jury; but

17 it was a little difficult to credit that, you know, any  
18 complete withdrawal from those views, given the  
strength and

19 indeed ferocity with which the views were expressed in

the

20 questionnaire.

21 And so I began to question her about that.  
She said,

22 Well, yes, that had been the images she had seen on TV  
and that

23 was the impression that she had at that time; and then  
she

24 said, "I wasn't sure in the beginning."

25 "So you weren't sure in the beginning; is that  
right?"

1342

1 This is at page 304.

2 "Well, it's kind of teetered back and forth.  
Right at

3 the beginning, I didn't have much of an opinion. Then  
I

4 thought, well, he must be guilty, you know, if they're  
5 prosecuting him. And then I started evaluating why do  
I think

6 that; and I realized I have no proof, I have no way of  
knowing

7 that. Okay. So that's why I changed it again. So  
it's been

8 teetering back and forth."

9 And she conceded at page 305 he may be -- that  
10 Mr. Nichols might have a hard time getting a fair trial  
as a

11 result of Timothy McVeigh.

"It 12                   Once again on page 306, we take up the theme:  
13 kind of teetered. I mean, I may not have come down to  
an exact 14 opinion on Terry Nichols."

15                   Now -- but the point is in her questionnaire  
she did 16 come down to an exact opinion, she did express it.

17                   And then she says, "I mean, they teetered back  
and 18 forth between guilty, not guilty, back and forth. I  
mean, I 19 have no exact definite opinion either way," except of  
course 20 that she had expressed a definite opinion earlier. And  
then 21 again at line 21, she is still referring to teetering  
back and 22 forth, your Honor.

23                   Finally, we really got to it: "The only time  
I 24 believe it should not be imposed," speaking of the  
death 25 penalty at page 312, "is if the crime is accidental."

1343

1                   "Did you believe that on that day?"

2                    "Well, this is a general opinion, but I still  
have  
3                    that."  
4                    "So that general opinion is one you held for a  
while  
5                    before you came out there on the 17th?"  
6                    "I think so."  
7                    "And you still hold it as a general opinion  
today?"  
8                    "I think so."  
9                    "So the general opinion," skipping now to line  
14, "is  
10                   sort of a background principle that -- that you use  
that as  
11                   part of your thinking about it?"  
12                   "Yes, but if there was proof otherwise --"  
13                   And then she reaffirms: ". . . you might have  
had  
14                   something that you've read about Terry Nichols, but if  
we were  
15                   able to bring you some evidence to show that he didn't  
do it,  
16                   that you could acquit him?  
17                   "Yeah, I think so."  
18                   In short, your Honor, this is not a juror who  
at the  
19                   end of the day says over and over again and never  
changes, I  
20                   always believe in the death penalty under these  
circumstances,  
21                   nor a juror who always says, I've got these

preconceived

22 opinions, but as to whom under the case law there is  
that

23 doubt, that substantial impairment of her ability with  
respect

24 to any penalty phase and with respect to publicity.  
And we ask

25 she be excused.

1344

1 THE COURT: All right. Ms. Wilkinson?

2 MS. WILKINSON: Your Honor, I don't know if  
Mr. Tigar

3 is suggesting this, but I read his papers where he  
challenged

4 this juror and said that she had plainly disqualifying  
answers

5 on her questionnaire. I don't believe that's ever been  
the

6 position of this Court. In fact, I think it's the  
opposite:

7 That no one would be disqualified based purely on their  
8 questionnaire.

9 That being said, of course, we use that in  
context to

10 judge the other answers that the jurors say to you when  
they

11 come in for questioning; and I think what happened in  
this case

juror 12 was your Honor read the questionnaire and looked at the  
13 and thought perhaps this juror was concerned about the  
colored 14 financial hardship and had therefore maybe -- that had  
other 15 her answers or shaded her answers in some way to the  
denying 16 questions; and so your Honor did what you just said in  
what jury 17 my last motion and explained to the juror, you know,  
with that, 18 service is really about and why it's important. And  
she 19 I think she did modify her views, recognizing (1) that  
her and 20 really didn't have an opinion, because when you pressed  
point to any 21 when Mr. Tigar pressed her and I did, she couldn't  
22 information that she really had.

23 She said that she could follow the Court's  
an 24 instructions. She told you that she really didn't have  
had 25 opinion and she could set aside the publicity that she

1345

asked on 1 seen; and she asked what her opinion -- when she was  
2 page 271 and '72 what her opinion of Terry Nichols was

today,

3 she said she didn't think she had one.

4           So I think in context, when you look at all of  
her

5 responses to you and to counsel, what became apparent  
was that

6 her financial hardship was of such great concern to her  
when

7 she filled out the questionnaire that she hadn't  
thought about

8 all of her responses and that when she came in here,  
while she

9 may be a believer in the death penalty, she was able to  
agree

10 that she could set aside her personal opinions and  
consider all

11 the facts and circumstances; and she said that on  
repeated

12 occasions when you questioned her.

13           THE COURT: All right. Well, apart from the  
concern

14 about the Court's questioning of this juror, as shown  
in the

15 written papers filed, I reviewed my contemporaneous  
notes made

16 when she was in here. I'm not going to share those  
with you or

17 anybody else; but considering everything about this  
juror, my

18 view is that she may be unable to render impartial  
service on

19 the question of penalty. I'm not as concerned with  
respect to

20 her on the issues for trial; but with respect to the  
penalty, I  
21 think there is an uncertainty in my mind that she would  
be able  
22 to be impartial and give full consideration to both  
possible  
23 punishments here. So I'm going to grant the motion.

24 And 335.

25 MR. TIGAR: Yes, your Honor. The Court will  
recall

1346

1 that this is a juror who has had long-time federal  
employment

2 and thus, we suggest, should be looked at with  
particular care.

3 As the Court knows, ever since the Supreme Court's  
decision in

4 Moreford vs. United States, there is no automatic  
implied bias

5 disqualification of federal employees, although there  
are --

6 there is case law that suggests that where there is an

7 important federal concern beyond the ordinary that this  
ought

8 to be looked at with particular care.

9 This is a juror who cannot recall anyone who  
was other

10 than approving when the radio played the news in her

office out

11 there at the Federal Center of the death verdict with  
respect

12 to Mr. McVeigh and that she had personally felt that he  
was

13 guilty. She felt the sentence of death was just, and  
the

14 reason she gave was that 160 people were killed and  
that it was

15 planned in advance.

16 Now, we concede, this juror doesn't know  
anything more

17 about the McVeigh case than what she reads; but there  
was

18 enough interest in it that, as I say, it came over the  
radio.

19 So finally, we started asking about the  
circumstances;

20 and she says, "Well, I favor the death penalty,  
depending on

21 the circumstances, all of the circumstances of the  
case."

22 So then we had to try to figure out what that  
meant.

23 That was at 818. And she thought the death penalty was

24 appropriate where a person is found guilty of multiple

25 premeditated murders; and then I asked what I thought  
was the

is, 1 bottom-line question at page 821, beginning at line 10,  
it does 2 "Can you tell us that if there is a guilty verdict and  
offense in 3 involve a lot of deaths and injury -- that is, the  
that 4 which a defendant played some role -- that you believe  
effects 5 there should be a death sentence there because of the  
other 6 of it, the number of people killed, regardless of any  
7 circumstances?"

8 "Answer: Yes, I do believe."

comes 9 So once again, your Honor, we have a juror who  
10 to us, as I say, with the need for special caution and  
term 11 circumspection because of her employment and the long-  
here about 12 nature of it and because of what we're going to hear  
that 13 the enormity of this particular crime who then makes  
14 answer; and that, we would suggest, is an impairment.

15 THE COURT: All right. Ms. Wilkinson again.

with her 16 MS. WILKINSON: Your Honor, Juror 335 began  
17 answers on the questionnaire with her views that  
matched what  
when she 18 you instructed her was the law. She told the Court

19 was asked in the questionnaire that she believed that  
the death

20 penalty could be appropriate for certain murders  
depending on

21 the circumstances; and she even qualified her death  
penalty

22 answer with certain murders vs. life imprisonment,  
where she

23 put "murders depending on the circumstances."

24 So she came in here with an understanding that  
she

25 would have to consider all the facts and circumstances,  
and she

1348

1 repeatedly responded that way throughout the  
questioning until

2 the very end.

3 She was asked -- and I think we've set this  
forth in

4 our brief, which I'm not sure whether you reviewed over  
the --

5 THE COURT: I did --

6 MS. WILKINSON: -- lunch hour -- where she was  
asked

7 on a repeated basis by you whether she understood the  
process

8 and whether she'd consider all the particular  
circumstances of

9 the defendant. That's on pages 793 and 794, and she

said she

10 could do that.

11 When defense counsel asked her where she stood  
on the

12 death penalty and to describe her view, on page 818 she  
said,

13 "I would say I favor the death penalty, depending on  
the

14 circumstances, all the circumstances, the case."

15 They asked again and this time loaded the  
hypothetical

16 with aggravating circumstances, saying, "Now, in the  
case where

17 a person is found guilty of multiple, premeditated,  
planned,

18 intentional, cold-blooded murder, murder of many  
people, do you

19 feel that life imprisonment could ever be the  
appropriate

20 punishment?"

21 And she said in that case, "I feel that the  
death

22 penalty is appropriate."

23 Again, asking that, I think, what we've  
determined now

24 is probably an improper question of just the  
aggravating

25 circumstances.

1                   When defense counsel asked her to describe the  
2 appropriate circumstances on page 818, he said, "That  
is to  
3 say, if you were on a case and somebody was convicted  
of  
4 that" -- referring back to this loaded hypothetical --  
"that  
5 would be enough for you to say the death penalty is the  
6 appropriate -- is the appropriate punishment?"

7                   And the juror respond, "Well, that is some of  
the  
8 circumstances, yes."

9                   So she's asked, "Is that enough?" which to me  
is a  
10 totally different question than if you can balance  
those  
11 things; but "is that enough for you to think that is an  
12 appropriate punishment?"

13                   And then she responded, "That's some of the  
14 circumstances." And she responded again that "that's  
some of  
15 the circumstances that would make it appropriate."

16                   She responds several times on page 818 and '19  
about  
17 circumstances; and it's only, I believe, on page 820  
when the  
18 Court says, "You seem to be saying, well, you're  
strongly in  
19 favor of it if there is a killing of one or more  
persons."

"I guess 20 And the juror, even to you, your Honor, says,  
all the 21 I'm saying there are factors. You have to listen to  
22 factors. I guess that's what I'm saying."

23 And it was only -- I believe it was your final  
24 question and where you asked her about the hypothetical  
the  
25 defense had raised; and you said, "Regardless of any  
other

1350

1 circumstance, do you think you would give the death  
penalty?"

2 And that's when she said, "Yes, I do believe."

3 So I think in the context of all her responses  
up  
4 until that one question, she is reiterating on her own  
that she  
5 should consider all the facts and circumstances to make  
a  
6 decision and would not be substantially impaired in  
considering  
7 all the alternatives for sentencing.

8 THE COURT: Well, I appreciate that Government  
counsel  
9 suggest that I shouldn't have asked that question and  
that it  
10 was inappropriate and may have been; but there were a

number of

11 other inappropriate questions before that. This is one  
of

12 those where I think we generated a good bit of  
confusion

13 because of the nature of the questioning, and I think  
we've

14 learned better over the past few days; but I believe  
that that

15 answer to that question makes me sufficiently concerned  
about

16 her ability to be impartial in the sense of being able  
to

17 consider all mitigating circumstances, mitigating  
factors; so

18 I'm going to grant the motion.

19 MR. TIGAR: The last one of the day, your  
Honor, is

20 No. 699.

21 THE COURT: I have it.

22 MR. TIGAR: Again, there may be reproaches for  
the

23 clarity with which the questions were asked; but we  
began with

24 the juror talking about on her questionnaire where  
there are no

25 mitigating circumstances; and we were trying to find  
out what

1050, 1 she meant by that, what her mind-set was. And at page  
some sort 2 she thought about crimes of passion, where there was  
could 3 of mitigating circumstance. And she had said that she  
very 4 impose the death penalty if the person had done this  
process; that 5 deliberately with a long process or even a short  
crimes of 6 terrorism might be involved. And that was where the  
7 passion came up.

8 Then, of course, she did say that she would be  
able to 9 listen. We concede that; that she would listen very  
carefully.

10 And of course, here's the problem, your Honor. Eddings  
vs.

11 Oklahoma -- that's a case in which the judge said,  
Well, I'll 12 listen but I'm not going to do anything about it. So  
when we 13 ask "will you consider," we don't think that's enough  
14 rehabilitation. It's "consider and give effect."

15 My daughter says to me, "Dad, are you going to  
buy me 16 that jacket?

17 I say, "No."

18 "Well, will you consider it?"

19 And I always say, "Yes," but she doesn't have

that

20 jacket yet.

21 And I think that's the difference we're  
looking at

22 here.

23 She does talk about mitigating circumstances;  
and then

24 she was asked at 1060, "As you use the word 'mitigating

25 circumstances' in your questionnaire, I was wondering  
-- I

1352

1 mean, one of the examples you gave was a crime of  
passion. Did

2 you have in mind any other types of mitigating  
circumstances?"

3 "No, not right now. I can't think of  
anything, I

4 guess."

5 And then, however, she did go on to say yes,  
she could

6 imagine it might have to do with the type of role or  
family

7 life or remorse. But -- excuse me, your Honor. I'm  
trying to

8 find the reference here.

9 "I would say the Oklahoma bombing would be an  
act of

10 terrorism in my mind, where if the case was proven to

me, the

11 death penalty would be appropriate." And she's  
referring just

12 to what she had said on her questionnaire with respect  
to

13 terrorism, premeditation, murder, and serial killers;  
that is,

14 she thinks the Oklahoma bombing case is a terrorism  
case.

15 And under those circumstances, what she says  
is that

16 the death penalty is the appropriate sentence, if  
someone has

17 proved all of those things.

18 She says, "I would listen to what was  
presented to me;

19 but if there wasn't a circumstance that said to me I  
should

20 change my mind, I would still say the death penalty is  
21 appropriate."

22 And respectfully, your Honor, I think there is  
one

23 more here to point out.

24 Oh, yes, the last bit. "You're saying to me  
if

25 Mr. Nichols is proven guilty" -- and I believe this is  
the

his 1 Court's question -- "irrespective of what percentage of

2 involvement was there --"

3 "Would I find him -- would I impose the death  
4 penalty?"

5 "Question: Yes."

6 "Answer: Yes."

a 7 So there the juror was rejecting the idea that

mitigating 8 differential degree of involvement would be a

follow the 9 circumstance, not, your Honor, a clear-cut I won't

has in 10 law, but a whole series of indications that this juror

therefore 11 mind (a) that this case involves terrorism; (b) that

she 12 it makes it appropriate for the death penalty; (c) that

mitigating 13 can't think of any mitigating circumstances, and (d)  
14 specifically with respect to the one and only one

"Nope, I'd 15 circumstance with which your Honor confronted her,

defendant. 16 still give him the death penalty," referring to this

17 THE COURT: Mr. Ryan.

18 MR. RYAN: Thank you, your Honor.

afternoon, 19 This was the last juror we had yesterday

20 your Honor.

21 THE COURT: Yes.

22 MR. RYAN: A very mature woman in a very  
responsible

23 job. She answered in her questionnaire without  
prompting that

24 she might impose the death penalty in certain cases  
where there

25 were no mitigating circumstances. And I went through  
the

1354

1 answers at lunchtime today that she gave in response to  
the

2 questions by both the Court and counsel no less than  
seven or

3 eight times. Does she repeat that same refrain? She's  
wanting

4 to hear what mitigation might apply.

5 (A) This is an act of terrorism, this crime.  
She's

6 right about that. We've charged it. It is under  
anybody's

7 definition. She wants to know what the mitigation is.  
No

8 information is being provided to her other than the  
fact --

9 these facts of premeditation and planning and cold-  
bloodedness.

10 I -- frankly, your Honor, when it comes right  
down to

11 the last question, I think that's probably the one that  
12 concerns you the most. Again, I would point out that  
that's  
13 but one mitigating factor.

14 But I think the argument that I want to make,  
your  
15 Honor, is if you take that answer in the connotation of  
her  
16 entire testimony, I think that you might conclude that  
the word  
17 "irrespective" that she uses -- it's her word, it's not  
any  
18 fault of the Court's -- but her word there on 1082, she  
doesn't  
19 mean what the rest of us think she meant. I think she  
means,  
20 Are you telling me to ignore what his role was in the  
crime?

21 I'd ask your Honor to look at it. It begins  
with your  
22 Honor on page 1081 saying, "If you were on a jury and  
you found  
23 Mr. Nichols had some role to play in the bombing, would  
you  
24 automatically sentence him to die?"

25 And she goes, "Automatically?"

1355

1 And you went "Yes," and you go on.

2                   And then she answers, "You're saying to me if  
3 Mr. Nichols is proven guilty, irrespective of what  
percentage  
4 of his involvement was there, would I impose the death  
5 penalty?" And she says, "Yes."

6                   I don't really honestly think, given the rest  
of her  
7 answers, that she means to say if I only found him to  
have a  
8 minor role, because she's previously given testimony  
throughout  
9 earlier questions that if he had minor role that she  
would take  
10 that into account.

11                  As I say, this juror, I think, is suffering  
under the  
12 disability of not really knowing what the mitigation  
is. All  
13 she's hearing is aggravation; and she's not given any  
14 opportunities to really -- any choices of what might  
mitigate  
15 this crime; but she's clearly interested in mitigation  
both  
16 from her questionnaire and both from your Honor's  
earlier  
17 questioning.

18                  THE COURT: Well, here, too, I don't have to  
read the  
19 transcript. I've got a clear recollection of what she  
said and  
20 how she said it. Very mature, analytical person in a

position

21 of great responsibility where those virtues are  
required of her

22 and those skills. I don't have any question about her  
ability

23 to decide with respect to guilt whether the evidence  
proves it;

24 but the manner in which she addressed the penalty  
questions and

25 the last answer raise great concern.

1356

1 You know, one of the things -- and it's  
awkward saying

2 about this somebody publicly -- and I'm not judging  
her. The

3 operative word again is "may." That's what we're  
dealing with

4 here, a concern about possibilities, not likelihood of  
what a

5 person might do. But here's someone who professionally  
does

6 categories, risk management, determinations of risk  
factors and

7 coverage, and so forth, and I think deals with and is  
trained

8 to and is experienced in sort of categorizing things.  
That

9 concerns me enough to grant the motion, because we  
can't have

10 people addressing this question of penalty by putting  
11 categories into their judgment. This is, indeed, a  
reasoned  
12 moral judgment, but it involves things other than  
13 classifications and categories.

14 I say I may be unfair to her in making this  
judgment;  
15 but it isn't a question of unfairly evaluating a person  
called  
16 in here for jury service. The fairness that I have to  
be  
17 primarily concerned about is the fairness to the  
process we're  
18 engaged in and the outcome; so I'm granting the motion.

19 MR. TIGAR: Your Honor, I know that there are  
these  
20 issues about the respective briefs with respect to the  
kinds of  
21 questions that ought to be asked. May I respectfully  
suggest  
22 we come early on Monday morning to do that? My  
daughter is  
23 arriving at the airport this evening and --

24 THE COURT: Well, you know, I can't -- again,  
I  
25 emphasize something that I said early on here: We  
don't do

it is  
be asked  
think  
here,  
see any  
my  
ruling on it. I think we're doing all right.

that  
was -- I  
be over  
Honor --

MR. TIGAR: I wasn't suggesting that we needed  
extra time, your Honor. I was only suggesting that I  
personally was hoping that the Court proceeding could  
within a reasonable time, of course, subject to your

soon. Right  
don't  
or that  
appellate cases  
judge;  
and that discretion has to be exercised in the context

THE COURT: Yeah. It's going to end very  
now. I'm just -- I don't think that it's helpful. I  
think it's helpful to present argument about this case  
case and the kinds of questions that were approved or  
disapproved by appellate judges. As all of the  
say, this is a matter for the discretion of the trial  
and that discretion has to be exercised in the context

of what

19 we're doing. And that's what I'm doing; and, you know,  
we're  
20 not at any point where we're stopping or interrupting  
the  
21 proceedings by these concerns. I think we'll go along  
as we  
22 have been, and I'll judge according to what's going on  
at the  
23 time.

24 And, you know, you can look through a lot of  
25 precedents, and there isn't one quite like what we're

1358

1 confronted with here; so I don't intend to hold  
argument about

2 that. I intend for us to start with the next  
prospective

3 juror.

4 But when you say we could come in early and  
talk about

5 that, I'd like to start 15 minutes earlier each day and  
start

6 at 8:45 so that we gain a little there and have a  
little better

7 balance between the mornings and the afternoons. If  
that isn't

8 something that presents a great hardship to either  
side, that's

9 what we'll do.

10 MR. TIGAR: That's agreeable.

11 MR. MACKEY: That's fine.

12 THE COURT: Then we'll recess till 8:45 Monday  
13 morning.

14 (Recess at 5:30 p.m.)

15 \* \* \* \* \*

16

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14 REPORTERS' CERTIFICATE

15 We certify that the foregoing is a correct  
transcript from  
Dated 16 the record of proceedings in the above-entitled matter.  
17 at Denver, Colorado, this 3d day of October, 1997.

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19

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Paul Zuckerman

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Bonnie

Carpenter

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