



21  
22  
23  
24  
Transcription  
Street,  
629-9285

Proceeding Recorded by Mechanical Stenography,  
Produced via Computer by Paul Zuckerman, 1929 Stout  
P.O. Box 3563, Denver, Colorado, 80294, (303)

1361

1 APPEARANCES  
2 PATRICK RYAN, United States Attorney for the  
Western  
3 District of Oklahoma, 210 West Park Avenue, Suite 400,  
Oklahoma  
4 City, Oklahoma, 73102, appearing for the plaintiff.  
5 LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNES,  
and  
6 JAMIE ORENSTEIN, Special Attorneys to the U.S. Attorney  
7 General, 1961 Stout Street, Suite 1200, Denver,  
Colorado,  
8 80294, appearing for the plaintiff.  
9 MICHAEL TIGAR, RONALD WOODS, ADAM THURSCHELL,  
and  
10 JANE TIGAR, Attorneys at Law, 1120 Lincoln Street,  
Suite 1308,  
11 Denver, Colorado, 80203, appearing for Defendant  
Nichols.  
12 \* \* \* \* \*

13

PROCEEDINGS

14

(In open court at 8:45 a.m.)

15

THE COURT: Be seated, please.

16

Good morning.

17

ALL: Good morning.

18

THE COURT: I think we're ready now for 473.

Ask him

19

in, please.

20

right hand

Good morning. If you'll please raise your

21

and take the oath from the clerk.

22

(Juror No. 473 affirmed.)

23

THE COURTROOM DEPUTY: Thank you.

24

THE COURT: Please be seated.

25

1362

Juror No. 473 – Voir Dire

1

VOIR DIRE EXAMINATION

2

BY THE COURT:

3

it on

Q. You took that oath once before, and you almost took

4

mix-up.

Friday when we had you in here by mistake, in a little

5

day

We apologize for that and also for making you wait all

6

Friday without getting to you, but I'm sure you

understand that

7 we can't time these in any way -- predictable way  
because like

8 a lot of things, it all depends.

9 So we have you now here this morning, and you  
recall

10 that you did take the oath when you completed a  
questionnaire

11 on September the 17th when you and others appeared at  
the

12 Jefferson County Fairgrounds' auditorium building.

13 A. I do.

14 Q. All right. And that at that time you met some of  
the

15 people who are here in the courtroom today with us, but  
I want

16 to make sure you know who's here, so let me  
reintroduce, first,

17 attorneys for the Government: Mr. Lawrence Mackey at  
the first

18 table here and Miss Beth Wilkinson. And additional  
counsel for

19 the Government now whom you had not met before, Mr.  
Patrick

20 Ryan and Mr. Geoffrey Mearns.

21 And you recall meeting counsel for the  
defendant:

22 Mr. Michael Tigar, Mr. Ronald Woods; and Mr. Terry Lynn  
23 Nichols, who is the defendant in the case.

24 And, you know, I'm sure you do remember these  
things,

you so 25 but it is necessary that I review them a little with

1363

Juror No. 473 – Voir Dire

You'll 1 that we have sort of a foundation for the questioning.

questionnaire 2 recall that before asking you to complete the

questionnaire 3 there on the 17th, we had given you an earlier

4 that came with the jury summons.

5 You remember that?

6 A. Yes.

there 7 Q. And you have the one that you completed on the 17th

8 with you.

9 A. Yes, I do.

to 10 Q. But you don't have the other one, and I just wanted

about 11 remind you that originally you advised us when we asked

from 12 hardships in terms of any reason that would prevent you

impact 13 serving, you expressed your concern about the financial

family 14 of jury service for an extended amount of time on your

formed some 15 and your employer and also mentioned that you had

16 opinion about Mr. Nichols. And you followed that up  
some on 17 the questionnaire, and we'll get to that.

18 But you do recall that I outlined the case in  
terms of 19 its background, procedural history of the case, how it  
does

20 arise out of an explosion that destroyed a federal  
building in

21 Oklahoma on April the 19th -- Oklahoma City, on April  
19 of

22 1995, killing and injuring people and that there was an  
23 indictment in Oklahoma City in the Federal Court  
charging

24 Timothy McVeigh and Terry Nichols and other persons not  
named

25 in the indictment with a conspiracy to bomb that  
building as a

1364

Juror No. 473 - Voir Dire

1 federal office building and to carry it out and with  
the

2 murders of eight law enforcement agents within the  
building.

3 You recall that.

4 A. Yes, I do.

5 Q. And that I mentioned to you the reasons for the  
case being

6 moved from Oklahoma City to Denver and also that I  
ordered

would have 7 separate trials so that Mr. McVeigh and Mr. Nichols  
evidence 8 separate trials and separate consideration of the  
that 9 against each of them by separate jury and the need for  
defendants; and 10 because of the differences with respect to the  
tried in 11 of course you're aware that Mr. McVeigh was already  
12 this court by a jury and its verdict.

13 A. Yes.

14 Q. And as I explained, the outcome of the McVeigh  
trial cannot 15 be considered now in the trial of Mr. Nichols. And of  
course 16 we're in the process of picking the jury for the trial  
of the 17 evidence as it relates to Mr. Nichols, and that's why  
you're 18 here.

19 Now, let's -- you live in Greeley?

20 A. Yes.

21 Q. Right?

22 And that's where you work as well.

23 A. Yes.

24 Q. And you work for a financial institution there in a  
branch 25 which has just, what, you and four other persons in it?

## Juror No. 473 - Voir Dire

1 A. That's correct, your Honor.

2 Q. Now, is that a locally owned financial institution;  
that is

3 to say, is it owned in Greeley by --

4 A. No, your Honor, it's not.

5 Q. Is it part of a larger organization, like a holding  
-- I

6 guess, I don't know if we talk about bank holding  
companies?

7 A. You're doing a great job; yes, it is, your Honor.

8 Q. So, have you talked with anyone who it would be  
appropriate

9 to talk with about what it would mean if you got  
selected for

10 this jury, what it would mean to your time commitments?

11 A. I have, your Honor.

12 Q. And tell us a little about that, the result of that  
or what

13 was said.

14 A. Well, I believe that the hardships would be more on  
my

15 people that are directly -- that directly report to me  
rather

16 than to me. However, there are some financial  
considerations.

17 Our company has a 20-day ruling on jury duty.

18 Q. Yeah, but all policies are subject to exception,



and I

19 didn't know whether there might have been a discussion  
about an

20 exception for this purpose.

21 A. Yeah, your Honor, there has been, and we have  
discussed it;

22 and my immediate supervisor was not available last week  
to

23 discuss it further with. But I believe that it  
probably will

24 be negotiable.

25 Q. Okay. But you are concerned, though, about if  
somebody

1366

Juror No. 473 - Voir Dire

1 else comes in and replaces you for several months while  
you're

2 on the jury, that might be damaging to the other people  
working

3 there, or what are you saying?

4 A. It could be. Banking is a pretty institutionalized  
thing,

5 and I do have a clientele base --

6 Q. Yeah, and in a town the size of Greeley and with a  
branch

7 that size, there's a lot of personal acquaintances and  
8 friendships and trust in individuals.

9 A. That would be correct.

10 Q. Okay. Now, you've been with this same financial  
11 institution for about five years?

12 A. That's correct.

13 Q. And before that you were with other banks?

14 A. That's correct, your Honor.

15 Q. Also in Greeley?

16 A. Yes, your Honor.

17 Q. Okay. And you were born in California.

18 A. That's correct, your Honor.

19 Q. And then you went to South Dakota, but that was  
after high  
20 school; you went to high school in California.

21 A. That's right.

22 Q. And then when you went to South Dakota, what, did  
your  
23 whole family move there?

24 A. My immediate family did, your Honor. That was how  
I got  
25 into the banking industry.

1367

Juror No. 473 - Voir Dire

1 Q. Tell us about that; what do you mean?

2 A. Well, I was in college in 1975, and I had an  
opportunity to  
3 go to South Dakota to become -- my major in college was  
4 finance. So I had an opportunity to go out there and

enter the

5 industry.

6 Q. Okay. And you have been involved with it ever  
since?

7 A. Yes.

8 Q. Except for the time that you were in the Air Force?

9 A. That's right.

10 Q. Which was '67 to '72?

11 A. Yes, your Honor.

12 Q. And where were you stationed in the Air Force;  
where were

13 your duty assignments?

14 A. My duty assignments were -- I started in Texas. I  
think it

15 would be Sheppard. That's a long time ago. Then  
Holloman, New

16 Mexico, and RAF Bentwaters, which would be in  
Woodbridge,

17 England.

18 Q. What kind of work did you do in the Air Force? You  
were a

19 sergeant, as I understand?

20 A. I was an aircraft maintenance specialist. I  
specialized in

21 fighter maintenance.

22 Q. And you supervised people as a sergeant?

23 A. Yes.

24 Q. Now, coming back to more immediate things, page 4  
-- and

we've 25 you feel free to look at your questionnaire because

1368

Juror No. 473 – Voir Dire

counsel 1 looked at your answers, and of course you realize that  
are not 2 have received them, too; but under restriction that we  
privacy 3 sharing them with anybody else. We're maintaining your  
also 4 here, referring to you without your name being used and  
understand 5 not publicizing your answers here, but of course you  
it were, 6 your answers here in the courtroom are in the open, as  
7 and subject to public knowledge.

counsel ask 8 So as I ask you some questions and other  
somewhat 9 you some questions, we may do so in ways that are  
it, you've 10 indirect. But with respect to this, as I understand  
11 had back trouble and you've had a couple of surgeries?  
12 A. Yes.  
sitting 13 Q. How comfortable or uncomfortable are you right now  
14 there?  
15 A. I'm fine.

16 Q. And you do sit a lot, I guess, at your job?

17 A. Yes, I do.

18 Q. But you get up and walk around, too.

19 A. That's correct.

20 Q. Here what we're talking about is, you know, because  
you've

21 been on a jury at least once before, when you lived in  
South

22 Dakota; right?

23 A. That's correct.

24 Q. You know, you sit here for a couple of hours at a  
time, and

25 then we take breaks midmorning and midafternoon, and of  
course

1369

Juror No. 473 - Voir Dire

1 at noon. Is your back -- well, are you going to be  
able to sit

2 and pay attention?

3 A. I think a couple hours would be fine, your Honor.

4 Q. Okay. Then you can get up and move around some.  
Are you

5 taking medication for that daily?

6 A. No.

7 Q. And on page 5, Question 20, you gave us a yes there  
with an

8 explanation. Is that a matter of several years ago?

9 A. About ten, your Honor.

10 Q. And is that all resolved as far as your view of it  
is

11 concerned?

12 A. Yes, it is.

13 Q. Now, you're married and your wife works, as I  
understand

14 it, marketing assisted-living facilities?

15 A. That's correct.

16 Q. Is that -- are we talking about apartment with  
special --

17 apartments with special accommodations, that kind of  
thing?

18 A. Yes, your Honor.

19 Q. And does she work for one org -- I mean a single  
20 organization that has such buildings?

21 A. Yes, your Honor, she does.

22 Q. There in Greeley?

23 A. Yes.

24 Q. So she's talking with families, making arrangements  
for

25 persons in the family who are appropriate for living  
there to

1370

Juror No. 473 - Voir Dire

1 sign contracts or leases or whatever and go in there.

2 A. That's correct, your Honor.

it 3 Q. And on page 12 . . . actually, on page 11 is where  
4 begins, where we asked you about organizations of types  
you've 5 employing members of your immediate family. And on 11  
6 got agencies using social workers. Is that referring  
to your 7 wife's work?

8 A. Yes, it would.

refer 9 Q. And page 12, farming and ranching: What does that  
10 to?

11 A. Your Honor, my background as a lender is in  
agriculture.

12 As I went to South Dakota to start my career, I worked  
for a

13 small agricultural bank in South Dakota at that time.  
And

14 that's basically what I did for a living for the last  
17 years.

15 Q. So you know a good deal about farming?

16 A. Yes, I do.

17 Q. Have you ever done hands-on farming?

18 A. A little bit.

19 Q. And you -- the bank there make crop loans?

20 A. We do, but I am not in that department any longer.

21 Q. What kind of bank financing are you involved -- I  
mean farm

22 financing are you involved with?

23 A. Currently none, your Honor.

24 Q. But you have in the past?

25 A. Yes, I have.

1371

Juror No. 473 – Voir Dire

1 Q. Done crop loans. Reviewed farmers' plans for what  
they're

2 going to plant?

3 A. That's correct.

4 Q. And what their needs are going to be, including  
fertilizer

5 and seed and so forth?

6 A. That's right.

7 Q. And you've done that in the Greeley area?

8 A. I did up until about five years ago.

9 Q. With mostly irrigated farms?

10 A. Some irrigated. My specialty is cow/calf  
operations and

11 livestock.

12 Q. And Greeley, of course, is a center for livestock  
industry

13 with Monfort, ConAg are there?

14 A. That's right.

15 Q. Well, do you know about fertilizer requirements of  
farmers?

16 A. Yes. I know a little bit about it.



some  
17 Q. Now, on page 19 you mention that your wife has done  
18 work with women's shelters. Is that right?  
19 A. That's right.  
20 Q. And you've been supportive of that?  
21 A. Yes, I have.  
22 Q. Are they there in Greeley?  
23 A. They were, up until about four years ago.  
24 Q. And what happened?  
25 A. She left the -- my wife was the director of a -- an

1372

Juror No. 473 - Voir Dire

1 assistant director of a women's shelter in Greeley.  
2 Q. All right. These are for women who have been in  
abusive  
3 relationships who seek to be separated from them, that  
type of  
4 thing?  
5 A. That's right, your Honor.  
6 Q. You mention on page 20 that there was a difficulty  
in audit  
7 with the IRS and you expressed your opinion about the  
way that  
8 was handled. How long ago was this incident?  
9 A. 1981 or 1982.  
10 Q. And this turned out adversely to your interests?

11 A. I didn't win that one.

12 Q. Well, do you have -- you know, the obvious question  
is: Do  
13 you have some residual resentment or something as a  
result of  
14 that?

15 A. I don't think so.

16 Q. But you don't think it was handled properly by the  
agency?  
17 A. Well, your Honor, I think everybody has a right to  
dispute;  
18 just one of the decisions made, I think, that you have  
to go  
19 with it.

20 Q. How far did that go? Did it go into a court  
proceeding?  
21 A. Just about. I ended up just settling out of court  
and  
22 paying it. It wasn't a real big deal. I think it was  
a matter  
23 of 6- or \$800.

24 Q. Now, as I mentioned, you did serve on a jury in  
South  
25 Dakota, and what I guess -- on page 26 is when you  
answered

1373

Juror No. 473 - Voir Dire

1 this question, 117. And I take it that was a criminal  
case?

2 A. Yes, it was.

3 Q. And it involved trafficking in controlled  
substances,

4 drugs. Now, was that in the Federal Court?

5 A. No.

6 Q. State court.

7 A. Right.

8 Q. How many defendants on trial?

9 A. One.

10 Q. And what did the jury decide in that case?

11 A. The individual was convicted.

12 Q. And you were the foreperson?

13 A. Yes.

14 Q. Now, were there -- was there more than one charge,  
more

15 than one count as it may have been referred to; do you  
16 remember?

17 A. I believe there were several counts, your Honor.

18 Q. And was the conviction, as you say, the guilty  
verdict, on

19 all of the counts --

20 A. Yes, your Honor.

21 Q. Do you know what happened to the defendant after  
the jury

22 decided the case?

23 A. I believe, if memory serves me correctly, that he  
was given

24 a seven- to eight-year sentence.

25 Q. And how did you learn that?

1374

Juror No. 473 – Voir Dire

1 A. It just came back through the media.

2 Q. Let's review a little what's involved in trial. Of  
course

3 this was ten years ago that you were there, but there  
are

4 certain principles that are so fundamental under the  
5 Constitution that they're applicable in all criminal  
cases and

6 all courts; and I'm sure you heard the judge there  
instruct you

7 about the presumption of innocence with respect to  
whoever the

8 defendant was on trial. Do you recall that?

9 A. Yes.

10 Q. And of course it is fundamental that all persons  
charged

11 with crimes in the United States in any of our courts  
are

12 presumed to be innocent of that crime, and it is  
incumbent upon

13 the prosecution, whoever that is, whatever form --  
level of

14 Government, whether it's a state prosecutor or local,  
county,

15 or federal prosecutors, they all have the same burden  
of

the 16 bringing in the evidence to support the charges against

17 accused. You understand that.

18 A. Yes, I do.

any 19 Q. And it is the law that no person who is accused has

20 burden or duty of proving anything or establishing his

has any 21 innocence, certainly. And no defendant who is accused

call any 22 obligation to take the witness stand and testify or to

23 witnesses.

foreperson of 24 Now, in the case in which you sat as the

testified? 25 the jury, do you recall whether the defendant

1375

Juror No. 473 - Voir Dire

1 A. Yes, he did.

along with 2 Q. He did. And so the jury discussed his testimony

witnesses; 3 all of the rest of the testimony from the other

4 right?

5 A. That's correct, your Honor.

case in 6 Q. Now, that isn't required of a defendant, and in a

7 which a defendant does not testify, the jury may not

consider

8 that against him or in any way in connection with the  
case. So

9 when we have trials in which a defendant does not  
testify, I

10 always tell the jury you can't consider that; indeed,  
you can't

11 talk about it, you can't be talking about things:  
Well, what

12 do you suppose he would have said, if he had talked on  
the

13 witness stand, that kind of thing. You understand  
that?

14 A. Yes, I do.

15 Q. And of course what the jury, I'm sure your jury,  
was told,

16 as all juries are told, that you cannot convict any  
person on

17 the charges unless satisfied beyond a reasonable doubt  
that the

18 evidence proves the essential elements of the crimes  
charged.

19 You were told that, weren't you?

20 A. Yes, I was.

21 Q. And you accepted that?

22 A. Yes, I did.

23 Q. Now, are you willing to accept that here?

24 A. I believe I am. I'm stuttering a little bit --

25 Q. I know, and I'm going to get to --

## Juror No. 473 - Voir Dire

1 A. It's a tough decision based on what, what has  
already been

2 out in the media and watching what's on.

3 Q. And that's what you told us in your first  
questionnaire,

4 that you may have some opinions here that would make it  
5 difficult for you to sit as a juror. Is that it?

6 A. That's correct, your Honor.

7 Q. You know what that obligation is: To set aside  
anything

8 that you have seen or read or talked about because that  
isn't

9 evidence. And what you were told, I'm sure, in the  
case in

10 which you sat, you must consider only the evidence that  
you saw

11 and heard at the trial; yes?

12 A. That's right.

13 Q. And having had that experience and knowing that  
when you

14 answered -- excuse me -- the questionnaire, that's the  
reason

15 you answered the way you did; is that right?

16 A. That's right, your Honor.

17 Q. Now, I'm sure you've thought about this a good deal  
and

18 perhaps not only from the time that you got your  
original

to 19 summons but when you completed the questionnaire and up  
fairly 20 today and analyzing in your own mind whether you can  
in your 21 decide in this case. Have you been going through that  
22 mind?  
23 A. Lots of times.  
to hear 24 Q. Yeah. So what is your assessment of your ability  
25 this case fairly and impartially right now?

1377

Juror No. 473 - Voir Dire

that I 1 A. Well, I think it's changed since -- since the time  
2 filled the questionnaire in.  
3 Q. Uh-huh.  
know and 4 A. And based on, you know -- going back over what you  
obviously I 5 what you think you know and thinking through it,  
everything 6 came back to the decision that maybe I don't know  
to 7 about this case and all the details. So I would have  
open than I 8 probably say that I could probably be a little more  
9 was before I did this questionnaire.



10 Q. Well, you know you got to be more than a little  
open. What  
11 you really have to be able to do is to set it aside and  
say,  
12 Look, what -- let me just ask you -- back up and ask  
you:  
13 Where did you get most of what you think you know about  
the  
14 case; where did you get most of your news or  
information?

15 A. I'd say newspaper and media, your Honor.

16 Q. Now, the newspapers that you read, you read the  
Greeley  
17 paper.

18 A. Yes.

19 Q. And The Post, is it?

20 A. Yes.

21 Q. And do you subscribe to The Denver Post?

22 A. Yes, I do.

23 Q. Read it every day?

24 A. Look through it.

25 Q. Selectively read it.

1378

Juror No. 473 - Voir Dire

1 A. Yes.

2 Q. And when the McVeigh trial was going on, did you  
read it --

3 what they had to say about that trial every day?

4 A. Not really.

5 Q. And how about television news coverage: Do you  
watch

6 television news there?

7 A. I do.

8 Q. And do you get the Denver stations there?

9 A. Yes, I do.

10 Q. So is there a particular news station or newscast  
out of

11 Denver on television that you watch regularly?

12 A. Yes.

13 Q. Which one?

14 A. 9 in the morning.

15 Q. And like 7 a.m.?

16 A. Yes.

17 Q. So you saw some things about it there, I trust?

18 A. Yes, I did, your Honor.

19 Q. And since you got your summons and since I  
cautioned you

20 out at Jefferson County Fairgrounds' auditorium about  
being

21 careful to avoid publicity, have you been able to do  
that?

22 A. I think I've done okay.

23 Q. Have you seen some things, even by accident or

24 inadvertence?

25 A. Nothing that really relates to the case. More with

the

1379

Juror No. 473 - Voir Dire

1 jury selection. There's a lot -- you'll overhear  
things or

2 people are talking at work.

3 Q. What kinds of things have people been saying to you  
or in

4 your presence about the jury selection?

5 A. Oh, the one that I heard last week was, I think you  
had

6 some person from Boulder that was being interviewed; it  
was the

7 karma deal or something.

8 Q. And somebody tell you about that?

9 A. Yeah.

10 Q. At work, at home?

11 A. It was at work, your Honor.

12 Q. And what did you say to them?

13 A. My reaction to those folks is we're just not going  
to talk

14 about it.

15 Q. Okay. Well, did you hear them out as to what they  
heard or

16 read?

17 A. Kind of went back to work.

18 Q. All right. Now, we have to talk a little about the

jury's

19 extra role in this case because this case would be  
different  
20 from the one you were in in South Dakota because, as  
we've  
21 already discussed, you weren't involved there as a  
juror in the  
22 punishment issue, what sentence was imposed in that  
case, and  
23 as I recall, you said you heard about it through the  
media.

24 Yes?

25 A. Yes.

1380

Juror No. 473 – Voir Dire

1 Q. So you realize that ordinarily in criminal cases,  
after a  
2 jury returns a verdict of guilty, it is then up to the  
Court to  
3 determine what sentence is appropriate for that person  
and that  
4 particular crime and all of the circumstances have to  
be  
5 considered. And what a judge does in sentencing is get  
more  
6 information about the accused and in a situation with a  
guilty  
7 verdict, he no longer is accused, he's been convicted,  
or she  
8 has.

9                                So to determine the sentence, the court  
collects  
10 information, not only additional information about the  
11 circumstances of the crime, things in addition to what  
the  
12 evidence was at trial, but also a good deal of  
information  
13 about the defendant: Who he or she is, what the  
background of  
14 that person has been, family history, employment  
history, that  
15 person's life in some detail. Because each of us, of  
course,  
16 has had different experiences in life and each of us is  
unique;  
17 and the law recognizes the uniqueness of people being  
18 sentenced.

19                                And then there's a hearing and a court hears  
all of  
20 that and arguments from the lawyers for the prosecution  
and the  
21 defense and then makes a decision that is particular to  
the  
22 individual, and that's it.

23                                Now, cases where the offense involved carries  
the  
24 possibility of a sentence to death or life imprisonment  
without  
25 any release under federal law are treated differently.  
Because

1381

Juror No. 473 - Voir Dire

1 the life-and-death question is so serious a one, we  
don't give  
2 that to judges; that's a jury's decision under federal  
law.

3 I'm sure you understood that when you looked at the  
4 questionnaire.

5 A. Yes, I did.

6 Q. I explained that, and then asked you questions that  
start  
7 on page 28. If you'll turn to that. And of course on  
page 27  
8 there it starts with 124 and begins with a rather  
lengthy

9 explanation about why the questions are asked.

10 You remember encountering this part of the  
11 questionnaire?

12 A. Yes, I do, your Honor.

13 Q. And also that it starts on the premise of what you  
think  
14 about penalties of life in prison and death, if you  
could make

15 the law without regard to what the law now is. And you  
16 answered in that vein, did you?

17 A. Yes, I did.

18 Q. And if you want to take a moment to review your  
answers,  
19 you're welcome to.

20                    Would your answers be the same today -- and  
here  
21                    again, I'm not suggesting that you didn't tell us the  
truth,  
22                    but sometimes people think about these things some  
more, as  
23                    you've been thinking about your own readiness to be  
24                    open-minded. Have you thought more about your answers  
here or  
25                    your views regarding the punishment possibilities of  
life in

1382

Juror No. 473 - Voir Dire

1                    prison without release and death?  
2                    A. My mind hasn't changed on those at all, your Honor.  
3                    Q. So, you know, if I asked you the same questions  
today,  
4                    you'd give the same answers?  
5                    A. I believe so, yes.  
6                    Q. Now, let me just put that now into the procedural  
context  
7                    as to what would be required if you served on the jury  
and if  
8                    there were a guilty verdict. Of course the first trial  
is all  
9                    about whether the evidence supports the charges beyond  
a  
10                    reasonable doubt. You understand that. And punishment  
is not

adequacy of 11 a factor in the jury's decision with respect to the  
12 the evidence; you understand that.  
13 A. Yes.  
hear a 14 Q. But if there is a conviction, then the jury must  
judges 15 good deal more in the same way that I've talked about  
decisions. 16 hearing more information and making individualized  
17 So the jury has to hear in what really is a second  
trial or a 18 penalty phase hearing, information first presented by  
the 19 Government on the circumstances of the offense and  
things that 20 the Government lawyers suggest warrant a penalty of  
death. And 21 we call those and refer to those as aggravating  
factors.  
22 And then also the jurors must be open to  
hearing from 23 the defense, which may provide information about the  
individual 24 defendant, these same things that I've talked about  
that a 25 judge would look into: Background, family history,  
employment



1 history, again, all of the things that go up to make an  
2 individual human being. And then the defense factors  
are  
3 generally referred to as mitigating factors, matters  
which  
4 suggest that death is not a deserved punishment for  
this  
5 particular people no matter what the offense is. You  
6 understand that?

7 A. Yes, I do.

8 Q. And the jury then in deciding this life-or-death  
issue must  
9 consider everything that has been presented to the  
jury: The  
10 aggravating factors, the mitigating factors. And the  
court,  
11 the judge, gives some additional instructions about  
what those  
12 factors are and how they may relate to the decision.  
But --  
13 and asks some questions and sort of help the jury in  
sort of  
14 analyzing that. But they're not formulae, they don't  
amount to  
15 some sort of mathematical or arithmetical equation or  
any sort  
16 of thing. What it comes down to is a question of  
whether a  
17 defendant should live or die, a particular defendant,  
is a  
18 matter of the moral judgment of the jurors, and each  
juror must

19 make a decision. Do you understand that?

20 A. Yes, I do.

21 Q. Now, the question here for you to answer is whether

you

22 could make such a decision based on all of the facts

and

23 circumstances and be open-minded and consider both

24 possibilities: Life or death or even the possibility

of a

25 lesser sentence which would go to the court to decide

the

1384

Juror No. 473 - Voir Dire

1 actual sentence. Understand --

2 A. Yes.

3 Q. -- the question? And what is your answer?

always

4 A. It's a difficult -- I think a death sentence would

that I'm

5 be a difficult decision, your Honor, but I do believe

6 open to that.

to decide

7 Q. And it would -- are you saying it would be easier

8 a life sentence?

9 A. Yes, I would.

10 Q. You would consider both?

11 A. Yes, I would.

12 THE COURT: Okay. Well, we have questions  
from the  
13 lawyers in the case. As I'm sure you realize, it's  
only fair  
14 for them to ask things from their point of view.

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

16 MR. MEARNS: Yes, I do, thank you.

17 VOIR DIRE EXAMINATION

18 BY MR. MEARNS:

19 Q. Good morning, sir.

20 A. Good morning.

21 Q. As the Judge has told you, my name is Geoffrey  
Mearns. I'm

22 one of the prosecutors who will be presenting our  
evidence in

23 this case.

24 The Court has asked you most of the questions  
that

25 we're interested in, and I'd just like to follow up on  
a couple

1385

Juror No. 473 - Voir Dire

1 of them, if I may. First I'd like to turn to the  
questions

2 about your service in the Air Force. I believe it's on  
page

3 14, Question 63. You indicate there that your  
experience in

would 4 the military made you a responsible citizen. And I

experience 5 just -- we would like to know what is it about that

6 that had this kind of positive impact for you.

me is it 7 A. One of the things that I think the service did for

other 8 gave me the ability to believe in myself and work with

other 9 people, and it gave me the motivation to go on and do

10 things with my life.

there at 11 Q. If you would, then, turn to page 30, Question 132

12 the bottom.

your 13 And that question essentially asks you for

And you 14 opinion about or your view on the incident at Waco.

strange 15 indicated among other things that you thought it was a

you mean 16 case. Could you tell us a little bit more about what

17 and what your view of the incident at Waco.

in that 18 A. I think what I meant by that is it's a strange case

happened with 19 I'm not sure what the real insides of what really

And I 20 that case. I mean we went off of media speculation.

went in 21 mean without having your ear to the investigation that

the -- 22 before and afterwards, I don't know that I could take  
in 23 either, you know, the Government's stance or the folks'  
handled 24 Waco. It just -- it appeared to me that it didn't get  
25 in the way it probably should have.

1386

Juror No. 473 - Voir Dire

fact that 1 Q. And is that -- is part of your uncertainty or the  
of the 2 you haven't formulated an opinion, is that because most  
about that 3 information or all of the information that you have  
4 incident comes from the news media?

5 A. Absolutely.

at page 6 Q. And I believe you indicated in your questionnaire  
that the 7 70 in response to Question 80 that you did not think  
8 reports in the news media were very accurate.

lot of 9 A. I think responsible reporting has not occurred in a  
10 situations.

for 11 Q. And does some of that -- well, what is the basis  
may have 12 your -- any of the knowledge or information that you

the news 13 about this case? Does it also derive exclusively from

14 media?

15 A. Yes, I believe most of it does.

determining 16 Q. Does that help you one way or another in

the 17 whether today you have an open mind about considering

18 evidence in this case?

over the 19 A. You know, after -- after thinking it back through

looking at 20 last couple weeks, when you start -- when you start

social 21 the real possibility of serving on this jury and the

opens 22 responsibilities that come along with that, I think it

know 23 you up a little bit and in asking yourself, do I really

24 all of the facts in the case, or don't I.

the 25 Q. And you understand from your jury service and from

1387

Juror No. 473 - Voir Dire

even have 1 Court's instructions this morning, in fact, we don't

one way 2 any evidence at this point from which you can determine

3 or another?

4 A. That's right.

5 Q. I'd like to ask you, then, to expand upon your  
answer to a

6 question on page 27, Question 121. The question there  
asks you

7 about feelings or opinions that you may have about a  
case in

8 which a witness who has pled guilty is called to  
testify in the

9 case. And I think you said in substance that you had  
some

10 doubts about whether we're -- whether we're getting a  
real

11 story. Could you expand for us a little bit, what  
prompts that

12 doubt in your mind?

13 A. I think sometimes when we do some of the plea-  
bargain

14 issues where we let folks off for testimony and stuff,  
just

15 sometimes I just don't feel like we're doing everything  
that we

16 can. I mean if you're getting by offer or something,  
it's like

17 bribing someone to give testimony, and I just question  
18 sometimes that doesn't get a little bit stretched.

19 Q. If there were such a witness called to testify in  
this

20 case, would you be able to consider his or her  
testimony with

21 an open mind?

22 A. I'd try.  
23 Q. Finally, I'd just like to follow up very briefly on  
some of  
24 the questions the Court asked you about possible  
punishment in  
25 this case. And as the Court indicated, that's on page  
28 of

1388

Juror No. 473 - Voir Dire

1 the questionnaire. In response to the question there  
at B, you  
2 said in substance that in your youth you questioned the  
death  
3 penalty. Could you expand on that a little bit more  
for us?

4 A. I think at a younger age, I'd probably say that 15  
or 20  
5 years ago, because of my religious upbringing, I really  
would  
6 have questioned the death penalty. I hate to say it,  
but I've  
7 seen -- you know, with rising crime rates over the last  
20  
8 years and things like that, it appeared to me there was  
a  
9 rollback at one point in time where we ruled the death  
penalty  
10 out and crime went up.

11 And I guess when you look at that, this is --  
the



12 death penalty is really a evil and somewhat necessary  
way of  
13 taking care of our system. And, you know, it bothers  
me that  
14 we would take any human life; but at some point in  
time, if it  
15 lowers the crime rate -- people have to stop and think  
about  
16 their action. And I guess my feelings are, when you  
take an  
17 aggressive action like taking lots of life, rape,  
something  
18 like that, I think you're -- you know, I think that  
it's  
19 justified. I mean you take a life, you need to look at  
that.  
20 Q. The Court this morning has explained some of the  
procedures  
21 or the process that we would follow if -- that is if  
the  
22 defendant is convicted and we get to a penalty phase in  
this  
23 trial. And the Court explained a little bit about  
aggravating  
24 factors andmitigating factors. Do you recall those  
25 instructions?

1389

Juror No. 473 - Voir Dire

1 A. Yes.

2 Q. And I believe the Court indicated that aggravating

factors

of 3 are those circumstances which suggest or that a penalty

4 death is warranted. You understand that?

5 A. Yes.

factors were: 6 Q. And then the Court explained what mitigating

deserved 7 That those are facts which suggest that death is not

8 in a particular case or for a defendant.

9 A. Yes.

us or 10 Q. Do you have a sense -- if you could articulate for

that is, 11 tell us in your own words what mitigating factors are;

12 these facts that --

question. 13 THE COURT: I'm going to exclude that

14 MR. MEARNS: Thank you.

things 15 THE COURT: Mitigating factors will be those

16 that are in the information and the Court identifies.

17 MR. MEARNS: Yes, your Honor. Thank you.

18 BY MR. MEARNS:

be able 19 Q. If we get to a penalty phase in this case, will you

open 20 to consider all of the facts and circumstances with an

21 mind?

22 A. I hope so. And I believe I will. I just hope so.

23 MR. MEARNS: Thank you, sir.

24 THE COURT: Mr. Tigar.

25 MR. TIGAR: Yes, sir.

1390

Juror No. 473 - Voir Dire

1 VOIR DIRE EXAMINATION

2 BY MR. TIGAR:

3 Q. Good morning, sir. My name is Michael Tigar. I'm  
one of  
4 the lawyers appointed by the court to help Terry  
Nichols here.

5 And we, too, have a few questions.

6 When you -- what were you doing at Lockheed  
Aircraft;  
7 what was your job out there?

8 A. I was -- I worked on the L1011 project; it was a  
commercial

9 airline that Lockheed decided to build for the markets.

10 Q. And was that in Burbank?

11 A. No, it was out in Palmdale, California.

12 Q. Out in the desert out --

13 A. Uh-huh.

14 Q. -- just beyond the San Fernando Valley there?

15 A. Yes.

16 Q. And were you a member of a labor organization?

17 A. Yes, I was.

18 Q. The IAM?

19 A. Yes.

20 Q. What local; do you remember?

21 A. It's been a long time.

22 Q. And I have a question -- you have a bumper sticker  
that

23 says, "No Pain, No Jane." And I'm a stranger in your  
parts.

24 What does that mean? My wife's name is Jane, and she  
wanted to

25 ask.

1391

Juror No. 473 - Voir Dire

1 A. I like to ski a lot. And my favorite place to ski  
is Mary

2 Jane in Winter Park, and it's probably one of the most  
3 difficult -- it's -- the terrain's pretty difficult.

4 Q. Now, when you were on that jury in South Dakota,  
how did

5 they select the foreman?

6 A. The jury picked it.

7 Q. And does that -- do you feel that you ran for the  
job or

8 that your experience in making decisions affected the  
other

9 jurors and they looked up to you because of your  
position in

10 the community; how did that work?  
11 A. I don't -- do not believe that it had anything to  
do with  
12 my community relations because I was located in a rural  
13 community at the time. I can't answer that; I don't  
know why I  
14 was chosen.  
15 Q. You -- in your questionnaire, you talked about your  
views  
16 on the criminal justice system. And I know you said  
you'd  
17 followed some trials: Oklahoma City, O. J., and the  
Ramsey  
18 case; do you remember that?  
19 A. Uh-huh.  
20 Q. What did you think of the outcome of the O. J.  
case?  
21 A. Personally, I'm not sure that -- you know, he had  
the right  
22 to trial. I just -- based on what I saw, I just  
thought it was  
23 kind of a goofy deal, and I really think he was guilty.  
24 Q. Now, let's take a look at that case. The jurors  
found him  
25 not guilty; right?

1392

Juror No. 473 - Voir Dire

1 A. Right.

the  
they  
swayed

2 Q. Do you have a question in your mind whether some of  
3 jurors may not have been quite honest with -- about how  
4 felt about the case going into it, or that they were  
5 unduly; how do you feel about how they did?

really  
good

6 A. That thing was so sensationalized, it would be -- I  
7 feel that was very difficult for a juror to make a real  
8 decision on that one at all.

9 Q. You think that was probably the lawyers' fault?

10 A. Don't know. Might have been.

wondered,  
Grisham,

11 Q. Well, now, it's okay. We can take it. I just  
12 because you also said that you'd read books by John  
13 who writes about lawyers a lot.

14 A. I've only read a few of his books.

that?

15 Q. And do you come away with views about lawyers from

16 A. No, because I work with lawyers a lot in my job.

Denver, I  
with a  
is Tim

17 Q. I understand. And the lawyer you work with in  
18 don't want to identify anyone by name, but do you work  
19 lawyer in the central office in Denver whose first name  
20 or who goes by Tim?

21 A. No.

22 Q. Okay. We would have added that to the list. It's  
just a  
23 question we have to ask.

24 Would you look at page 29 of your  
questionnaire.

25 Question 126. You said -- "How well do you think the

1393

Juror No. 473 - Voir Dire

1 Government plays its role?"

2 You say, "I believe the Government does a  
better job  
3 of protecting the rights of the affluent, the guilty  
4 politicians than it does for the normal citizen in this  
5 country."

6 Can you tell me a little more about that?

7 A. I -- you know, based on the O. J., and that's what  
I was  
8 coming off in this; you know, it really looks to me if  
you got  
9 a lot of dollars to back up your legal counsel with, if  
you  
10 have the best, you know, the best that money can buy,  
it  
11 appears to me that you can get away with a lot more or  
it's far  
12 more difficult to convict somebody.

13 Q. Do you have that view about any other cases that

you've

14 thought about in the news or read about, that people  
with a lot

15 of bread wind up being able to get around the system?

16 A. Just, just things that you hear. I guess I  
wouldn't put my

17 hand on any particular one.

18 Q. Could you share that with me. I know that you've  
followed

19 the Ramsey case. Do you have an opinion about money in  
that

20 case or the way that's been handled? I know these are  
tough

21 questions, but you can see why we want to ask them.

22 A. I think the Ramsey case, based on what we've seen  
in the

23 media, it's just peculiar that it's taken so long for  
enough

24 evidence to come up to start going after some people.  
But then

25 again, maybe the evidence isn't there.

1394

Juror No. 473 - Voir Dire

1 Q. Now, do you have an opinion as you sit there today  
that

2 there ought to be enough evidence against some  
particular

3 person or persons?

4 A. Not really.



5 Q. I notice that -- your brother is in business in  
Fresno.

6 Could you tell me what business that is?

7 A. My brother is -- actually, he manufactures  
monuments, such

8 as headstones and things like that.

9 Q. And that's your twin brother?

10 A. Uh-huh.

11 Q. You get your news from a lot of different sources,  
I see.

12 I wonder if you could . . . . Let's see here. Find  
it. Yes,

13 page 33, Question 144. And we've talked -- you talked  
some

14 with his Honor and the prosecutor about, you know, TV,  
radio.

15 What magazines do you read?

16 A. Probably ski -- a lot of ski magazines, Newsweek  
once in a

17 while, look at The Wall Street Journal.

18 Q. And have you seen anything about this case in  
Newsweek or

19 any other magazine that you read?

20 A. Really haven't.

21 Q. You also checked that you have read or heard about  
the

22 Oklahoma City bombing from Internet and on-line. Have  
you --

23 how have you used the Internet and on-line to follow  
the case?

24 A. I've just seen -- I use AOL, and there's been some  
-- if  
25 you punch into the news once in a while, you'll see  
some stuff

1395

Juror No. 473 - Voir Dire

1 on that.

2 Q. And then it says, "Conversations and heard other  
people  
3 discussing the case." Who can you remember talking  
about it  
4 with?

5 A. I -- you know, I think during the McVeigh case, I  
think  
6 that was pretty much a let's talk about it all over the  
case.

7 Q. Yes, indeed, I can understand that. So you talked  
about it  
8 with people at work?

9 A. Sure.

10 Q. You talked about it at home with your wife --

11 A. Yes, yes.

12 Q. -- and other members of your family?

13 A. Uh-huh.

14 Q. And how did you feel with the jury's verdict in  
that case?

15 A. I felt it was justifiable.

16 Q. And the penalty verdict in the McVeigh case: How

did you

17 feel about that?

18 A. I think that was justifiable, also.

19 Q. Now -- so, having followed the case, what did you  
think

20 when you got your summons?

21 A. It was interesting.

22 Q. Well, I notice that in your summons you mention  
that you

23 were the sole support of your family; it would be  
difficult to

24 find backup support?

25 A. At the time, I was.

1396

Juror No. 473 - Voir Dire

1 Q. And how -- based on how you feel about it now, what  
you

2 know now, how many days of jury service do you think  
your

3 company would be willing to help you out with?

4 A. Well, we know they're going to -- we know they're  
going to

5 give me 20. At this point in time -- I think that's a  
6 negotiable issue at this point in time. I'm not sure

what's

7 going to happen after 20 days.

8 Q. As an experienced negotiator, what do you think the

9 parameters of the negotiation are?

10 A. I believe that if my company believes in the system  
as they  
11 do, our holding company will probably give me unlimited  
time  
12 off. That's what I believe they're going to do.

13 Q. Now, you also wrote in your response, "I have  
followed this  
14 case and feel Mr. Nichols is guilty and because of  
this, I feel  
15 I would not be open to giving him a fair decision."

16 Now, I want to ask about the first part. You  
had  
17 followed the Oklahoma City bombing case?

18 A. That's correct.

19 Q. What is it about what you'd read that led you to  
think that  
20 he was guilty; what facts did you read -- I'm not  
saying that

21 they are facts, but what things had you read or heard?

22 A. You know, from the beginning when -- and it's been  
over a  
23 period of years, so I don't have all the details; but I  
think  
24 from the time that they went out looking for the three  
25 suspects -- and I think they referred to them as A, B,  
and C at

me to 1 the time. I can't remember. But it was difficult for  
a 2 believe that someone -- you know, that this wouldn't be  
3 conspiracy case. I just think -- for the atrocity that  
really felt 4 happened here, for one person to pull that off, I  
5 that it would be difficult.

first 6 Q. So that was your first impression. Then when's the  
7 time you can remember hearing or seeing anything about  
Terry 8 Nichols?

or at 9 A. It was probably a couple of weeks after the arrest  
10 the time they picked up Mr. Nichols.

Nichols came 11 Q. Okay. Now, what do you remember about how Mr.  
12 in contact with the authorities, if you do?

13 A. I don't.

publicity, 14 Q. And then you saw -- so beginning, then, you saw  
15 I guess newspapers, television, radio, and so on?

16 A. Yes.

thinking, 17 Q. When can you remember, if you can, the first time  
18 you know what, he's guilty?

McVeigh 19 A. I think it was -- I think probably coming up to the  
20 case, as it was coming in, the media blitz that was

done on it.

21 Just some of the little things that came out. I think  
that's  
22 probably when I got my preconviction.

23 Q. All right. Now, and can you remember some of those  
things  
24 that came out?

25 A. I think it was -- the parts that I remember were,  
you

1398

Juror No. 473 - Voir Dire

1 know -- actually it's one of those things that, as I  
recall,  
2 were some old Army buddies or some affiliations with  
that.

3 Q. Let me turn to some of these publicity questions  
here. You  
4 said also, I think, you watched Channel 9 News; is that  
5 correct?

6 A. Correct.

7 Q. Could you turn to page 36 of your questionnaire,  
and right  
8 at the bottom you -- Question 158, you say you've read  
a lot  
9 about the Oklahoma City bombing. It says, "Please  
summarize,"

10 and you say, "A lot"?

11 A. A lot would be whatever was in The Post or in the  
Greeley

12 paper.

13 Q. Okay. And then you -- turn over on page 37,  
Question 159,  
14 it says, "Please summarize what you've seen, read, or  
heard  
15 about Terry Nichols."  
16 And you say, "Too much."  
17 And I'm not -- you understand that I'm not  
trying to  
18 attack you for your answers or anything. We're just --  
the  
19 process is important to us. What did you mean by that?  
20 A. Well, I think in fairness to Mr. Nichols, I think  
there was  
21 a media blitz going on out there, with the speculation  
and  
22 everything going on out there. It would be hard in  
this day  
23 and age not to have heard a lot. I mean everything  
that was on  
24 the news, you know, that related to Mr. McVeigh or Mr.  
Nichols  
25 for months. I mean you'd have to be in an absolute  
vacuum not

1399

Juror No. 473 - Voir Dire

1 to have heard a lot of media.

2 Q. Then going on to Question 160, you wrote, "I  
believe

believe 3 Mr. Nichols was a part of the bombing case. I also  
this 4 that he was a key person involved in the success of  
and heard 5 operation. This is based on what I have read, seen,  
6 over the past two years"; right?  
7 A. That is correct.  
heard or 8 Q. And then at page 162, you say -- "What have you  
trial"? 9 read about Terry Nichols as a result of the McVeigh  
10 A. "That he was involved beyond doubt."  
this and 11 Q. And I know that you've had a chance to reflect on  
wrote 12 think about it in the intervening time. But when you  
thoughts; 13 that on the 17th, that -- those were your real  
14 correct?  
15 A. Correct.  
putting out 16 Q. And do you think that you would have difficulty  
was 17 of your mind this conclusion that he -- beyond doubt he  
18 involved if you were selected as a juror?  
19 A. I would hope that I could do that.  
would have 20 Q. Well, what I'm asking you is: Do you think you  
21 difficulty doing that?



22 A. No, I don't. I do this every day. Every day at  
work, I do  
23 this. I have people that come in and maybe they're  
looking at  
24 borrowing funds or looking for some kind of a banking  
25 relationship; and I might have some preconceived notion  
of the

1400

Juror No. 473 - Voir Dire

1 person, but until I look at the facts and analyze what  
I have  
2 in front of me, it's really difficult to make a final  
decision.  
3 Therefore, you know, I've been known to have to change  
my mind  
4 because of fact.

5 Q. Now, that's -- so there are cases in your life in  
which  
6 you've had a preconceived decision going into  
something; right?

7 A. Sure.

8 Q. And then it's when the person about whom you've had  
--  
9 involving a lending situation?

10 A. Yes.

11 Q. So the borrower comes in and you may think, gee, I  
don't  
12 think this is a good risk, and then you change your  
mind;

13 right?  
14 A. You bet.  
15 Q. And you leave it to the borrower to convince you  
that  
16 they're a good risk; you're open to that?  
17 A. I'm open to that. I'm also open to looking at --  
looking  
18 at the data in front of me.  
19 Q. Now, would you expect the defense in this case to  
put on  
20 evidence to overcome your feelings about this?  
21 A. I would hope they'd want to.  
22 Q. Now, if you'd turn to page 130 -- or to page 38,  
rather,  
-- the  
23 Question 164. You say, "Can you think of any reason"  
would  
24 question is, rather, "Can you think of any reason that  
impartial  
25 prevent you from being able to render a fair and

1401

Juror No. 473 - Voir Dire

the Court 1 verdict based solely on the evidence and the laws as  
2 will instruct you at the conclusion of the case?"  
3 You said, "yes"; is that right?  
4 A. Yes.  
5 Q. And then you explained, "Mr. Nichols is entitled to

a fair

6 trial. I believe I have prejudged him and will not be  
able to

7 render a fair and impartial verdict because of the  
information

8 presented over the last few years."

9 Is that what you honestly felt that day?

10 A. Yes, I did.

11 Q. Now, turning to this question of possible penalty,  
I

12 don't -- we're not asking you about this case, all  
right,

13 because you haven't heard any evidence in this case.  
How did

14 you feel about -- you said you thought the McVeigh  
verdict was

15 a reasonable one; right?

16 A. Yes.

17 Q. And I made a note that as you were talking, you  
said that

18 where you take a life, lots of life, you need to take a  
look at

19 that. Is that what you said, "lots of life" or "loss  
of life"?

20 A. "Lots of life."

21 Q. L-O-T-S?

22 A. Uh-huh.

23 Q. What did you mean by that, when there's lots of  
life, you

24 need to look at that?

the 25 A. You know, taking a life is -- I mean everybody has

1402

Juror No. 473 - Voir Dire

1 right to live.

2 Q. Exactly.

3 A. We do.

4 Q. Exactly.

5 A. And taking a life is no small matter.

6 Q. Indeed, it's not.

7 A. No matter what happens, taking someone's life and  
make a

8 decision whether you'll take -- that's like me putting  
the

9 finger on the trigger and taking the life. Can I do  
it? I

10 don't know. If it's justifiable, yes, I can. If it's  
not, I

11 guess I'm going to have to decide whether it is or it  
isn't.

12 Q. Now, have you followed the publicity in the  
newspapers

13 about the Davis case, the man who's scheduled for  
execution

14 next Monday?

15 A. Not a lot.

16 Q. Well, what I'm trying to get at here is that the  
process of

17 decision for jurors in federal cases -- we're going to  
fight on  
18 this innocence phase of the trial, so we don't think  
we're ever  
19 going to get there, but we only all get one chance to  
ask you.  
20 If a jury has to decide this question, they  
may be  
21 asked -- the jury might be asked to look at not only  
the lives  
22 that were lost, but also about the individual  
circumstances of  
23 the person who's on trial, whether he or she was  
subject to  
24 influences growing up, their age, their prior record,  
what  
25 relationship they might have had to other people that  
were

1403

Juror No. 473 - Voir Dire

1 involved, all those things that are, in addition to the  
lives  
2 that were lost, right, which is horrible enough in  
itself as  
3 we've talked about. Would you, if you're seated as a  
juror in  
4 this case, be able to look at all of that information  
about the  
5 harm that was done and about the individual person who  
-- whose  
6 life you're weighing, all about their background and so

on?

7 A. I would have to, if I was making that decision.

8 Q. I understand. Would you be able, if it came to  
that, to

9 listen to and give effect to the information presented  
by both

10 sides and then to follow the Court's instructions,  
which, as

11 you can imagine, would be very detailed, about how to  
apply

12 these different factors?

13 A. Yes, I would.

14 Q. And just couple more questions. You've been a  
agricultural

15 lender for many years; is that correct?

16 A. That's correct.

17 Q. And there was a time back in the 1980's when  
somebody from

18 the agriculture movement came and told you that U.S.  
currency

19 was not legal tender; is that right?

20 A. That's correct.

21 Q. What did you think about that?

22 A. Go back to the time, which would have been in the  
late 70's

23 and early '80, and go through the farm crisis as it was  
and

24 look at everything that was happening out there, and  
with the

25 struggles for that ag community, and you can kind of  
understand

1404

Juror No. 473 - Voir Dire

1 where people were coming from. They felt, you know,  
the

2 government programs were rolling out and there was a  
new farm

3 plan was being discussed in Congress and a lot of  
agricultural

4 people felt they had been somewhat betrayed. And  
that's when

5 organizations like the American ag movement and some of  
the

6 other organizations really got a full head of steam,  
head of

7 steam.

8 Q. Would it be fair to say that although you might not  
have

9 agreed with their policies and their politics, you  
could

10 understand where they were coming from?

11 A. Sure. Sure.

12 Q. Now, one last question. If you would turn to page  
18,

13 please. Because I think you set a record here for --  
on

14 Question 84, because you really read the question,  
which I

15 think a lot of people didn't. Could we just go down  
that list

16 of organizations and see what your familiarity is with  
them, if

17 I might. The NRA?

18 A. I was a member at one point in time.

19 Q. And Handgun Control, Inc.

20 A. Just heard it.

21 Q. Okay. Fraternal Order of Police?

22 A. Lot of donations, telemarketing.

23 Q. Okay. We the People?

24 A. That one isn't one that I've just really heard of.  
I don't

25 know too much about it. This would be part of back in  
the ag

1405

Juror No. 473 - Voir Dire

1 movement there.

2 Q. Okay. New World Order?

3 A. I've heard that one.

4 Q. And what have you heard about that?

5 A. It's -- not a whole lot. I just don't really pay  
attention

6 to that.

7 Q. Do you understand that's a description that's  
applied to --

8 A. Political description.

9 Q. Right.



10 A. Is it not?  
11 Q. But to the United Nations and so on by people who  
are  
12 opposed to it?  
13 A. Right; right.  
14 Q. How do you feel about that political view?  
15 A. I think everybody's entitled to a right to view  
anything.  
16 It's how they act upon that.  
17 Q. AARP?  
18 A. Know that one a little bit.  
19 Q. Everybody gets that one.  
20 A. We're getting close.  
21 Q. I'm already there. Klan Watch?  
22 A. Crime Watch, that's just a neighborhood deal, I  
believe.  
23 Q. No, Klan Watch, I'm sorry, sir.  
24 A. I don't know that one real well.  
25 Q. Okay. I'm going to skip over Political Research

1406

Juror No. 473 - Voir Dire

1 Associates. Patriot movement?  
2 A. Just have heard it.  
3 Q. Okay. And the only other one, Posse Comitatus?  
4 A. Heard that one.

ideology 5 Q. Indeed. Is Posse Comitatus and that -- the  
in Weld 6 associated with it, is there a lot of talk about it up  
7 County?

involvement in 8 A. No. That one stems from my agricultural  
incident 9 South Dakota. I don't know -- I believe that's the  
the tax 10 that happened up in North Dakota with the shootout over  
11 thing.

make -- 12 MR. TIGAR: Okay. Well, I thank you. Just  
13 look at my notes here. Apparently one more.

14 No, that's it. Thank you very much, sir. I  
15 appreciate it.

16 VOIR DIRE EXAMINATION

17 BY THE COURT:

talked 18 Q. I just wanted to ask you one follow-up, because we  
recall you 19 about your having been on a jury before. And as I  
20 telling us that the defendant testified in that case.

21 A. Yes.

Mr. Tigar 22 Q. Did you? And I think you mentioned something to  
on 23 that you would hope that the defense would want to put  
24 something to evidence. I can't remember the exact words, but

25 that effect.

1407

Juror No. 473 - Voir Dire

both 1 A. Well, I would think -- I would kind of like to hear  
2 sides of the story.

of the 3 Q. But you understand that you could hear both sides  
4 story from cross-examination --

5 A. Sure.

6 Q. -- and from --

7 A. Sure.

only called 8 Q. -- the testimony of witnesses even if they were  
9 by the Government?

10 A. Yes.

clear that: 11 Q. And, you know, I want to make the question very

defendant to 12 Do you understand that there is no obligation on a  
13 testify or to produce evidence?

14 A. I understand that.

15 Q. And you accept that?

16 A. Yes, I do.

17 Q. And would follow it if you were on this jury?

18 A. Yes, I would.

now 19 THE COURT: Okay. Well, your time with us is  
I hope 20 complete. We're not making decisions as we go here, as  
talking 21 you understand the reasoning behind that. We will be  
waiting, but 22 to a number of people. So there will be some more  
your 23 it won't be in the room here. You're free to return to  
we ask of 24 regular life and work routine with the exception that  
on the 25 you to continue to be very careful now and to operate

1408

Juror No. 473 – Voir Dire

to 1 assumption that you will indeed have the responsibility  
required 2 serve on this jury and make the decisions that will be  
3 of the jury. So be careful.

4 JUROR: I will.

5 THE COURT: Avoid the publicity, avoid the  
on the 6 conversation, and be able to come back to us and serve  
7 jury. Will you do that?

8 JUROR: Yes, I will, your Honor.

9 THE COURT: We can't tell you when we will  
know

10 whether you will serve or not. So it may be a while  
yet, so

11 please be patient with us. You're excused for now.

12 JUROR: Thank you.

13 THE COURT: 231.

14 Good morning, sir. Will you raise your hand  
and take

15 the oath from the clerk, please.

16 (Juror No. 231 affirmed.)

17 THE COURTROOM DEPUTY: Thank you.

18 THE COURT: Please be seated.

19 VOIR DIRE EXAMINATION

20 BY THE COURT:

21 Q. You can swivel around there to be comfortable, and  
we just

22 ask you to answer out loud so we can make a record of  
your

23 answers.

24 You understand that you're here as a result of  
through

25 a chance system your number came up, as it were, or  
your name

1409

Juror No. 231 – Voir Dire

1 did, as a possible juror for the trial of the case of  
the

2 United States against Terry Lynn Nichols. Is that

right?

3 A. Yes, sir.

4 Q. And you answered a short questionnaire when you  
first got

5 that summons, and you sent it back; and in that  
original

6 answer, you talked about it would be a hardship on the  
company

7 and you financially where you work to take the time out  
8 necessary that's -- that may be necessary for this  
trial. But

9 in spite of that, we told you to come on out to  
Jefferson

10 County Fairgrounds on September 17 to answer some more  
11 questions, and you cooperated with us and did that.

12 A. Yes, sir. That's right.

13 Q. You recall that day and that at that time I  
appeared there

14 with you and other members of the jury pool or panel,  
and also

15 with me then were some lawyers and Mr. Nichols. And I  
want to

16 reintroduce the people you saw then, because they're  
here now

17 and a part of this process.

18 Let me call to your attention here at this  
first

19 table, Mr. Lawrence Mackey and Ms. Beth Wilkinson.  
They were

20 there as lawyers for the Government. Now they are  
joined today

21 by Mr. Patrick Ryan and Mr. Jeffrey Mearns.

Ronald  
present

22 You recall meeting Mr. Michael Tigar and Mr.

23 Woods, attorneys for Terry Nichols. Terry Nichols was

24 and is, of course, present here again.

read

25 Now, I don't want you to think that we didn't

1410

Juror No. 231 - Voir Dire

it to

1 your first answer, the first questionnaire, or consider

jury

2 be a matter of importance. It's just that, you know,

regular life

3 service involves a lot of interruption of people's

more.

4 and work; and so we need to talk with you about it some

don't

5 That's why you were brought in. It's not because we

it in

6 believe what you wrote. And you wrote some more about

7 this questionnaire. You've got the answers there, your

8 completed questionnaire, in front of you now.

9 A. Okay.

and

10 Q. That's what's in that folder. You looked at that

11 confirm there it is; right?

12 A. Yes, sir.

13 Q. And we took your answers and made copies and  
provided it to  
14 the lawyers and to me, but we haven't shared this  
information  
15 with anybody else; we're keeping it private because we  
asked  
16 you a lot of private things. And that's why your name  
is not  
17 being used here in court. And also, we arranged for  
you to  
18 come in and out of the courthouse without being  
photographed  
19 and all that, all as a matter of trying to protect your  
privacy  
20 as much as we can. You recognize, of course, here we  
are in  
21 open court now and your answers are public. I mean,  
the  
22 answers that you give now.  
23 So we won't be asking you, I think, anything  
that  
24 would be uncomfortable for you; but we do want to go  
over a few  
25 of your answers. Okay?

1411

Juror No. 231 - Voir Dire

1 A. Yes, sir.  
2 Q. Let me turn right to the, some of the things that  
you --



operator. 3 that are concerning you. You're a heavy equipment

4 Right?

5 A. Yes, sir, I am.

6 Q. And you work with an excavation business?

we're 7 A. Yes, sir. It's NBR Earthmoving, Incorporated; and

8 mainly a housing project subcontractor.

working? 9 Q. Working in Boulder County area, or where are you

huh. 10 A. I'm up in Longmont right now. Boulder County, uh-

11 Q. And you live in that area?

12 A. Longmont; right.

13 Q. Born in Colorado?

14 A. Yes, sir.

15 Q. Now, do you get paid by the hour, or what's your  
16 arrangement?

the 17 A. It's an hourly wage scale, and I only get paid for  
18 hours that I work.

19 Q. Yeah. And there's no arrangement for jury service?

that they 20 A. Not so far. I've talked to them, and they said

duty; and so 21 didn't have to pay me for, you know, being on jury

22 far, I haven't received any pay from the company.

here last 23 Q. For the day you were here last Friday -- you were

24 Friday; right?

25 A. Yes, sir, I was.

1412

Juror No. 231 – Voir Dire

1 Q. You had to wait all day?

2 A. Yeah.

3 Q. And you lost a day's pay?

4 A. I lost a day's pay.

5 Q. And you lose a day's pay today, too?

6 A. Yes, sir.

7 Q. Because you can't very well get back and do a day's  
work

8 now?

9 A. I'm going to try to get back there this afternoon.

10 Q. Well, we'll try to help you with that.

11 A. Okay.

12 Q. You'll be done here in not too long.

13 So I don't want to identify the people you  
work for

14 here, you know, 'cause it is a small operation; right?

15 A. Yes, it is.

16 Q. And I take it that whoever that is subcontracts  
with a

17 developer the duties -- you're opening up foundations,  
are you?

18 A. Yes, sir. All the housing project work: We dig

basements,

19 and backfill foundation, and back yards, and just move  
any dirt

20 that's on a housing project, all housing project work.

21 Q. You've done the same kind of work for other  
employers?

22 A. Yes, sir, I have. Uh-huh.

23 Q. And you've been with this one how long now?

24 A. One point I was with them for 13 years, and I've  
been back

25 for probably three years. Total of 16 years.

1413

Juror No. 231 - Voir Dire

1 Q. Is this a local business?

2 A. Yes, it is.

3 Q. And does the owner of this business get out there  
and work,

4 too?

5 A. No, he doesn't.

6 Q. Okay.

7 A. Actually, there's two owners, and one does actually  
kind of

8 run the business. The other is a kind of a silent  
partner.

9 Q. "Put up the money" type?

10 A. Yes.

11 Q. So, you know, we'll come right to it, because

there's no

12 reason to dance around it. We want to talk about what  
this

13 would mean to you and your financial situation if you  
got on

14 this jury and served several months. You just tell us,  
15 thinking about that -- and you have been thinking about  
that, I

16 know -- where you are today in your thinking on that.

17 A. Well, it would be a real hardship. I'll be honest  
with

18 you. I've got a son that's going through a divorce,  
and he's

19 got three little kids that I'm trying to help along  
with, you

20 know, my own payments. And it would -- it would be a  
hardship.

21 Q. And you have a little farm there in the Longmont  
area?

22 A. Yes, sir, I do.

23 Q. You have some horses?

24 A. I've got two of them. Three of them, actually.

25 Q. And you do team roping. Are they the horses you  
use for

1414

Juror No. 231 - Voir Dire

1 that?

2 A. One of them's a young horse and one's an older  
horse, and

3 the other I use all the time.

4 Q. So you rodeo in this area?

5 A. Mostly just smaller jackpot ropings, and I have in  
the past  
6 gone to the senior -- the old-timers' rodeos, is what  
it was.

7 Q. Okay.

8 A. Over the hill gang.

9 Q. You don't make prize money that would take care of  
your  
10 financial things?

11 A. No.

12 Q. All right.

13 A. No.

14 Q. So, you know, I appreciate your coming in here and  
talking  
15 with about it -- with us about it. What I hear is you  
just  
16 can't stay out of bankruptcy court if you were on this  
jury.

17 Is that the bottom line, so to speak?

18 A. No, that wouldn't an honest statement.

19 Q. That's too far?

20 A. I could survive, but I mean it would be a real  
hardship.

21 It's . . . .

22 Q. Okay. You've got some -- you know, we're not  
asking you to

23 open up and show us your wallet or your balance sheet

or

could 24 anything like that; but you do have some money that you  
25 pay your current expenses from, do you?

1415

Juror No. 231 - Voir Dire

could if 1 A. Yeah. It's been a long time in the making, but I  
2 I had to.

these 3 Q. Okay. Well, we appreciate your telling us about  
4 things.

here. 5 Now, we'll just ask you a few more questions

6 You've been on a jury before; right?

7 A. Yes, sir, I have.

that was a 8 Q. Page 26 is where you told us that. And I guess

it? 9 civil case arising out of an automobile accident, was

10 A. Yes, sir.

11 Q. And that was in -- was that in Boulder?

12 A. Boulder County, uh-huh.

13 Q. And the court in Boulder?

14 A. Yes, it was.

15 Q. District court?

16 A. It was the court at 13th and Pearl, or somewhere in

that

17 area.

18 Q. Okay.

19 A. Yeah.

20 Q. How long ago did you have this jury service?

21 A. Boy, you're putting me on the spot.

22 Q. Well, about?

23 A. Seven, eight years.

24 Q. Seven, eight. How many people on the jury? Do you

25 remember? Was there six, or more than six?

1416

Juror No. 231 – Voir Dire

1 A. More than six. More than six.

2 Q. 12?

3 A. I don't think there was 12.

4 Q. Okay. Somewhere in between?

5 A. Somewhere -- yeah, it seemed like somewhere -- you  
know, I  
guess.  
6 couldn't be honestly true with you. I'm just taking a

7 Q. Yeah. And the jury heard the whole trial?

8 A. Yes, we did.

9 Q. Come up with a verdict, a decision?

10 A. Yes.

11 Q. Which way did it go; for the plaintiff who was

seeking

12 damages, or for the defendant?

13 A. It went for the defendant.

that the

14 Q. So you found that the -- the jury did, I mean --

15 defendant wasn't at fault in some way?

16 A. That's right.

17 Q. And there were injuries in the case?

we were

18 A. It had gone to trial previously to the trial that

19 on. And there were injuries in the case, yes.

20 Q. Did you know about the first trial?

21 A. No. No, I didn't, sir.

22 Q. Until afterwards?

23 A. Until afterwards.

24 Q. Were you the foreman of the jury?

25 A. No, I wasn't.

1417

Juror No. 231 - Voir Dire

as

1 Q. And do you remember very much about what you heard

2 evidence in the case and what the jury talked about?

3 A. I remember some.

to

4 Q. Did you have the court giving you some instructions

5 guide you in your consideration of the case?



6 A. Yes, sir; but I couldn't recall what they are  
today.

7 Q. No. We wouldn't expect you to. But I'm sure that  
being a

8 civil case, the judge instructed you something along  
the lines

9 that where there is conflicting evidence here, you have  
to

10 judge the witnesses and who's being truthful and who's  
not and

11 what testimony you believe and all that. Do you  
remember

12 something along those lines, do you?

13 A. I don't really remember.

14 Q. Okay.

15 A. I don't.

16 Q. Well, do you remember him saying or her saying  
about the

17 preponderance or the greater weight on one side or the  
other?

18 Do you remember like that?

19 A. I don't.

20 Q. Well, that's good, because those instructions have  
nothing

21 to do with this. And the reason is that's a civil case  
and

22 this is a criminal case. And there are different  
rules.

23 Now, when you were out there at Jefferson  
County with

24 others, I told you something about this case. You

recall that?

25 A. Yes.

1418

Juror No. 231 – Voir Dire

1 Q. I talked about this all coming out of an explosion  
that  
2 took place in Oklahoma City on April the 19th of 1995,  
when a  
3 federal office building blew up and people were killed  
and  
4 injured; that there was then an indictment, charges  
filed in  
5 Oklahoma City; that I described those charges in a  
general way;  
6 that the Government was accusing a man named Timothy  
James  
7 McVeigh and also Terry Nichols here and other persons  
not named  
8 in the charges with conspiring to blow up that building  
and to  
9 do things to carry out that objective and also with the  
murder  
10 of eight law enforcement agents who were in the  
building. You  
11 remember that?

12 A. Yes, sir.

13 Q. And I also said that Mr. Nichols entered his pleas  
of not  
14 guilty creating the issues for trial and that just  
because he's

also 15 charged, you can't consider that against him. And I  
Denver 16 explained how the case got moved from Oklahoma City to  
17 and why and also that separate trials were ordered for  
would hear 18 Mr. McVeigh and Mr. Nichols, so that different jury  
19 these cases because it wouldn't be fair to them to be  
tried by 20 the same jury because of differences in what the  
evidence may 21 be. Do you follow all that?  
22 A. Yes, sir.  
23 Q. I know you remember this, but I've got to repeat  
it. 24 That's just kind of the way things go in court: You  
have to 25 sort of sometimes talk about the obvious.

1419

Juror No. 231 - Voir Dire

1 But you recall that I also explained that  
2 Mr. McVeigh's already been tried by a jury and that  
jury made a 3 decision about the evidence with respect to him, but  
that has 4 nothing to do with this case to be tried by a separate  
jury 5 with evidence relating to Mr. Nichols which may be  
altogether

6 different from the evidence in this trial of Mr.  
McVeigh. You

7 recall that?

8 A. Yes, sir, I do.

9 Q. And here we're looking for people who can decide  
the

10 evidence in this case and focus on what the evidence  
may be and

11 follow the law in this case.

12 Now, I also talked about some general  
principle of law

13 applicable to criminal cases, and this is instructions.  
And in

14 a criminal case, different from a civil case, the  
burden of

15 proof is on the Government, who brings the charges; and  
they

16 have to prove it beyond a reasonable doubt, not just by  
a

17 preponderance or the greater weight or the likelihood  
of truth

18 or anything but beyond a reasonable doubt. You've  
heard that

19 before?

20 A. Yes.

21 Q. And a defendant, including Mr. Nichols -- every  
defendant

22 in a criminal case in this country -- and it's true all  
over,

23 no matter what the charges are or who the person is or  
what

our 24 court it's in, 'cause it's constitutionally required by  
presumed to 25 United States Constitution -- that the defendant is

1420

Juror No. 231 - Voir Dire

1 be innocent. And the Government has the burden of  
proof, and 2 no defendant has to prove anything, no defendant has to  
testify 3 or can be called on to testify or explain anything at  
his trial 4 and that this presumption carries throughout the trial  
and 5 entitles a defendant to be acquitted -- found not  
guilty -- 6 unless a fair-minded jury, considering the evidence  
only and 7 the law, determines that the Government proves guilt  
beyond a 8 reasonable doubt. You follow what I just said?  
9 A. Yes, I do.  
10 Q. So at the end of the day, at the end of the trial,  
if the 11 jury, after talking it over, has a reasonable doubt  
about 12 whether that evidence that they heard and saw shows the  
13 defendant to be guilty in accordance with the law  
that's given 14 in the instructions, they have to give the defendant

the

follow 15 benefit of that doubt and find him not guilty. Do you

16 me on that?

17 A. Yes, sir, I do.

18 Q. Any question about that?

19 A. No.

were on 20 Q. Do you understand that and would follow it if you  
21 this jury?

22 A. Yes.

37, I 23 Q. Now, you mentioned in this questionnaire on page

formed 24 believe -- Let's turn to that. You say on 160 that you

25 an opinion about Terry Nichols. Do you see that?

1421

Juror No. 231 - Voir Dire

1 A. Yes, sir, I do.

2 Q. And 163, you see what you said there?

3 A. Yes, sir.

it up 4 Q. And then on to the next page, 165, you sort of sum

5 saying: "I'm not as open-minded -- I'm probably not as  
6 open-minded as I should be."

7 A. Yes, sir.

to be 8 Q. So when you say "as I should be," you know you have  
9 open-minded if you serve as a juror in a fair trial.  
10 A. Yes, sir, I realize that.  
answered 11 Q. Now, tell us -- this is what you thought when you  
different 12 the questions on September the 17th. Now, is it any  
13 today?  
14 A. It's probably about the same.  
on 15 Q. Well, we want you to be honest with us. You're not  
that. You 16 trial here for having an opinion or something like  
17 have, as I understand it, seen and read a lot in the  
news about 18 the McVeigh case?  
19 A. Yes, sir. I followed it fairly closely.  
20 Q. Talked with others about it?  
21 A. Yeah, I did, uh-huh.  
22 Q. You know the jury verdict?  
23 A. He was found guilty.  
24 Q. And the sentence?  
25 A. Death.

1422

Juror No. 231 - Voir Dire

1 Q. Did you agree with that, both ways -- both guilty

verdict

2 and the sentence?

3 A. Yes, sir.

4 Q. Did you express opinions to others about that when  
it

5 happened, or particularly the death sentence?

6 A. Yes, sir, I did.

7 Q. What did you say?

8 A. We just talked about it. We figured, you know,  
that there

9 were a lot of innocent children killed and a lot of  
people and

10 it was -- it's what the death penalty was made for.

11 Q. Now, you have expressed some views about the death  
penalty

12 in this questionnaire, too.

13 A. Yes, sir.

14 Q. We asked you to. And page 28 is where you told us  
some

15 things about that. I want to just go over that with  
you a

16 little bit, because you understand that if there is a  
guilty

17 verdict in this case or in any case that has the  
charges of

18 this nature, premeditated murder among them, and a  
conspiracy

19 to do the things that are alleged, under federal law,  
whereas

20 in most criminal cases judges decide the punishment for  
the



life or 21 particular person and juries don't, when it comes to  
these 22 death, the jury decides. And that's why we ask you  
23 questions. And you understand that to be the law?  
24 A. Yes, sir.  
25 Q. And then we ask you some questions here about  
regardless of

1423

Juror No. 231 - Voir Dire

under Item 1 what the law is, what do you think. And you said,  
that is, 2 B, you have "mixed feelings about doing it, myself";  
3 imposing the death sentence. That's what you said.  
4 A. Yes, sir, I did.  
saying 5 Q. Now, you know, you can explain this. I'm not  
into 6 because of what you said there, you may -- are locked  
so it's 7 that. This is opinion and how you feel about things,  
8 open. But you agreed with the McVeigh sentence, yes?  
9 A. Yes, sir.  
would have 10 Q. And just jumping into this, would you think you  
to that 11 had difficulty, so far as you know what was presented

would 12 jury, from what you read and heard -- do you think you  
on the 13 have had difficulty with that sentence if you had been  
14 McVeigh jury?

15 A. Well, I tell you, I've never had to sentence  
anybody to  
if it 16 die, and I'm not a real violent man, and I don't know  
-- 17 would have -- I'm sure it would have bothered me, but

18 Q. Well, that isn't the question, whether it bothers  
people.  
19 This is a very tough question for people.

20 A. It is a tough question. And after considering  
everything,  
21 I would have probably voted, you know, for the death  
penalty.  
22 I would have.

23 Q. Now, let me just explain a little about that, and  
then  
24 we'll take a recess here, but we'll get you out before  
noon.

25 Don't worry about that. What the law says is that --  
and I'm

1424

Juror No. 231 - Voir Dire

1 not trying to argue with you in any way; I just want to  
give  
2 you the context of what happens, just as I've described

a trial

3 and the presumption of innocence and so forth.

4 In a case where the jury has to decide  
punishment

5 because of the statutes that make the particular  
conduct a

6 crime, the jury has to hear more than what they heard  
at the

7 trial. We have really a second trial. A penalty  
hearing is

8 what we call it. And the Government comes in usually  
with

9 things they call "aggravating factors" that go to  
support the

10 view that death is deserved for that defendant and that  
crime.

11 The defense has the opportunity there to come on and  
present

12 information in mitigation; we call it "mitigating  
factors" that

13 tend to support the view that death is not deserved for  
this

14 defendant, regardless of the crime; that the defendant  
has to

15 be considered as an individual, unique human being and  
that the

16 jury must hear and think about and consider in making  
this hard

17 choice between life or death things that go to the  
defendant's

18 background, who he is and what he is, family history,  
and all

19 of those things, and consider the defendant, too,

before

I'm 20 deciding on his life or death. Do you understand what

21 saying?

22 A. Yes, sir.

I say 23 Q. Would you be able to do that, you think? And when

I mean 24 "do that," I don't want to confuse you. By doing that,

about what 25 consider whatever was presented -- and we can't talk

1425

Juror No. 231 - Voir Dire

talk about 1 may be presented because we don't know. We have to

the 2 this sort of in the dark. But you have to think about

where he's 3 defendant and who he is and what he is and sort of

decide the 4 "coming from," in a modern phrase, before you can

you 5 question of his punishment regardless of the crime. Do

6 understand now what I'm asking you?

7 A. Yes, sir.

8 Q. Can you do that?

9 A. I would think I could.

this a 10 Q. Now, we're going to take a break. We've been at

take a 11 little long -- longer than you have; but I'm going to  
have an 12 20-minute break and come back; and the lawyers will  
we'll get 13 opportunity to question you a little further. But  
anyway. So 14 you out of here so that you can get a half day in,  
20 15 you can step out for now. We'll be back here in about  
16 minutes.

17 Go ahead, yes.

18 (Juror out at 10:20 a.m.)

19 THE COURT: May I see counsel at the bench for  
just a 20 moment.

21 (At the bench:)

22 (Bench Conference 13B1 is not herein transcribed by  
court 23 order. It is transcribed as a separate sealed  
transcript.)

24

25

1429

Juror No. 231 - Voir Dire

1 (In open court:)

2 THE COURT: I've discussed this situation with

3 counsel, and we've agreed to excuse him for hardship.

4 We'll take a 20-minute recess.

5 (Recess at 10:22 a.m.)

6 (Reconvened at 10:44 a.m.)

7 THE COURT: Be seated, please.

8 798.

9 Good morning. If you'll raise your right hand  
and

10 take the oath from the clerk, please.

11 (Juror No. 798 affirmed.)

12 COURTROOM DEPUTY: Thank you.

13 THE COURT: Please be seated there in the seat  
by the

14 microphone. That chair moves around a little, so you  
can make

15 yourself comfortable.

16 VOIR DIRE EXAMINATION

17 BY THE COURT:

18 Q. We appreciate the wait that you've had here, and we  
19 apologize for that. You were in Friday --

20 A. Yes.

21 Q. -- all day and waited all day; and we thought we'd  
get to

22 you, but we didn't, so -- but you're here now finally.

23 And you recall, of course, receiving a summons  
24 notifying you that you have been selected, so to speak,  
through

25 a computer process that gave us your name as possibly

being a

1430

Juror No. 798 – Voir Dire

Lynn 1 juror in the trial of the United States against Terry  
2 Nichols.

3 A. Yes.

4 Q. And we're here as a result of that.

Jefferson 5 You also received a notice to go out to the  
6 County Fairgrounds on September 17, where you and  
others came

7 to the auditorium building and I introduced myself and  
others  
8 who were with me. And I want to do that again so you  
know who  
9 is here in the courtroom in front of you today.

here at 10 You recall meeting Mr. Lawrence Mackey, who is  
11 the first table with Ms. Beth Wilkinson as attorneys  
for the  
12 Government. They are joined this morning by Mr.  
Patrick Ryan  
13 and Mr. Geoffrey Mearns as additional lawyers for the  
14 Government.

15 You recall also meeting Mr. Michael Tigar and  
16 Mr. Ronald Woods as attorneys for Terry Nichols, and  
17 Mr. Nichols was with us on that day as well.

18                   And then we asked you to answer a lot of  
questions on  
19                   a written questionnaire. You should have that in front  
of you  
20                   now, your answers; and we did, as I said we would, made  
copies  
21                   of those answers and gave them to counsel and to me and  
we read  
22                   them and, if you can believe it, have some additional  
23                   questions --

24                   A. Okay.

25                   Q. -- some of which -- many of which will be sort of  
follow-up

1431

Juror No. 798 - Voir Dire

1                   to some of the things that you have told us but also  
some  
2                   things that I need to tell you about with respect to  
the trial  
3                   and what may be involved in jury service.

4                   Now, we're appreciative of your interest in  
personal  
5                   privacy; and as I told you, we have not made your  
answers  
6                   public in any way, and those of us who have read your  
answers  
7                   will limit our use of them to this process. And  
additionally,  
8                   we're not going to use your name here in court; and



we've taken

9 measures, as you well know, so that you can come and go  
from

10 the courthouse without being photographed and  
identified by

11 others. You do recognize, I am sure, that your answers  
now are

12 public because we're in a courtroom, it's a public  
place, and

13 that's the nature of the proceeding.

14 Let me sort of take you back to what I said on  
the

15 17th of September about the background of the case.  
You

16 remember I gave you some explanation that as a result  
of an

17 explosion that occurred in Oklahoma City, Oklahoma, on  
April 19

18 of 1995, destroying an office building there and  
resulting in

19 death and injury to people in it, the Government filed  
some

20 charges by way of an indictment in the Federal Court in

21 Oklahoma City, charging a man named Timothy McVeigh and

22 Mr. Terry Lynn Nichols here and other persons not named  
in the

23 indictment with entering into a conspiracy or agreement  
of some

24 kind to carry out a bombing of that building and that  
also,

25 acts were done to carry it out and that the charges  
included

## Juror No. 798 - Voir Dire

1 charges of murder of eight law enforcement agents who  
were in  
2 the building, federal law enforcement agents, and that  
to these  
3 charges, Mr. Nichols pleaded not guilty; that the case  
got --  
4 and so did Mr. McVeigh. The case got moved from  
Oklahoma City  
5 here to Denver. The Court ordered separate trials for  
the two  
6 named defendants, Mr. McVeigh and Mr. Nichols, because  
of  
7 differences in the evidence or expected differences in  
the  
8 evidence with respect to each of them and the Court's  
view that  
9 there couldn't be a fair trial if both men were tried  
together.

10 I told you all those things.

11 A. (Juror nods head.)

12 Q. Yes?

13 A. Yes, sir.

14 Q. And that the trial with respect to -- a trial with  
respect  
15 to Mr. McVeigh has already been held here before a jury  
and the  
16 jury's verdicts in that case, finding him guilty under  
the

17 evidence that they had presented and also a  
recommendation for

18 a death sentence. You're aware of that?

19 A. Yes, sir.

20 Q. And of course, none of that can be considered now  
by any

21 jury or jurors considering the case with respect to

22 Mr. Nichols. We have a different focus here. And none  
of what

23 was received as evidence in the trial of Mr. McVeigh  
can be

24 considered as any evidence with respect to Mr. Nichols.

25 And of course, only evidence that's presented  
at trial

1433

Juror No. 798 - Voir Dire

1 can be considered with respect to these charges. You  
2 understand that?

3 A. Yes, your Honor.

4 Q. And as I said, then, I believe -- but let me repeat  
it --

5 that there are some fundamental principles of law that  
apply

6 here as they do to every case because they're  
constitutional in

7 their origin; and it is the law, fundamental law, that  
by his

8 pleas of not guilty, Mr. Nichols is entitled, as any

defendant

9 is on any charges, to the presumption of innocence,  
which means

10 that he must be acquitted unless the prosecution  
presents

11 evidence that convinces jurors of his guilt under that  
evidence

12 beyond a reasonable doubt.

13 Mr. Nichols is the same as any other  
defendant. He's

14 not required to prove anything at his trial or to  
explain

15 anything or to introduce any witnesses or to testify  
himself.

16 A person on trial has the right to remain silent  
entirely and

17 simply challenge the Government's evidence against him.

18 And of course, he may call witnesses if he  
chooses, or

19 may not. And what we say to jurors in a case in which  
the

20 defendant does not testify as a witness: The jury may  
not

21 consider that at all. That's not something against him  
and

22 doesn't suggest that he's got something to hide or  
whatever.

23 It's under the rules that the Government has the burden  
of

24 proof; and the Government has to meet that burden.

25 And if at the end of the trial, considering  
the

1434

Juror No. 798 - Voir Dire

1 evidence that was produced, the juror finds -- the jury  
finds  
2 that there is still a reasonable doubt as to whether  
that  
3 evidence proves guilt of the particular crimes charged  
under  
4 the Court's instructions about what has to be proved to  
5 constitute the offense, then the jury must give the  
defendant  
6 the benefit of that doubt and find him not guilty. Do  
you  
7 understand these things?

8 A. Yes, your Honor.

9 Q. Do you accept those as rules that would govern you  
if you  
10 were to serve on this jury?

11 A. Yes, your Honor.

12 Q. So as he sits here this morning with us, you  
understand

13 Mr. Nichols is presumed to be not guilty.

14 A. Yes, sir.

15 Q. Now, I want to talk a little about your background  
and some  
16 of the things told to us in our questions of you. As I  
17 understand it, you're a native Coloradan, born in  
Denver?

18 A. Yes, sir.  
19 Q. Live now sort of going up towards the mountains  
west of  
20 town?  
21 A. Yes, sir.  
22 Q. And you have an acreage there?  
23 A. Yes, sir. 11.  
24 Q. 11 acres? And you -- do you have any animals  
there, horses  
25 or goats or anything?

1435

Juror No. 798 - Voir Dire

1 A. Yes, sir.  
2 Q. What do you have?  
3 A. We have a goat and some chickens, and we just got a  
little  
4 donkey.  
5 Q. Okay. You milk the goat?  
6 A. No. No.  
7 Q. So goat is sort of a pet?  
8 A. Yes.  
9 Q. And you've got, what, four children? Two are at  
home?  
10 A. Yes.  
11 Q. And I want to turn to page 4, and please understand  
you can

12 expand on anything here with respect to these answers;  
but page  
13 4 under Question 18, we asked you something about  
medication,  
14 and you answered. Do you want -- please feel free to  
-- I  
15 don't want you to be put at a disadvantage. I want you  
to read  
16 what you wrote.

17 The way I understand that, you take some daily  
18 medications and nothing about them would interfere with  
your  
19 being with us here from 9 to 5 or whatever the hours  
may  
20 finally turn out to be every day?

21 A. No, sir.

22 Q. No problem.

23 Now, you're -- you're in a second marriage.  
Is that  
24 right?  
25 A. First marriage.

1436

Juror No. 798 - Voir Dire

1 Q. First marriage. Well, I'm sorry. I got the wrong  
2 understanding here. The reason I ask that is page 2,  
Question  
3 7. Apparently you misunderstood the question. You see  
why I'm

4 confused?

5 A. Oh. Okay.

6 Q. That looked like you were married before this one.

7 A. Yeah. I guess I -- I have a child by a previous  
8 arrangement -- situation.

9 Q. All right. Yeah. Not a marriage but you and the  
father of  
10 that child were together.

11 A. Yes.

12 Q. Okay. And I take it that's the oldest?

13 A. Yes.

14 Q. Of the children. Now, you -- let's see. Page 9  
describes

15 your work history, and you're working now full-time in  
a  
16 financial institution handling new accounts?

17 A. Yes, sir.

18 Q. And what do you do? Go through the paperwork  
necessary to  
19 set up the account for a new customer?

20 A. Yes. Customer service of any type, setting up  
accounts,  
21 closing.

22 Q. Okay.

23 A. Dealing with their problems.

24 Q. Do you have anything to do with loans?

25 A. No, sir.



Juror No. 798 - Voir Dire

1 Q. So it's savings, checking, the accounts with the  
bank.

2 A. Yes.

3 Q. And there was a time that you worked as a teacher  
in a day

4 care?

5 A. Yes, sir.

6 Q. And you have shown us the dates. Where was that?  
Where is

7 that? I suppose it's still . . .

8 A. The day care?

9 Q. Yeah.

10 A. Is in north Denver. It's a church day care.

11 Q. Connected with a church?

12 A. Yes.

13 Q. Is it preschool?

14 A. It's ages 2 to kindergarten. Includes  
kindergarten.

15 Q. All right. Then you worked at home doing some  
telephone

16 calling?

17 A. Yes, sir.

18 Q. What kinds of things, products or services, were  
you

19 telemarketing?

discarded items 20 A. It's a nonprofit organization that picks up

21 from people's homes.

22 Q. All right. For the benefit of some charitable  
23 organization?

local 24 A. Yes. It goes -- the items go into their little

25 stores and are resold for a small fee.

1438

Juror No. 798 - Voir Dire

1 Q. Like a thrift store of some sort?

2 A. Yes. Yes, exactly.

3 Q. But you got paid for the calling service?

4 A. Yes, sir. Yes, sir.

5 Q. Okay. Your husband is in the printing business?

6 A. Yes, sir.

7 Q. And he was in the Army in Vietnam?

8 A. Yes, sir.

9 Q. Now, this is before you were married?

10 A. Yes, sir.

whether he 11 Q. Do you know from what he's told you or whatever

12 was in combat in Vietnam?

13 A. Yes, sir, he was.

experience? 14 Q. And has he told you some things about that

15 A. A little. Not a whole lot.

16 Q. Is that a matter -- and, you know, this is an  
awkward  
17 question, but that is a matter that seems to be  
troubling to  
18 him now?

19 A. No. I think --

20 Q. Put it behind him?

21 A. Yes, it's behind him.

22 Q. Okay. On page 22 at Question 102, the way that I  
23 understand what you've told us is that you were present  
in this  
24 bank when it was robbed.

25 A. Yes, sir.

1439

Juror No. 798 - Voir Dire

1 Q. Was there a weapon involved?

2 A. Yes, sir.

3 Q. How long ago?

4 A. It's been about approximately three weeks ago.

5 Q. Just before you came out to the Jefferson County  
6 Fairgrounds?

7 A. Yes, sir.

8 Q. A matter very fresh in your mind at that time?

9 A. Yes, sir.

10 Q. You were interviewed about what you saw?

11 A. Yes, sir.

12 Q. Was that by FBI agents?

13 A. Yes.

14 Q. Or police, or both?

15 A. FBI.

16 Q. And did you see -- how many people involved as  
perpetrators

17 or the people who did the robbery?

18 A. There was one.

19 Q. And the type of weapon?

20 A. It was a pistol, a semiautomatic and a rifle.

21 Semiautomatic rifle.

22 Q. And were these weapons at any time aimed at you?

23 A. Yes, sir.

24 Q. Or to your perception, they were?

25 A. Yes, sir. For an instant. It was for an instant  
on

1440

Juror No. 798 - Voir Dire

1 everyone involved.

2 Q. Okay. Do you know whether anybody has been  
arrested?

3 A. I have not heard, sir.

4 Q. You remember this day pretty well, I trust. Do

you?

5 A. Yes, sir.

6 Q. Is that the first time that you've had such an  
experience

7 in your life?

8 A. Yes, sir.

9 Q. And were you injured in any way physically?

10 A. No, sir.

11 Q. How many times have you been interviewed by the FBI  
with

12 respect to this event?

13 A. Once.

14 Q. Did you give a description of the person?

15 A. Yes, sir, as well as I could.

16 Q. Yeah. Did you have a pretty good opportunity to  
view this

17 person?

18 A. Yes, sir.

19 Q. Was there anytime that you were asked to look at

20 photographs?

21 A. No, sir.

22 Q. So would it be the case that you just told the FBI  
people

23 what you remember, describing height and apparent  
weight and

24 any outstanding characteristics and so forth?

25 A. Yes, sir.

## Juror No. 798 - Voir Dire

1 Q. Did the person wear a mask?

2 A. Yes, sir.

3 Q. Okay. And page 25, Question 114. And in your --  
do you

4 have that?

5 A. Yes, sir.

6 Q. In making that answer, did you have in mind your  
own

7 ability to describe what you saw and heard? I mean,  
did you

8 connect this question up with your own experience?

9 A. Yes, sir, I did.

10 Q. And that's why you answered the way you did?

11 A. May I elaborate?

12 Q. Sure, you may.

13 A. I -- it's -- I feel as the time goes by my -- what  
I

14 recollect has changed. My remembering what exactly I  
thought

15 we saw or what everyone saw -- everyone saw something

16 different, pieced it together. And I feel it's my  
perception

17 of what I saw, not everyone's perception is the same.

18 Q. Uh-huh. Well, you say it's changed. Will you  
explain that

19 for us, how -- what's the reason for it changing?

one  
20 A. I just think time. I think I have maybe forgotten  
21 little piece of it or this or that on it.  
22 Q. So it's changed in the sense you don't have as good  
a  
23 recollection as you did when you were interviewed? Is  
that  
24 what you're saying?  
25 A. Yes, sir, I think that's true.

1442

Juror No. 798 - Voir Dire

leading  
you to  
little.  
something of  
there?  
sort of  
of  
1 Q. Now, don't let me lead you. I'm not -- I'm asking  
2 questions, but I'm not trying to give you an answer for  
3 say yes or no. I'm simply trying to draw it out a  
4 A. Yes. I believe that I've lost maybe a little  
5 that --  
6 Q. Yeah. Did you talk -- how many bank employees were  
7 A. There was eight of us.  
8 Q. Did you talk with each other about what you saw and  
9 compare notes before you were interviewed?  
10 A. No, sir. After, we were allowed to, after a period

11 time.

12 Q. How soon after the event were you questioned by FBI  
agents?

13 A. Probably within two hours.

14 Q. And during those two hours, did you talk at all  
among

15 yourselves?

16 A. Very little. They instructed us we -- we were to  
write

17 everything we could remember and not communicate.

18 Q. And not talk about it?

19 A. On that -- on this event.

20 Q. Yes. But then after everybody got interviewed, you  
did

21 some note-comparing?

22 A. Everyone -- we basically had a meeting with  
counselors, and

23 everyone could kind of let their feelings out a little  
bit.

24 Q. Yeah. Counselors in the sense of people helping  
you to --

25 A. Yes, sir.

1443

Juror No. 798 - Voir Dire

1 Q. -- adjust to this event?

2 A. Yes.

3 Q. And did you compare notes as to what you remember  
in



4 describing the person?

5 A. Yes, sir.

6 Q. What -- I'm not asking you -- we're not trying that  
case.

7 A. Yes, sir.

8 Q. But we just want to know a little about somebody  
has been

9 through a process like this, something about your  
perception of

10 it. Was there a lot of difference among the eight of  
you who

11 saw this about things like height and weight and, you  
know, in

12 the description of the person?

13 A. I think generalities were pretty much the same as  
far as

14 that goes. Other little details like someone noticed  
the hands

15 and someone noticed the shoes or someone didn't. Those  
kind of

16 things were --

17 Q. Did you all describe the clothing about the same?

18 A. Yes, sir.

19 Q. Okay. Well, we're done questioning you about that,  
but I'm

20 sure you can appreciate why we're interested in some  
details,

21 because it may relate to how you view the testimony of  
people

22 who describe other people and events.

23 Now, you've never been on a jury, have you?

24 A. No, sir.

25 Q. Have you ever watched any trials, either in person  
or on

1444

Juror No. 798 - Voir Dire

1 television?

2 A. A little bit on TV.

3 Q. What have you watched on TV?

4 A. A little bit of the O. J. trial. That's basically  
--

5 Q. That trial was televised. Did you watch it as it  
was

6 happening, or did you watch newsclips?

7 A. No, sir, news.

8 Q. Okay. Well, I want to review a little with you  
about --

9 I've already talked about the overall burden of proof  
and all

10 of that, you understand.

11 A. Yes, sir.

12 Q. And in the criminal trials that do not involve the  
13 possibility of a death sentence, then what happens in  
the trial

14 is the -- both sides are there, of course. The  
evidence is

15 presented. As I've already said, the defense doesn't  
have to

all, is 16 produce any evidence; and the jury, having heard it  
prove to 17 asked then to make a decision: Does this evidence  
defendant 18 your satisfaction beyond a reasonable doubt that this  
if the 19 on trial is guilty of whatever he's charged with? And  
jury 20 answer to that is no, we have a reasonable doubt, the  
end of it. 21 comes back with a not guilty verdict; and that's the  
22 You understand that?  
23 A. Yes, sir.  
juror 24 Q. If, on the other hand, the jury is satisfied, every  
the 25 reaches this decision and it's a unanimous verdict that

1445

Juror No. 798 - Voir Dire

then the 1 defendant has been shown to be guilty by the evidence,  
what we 2 verdict is guilty; and in cases that do not involve  
as the 3 call jury sentencing, that's the end of it, too, as far  
the judge 4 jury is concerned, because then the case goes back to  
5 for sentencing. And before there can be a sentence

6 determination -- that is to say, what punishment should  
be  
7 imposed -- the judge holds a hearing. And before that  
hearing  
8 happens, information is collected about circumstances  
of the  
9 offense and also things that are about the defendant:  
That  
10 person's background, sort of life story, his  
upbringing, family  
11 relationships, work history, experiences in life, the  
things  
12 that make each one of us, our own lives, unique.

13 And then arguments are presented to the court  
and by  
14 the prosecution and the defense; and the judge reaches  
a  
15 punishment decision, a sentence, unique to that person.  
Do you  
16 understand that?

17 A. Yes, sir.

18 Q. And in a case now where there is the possibility of  
a  
19 sentence to death because of the statute and in a  
federal case  
20 in Federal Court, that isn't the end of it because it  
is the  
21 jury that decides the basic question on sentencing as  
to  
22 whether the sentence should be and the options given to  
the  
23 jury are life in prison without any possibility of ever  
being

it goes 24 released, death, or some lesser sentence, in which case  
just 25 back to the court again, as in other cases as we've

1446

Juror No. 798 – Voir Dire

1 described.  
what 2 Now, I'm not going to go through with you yet  
the reason 3 process is involved there but simply to let you know  
prison 4 that we asked you your opinions about death and life in  
us 5 without release as possible punishments, and you gave  
page 27, 6 answers on page 28. And you may want to look back to  
questions, 7 too, where we gave you some explanation of these  
be to 8 first of all, saying, of course, that this should not  
Because we 9 suggest any question of anything showing guilt.  
something 10 don't know what will happen here, but we need to know  
knowing the 11 about your views concerning these penalties without  
you 12 specifics about the law or indeed about any facts. And  
13 gave us your answers. Please take a moment to review

them.

14                   And there is on the next page, 29 -- there is  
a

15                   further question and answer.

16                   All right. You have in mind now what you  
wrote. And

17                   taking you back to that time when you confronted these

18                   questions and gave the answers, had you before that day  
given

19                   serious consideration to what you think about  
punishment in

20                   criminal cases?

21                   A. No, sir.

22                   Q. And had the subject of the death penalty been a  
matter for

23                   your, you know, consideration and deep thought before  
this?

24                   A. No, sir.

25                   Q. And the reason I'm asking is sometimes people read  
a book

1447

Juror No. 798 - Voir Dire

1                   or watch a movie or learn about a particular case in  
the news

2                   or something and that generates discussion about it; so  
that's

3                   why I asked.

4                   When you got the summons and knew the case  
that you

5 were to hear, if you served, had you -- did you do some  
6 thinking about it then?

7 A. Yes, sir.

8 Q. You realize, then, that the nature of the charges  
in this  
9 case were such as to involve the jury in a sentencing  
decision?

10 A. Yes, sir.

11 Q. And how did you know that?

12 A. Because I believe it was -- it's been conveyed to  
me.

13 Q. By what you read?

14 A. Yes.

15 Q. And you knew of the McVeigh trial result?

16 A. Yes, sir.

17 Q. Now, thinking -- have you thought some more about  
this  
18 since you gave us these answers?

19 A. Yes, sir.

20 Q. As -- do you have any changes in what you said  
here? Has  
21 you view changed in any way, or do you have more to say  
about

22 these questions, or is this pretty much the same --

23 A. Pretty much.

24 Q. -- the way you think right now?

25 A. Yes, sir. I feel everyone has a right to be  
considered

## Juror No. 798 - Voir Dire

1 innocent until the evidence is proved against them.

part of 2 Q. All right. But now we're not talking about that

been 3 the case; we're talking about suppose a defendant has

Now what 4 proved guilty, a jury has said guilty in a verdict.

to 5 happens is the jury has to hear more and decide on what

6 recommend on punishment.

7 A. Yes, sir.

explanation 8 Q. And let me just go through this process in

about. The 9 to -- make sure you understand what we're talking

when it's 10 jury may not consider the issue of punishment at all

reasonable 11 deciding whether the evidence shows guilt beyond a

involve jury 12 doubt. We tell juries that. In cases that don't

of 13 sentencing, of course, they don't know what the range

evidence 14 sentence might be and they can't consider that. The

the jury 15 is there and it's either sufficient or it isn't, and

16 isn't to speculate about what might happen on a guilty



verdict.

17                   The same is true here. You have to judge the  
evidence  
18                   on whether it supports the charges and convinces the  
jury  
19                   beyond a reasonable doubt. But now if the jury finds a  
20                   defendant guilty of charges like this, then there is  
another  
21                   trial, really, sentencing hearing or penalty phase  
hearing,  
22                   whatever -- there are different words to describe it.  
But just  
23                   the way I've talked about a judge getting more  
information  
24                   before deciding a particular sentence for a particular  
person,  
25                   so must that be true for the jury. And they have to  
come into

1449

Juror No. 798 - Voir Dire

1                   the sentencing phase with open minds.  
2                   Of course, they have found a defendant guilty,  
so that  
3                   much is decided; but then what to do about it, in a  
way. And  
4                   they have to consider now information provided at this  
second  
5                   hearing. And the information provided then goes like  
this:  
6                   that the Government brings in information suggesting

that death

7 is the deserved punishment. And usually, that  
information  
8 relates to the offense, the criminal conduct, and is  
called  
9 "aggravating factors." The defense has the opportunity  
to  
10 present what are called "mitigating factors," and  
that's when  
11 the jury hears information uniquely about the  
defendant, these  
12 same things that I've already mentioned: life history,  
work  
13 history, what the defendant has done in life, what has  
happened  
14 to him or her, and so forth, the things again that  
constitute  
15 this individual's life.

16 And before making a decision about life or  
death for  
17 this person, the jury has to consider all of that,  
everything  
18 that has been heard, and then discuss it, of course.  
But then  
19 finally each juror has to make what amounts to a moral  
judgment  
20 as to whether this particular person should live or  
die.

21 Do you understand what I've explained?

22 A. Yes, sir. Yes, sir.

23 Q. And again, that's a moral judgment that takes into  
account

24 the offense but also must take into account the  
offender and  
25 this person's life, because that's the decision, life  
or death.

1450

Juror No. 798 – Voir Dire

1 Now, the question of you is whether you could,  
if  
2 asked, approach that question with an open mind and  
consider  
3 all of the information given to you before making that  
4 decision.

5 A. Yes, sir, I feel I could.

6 THE COURT: Okay. Now, the lawyers on both  
sides have  
7 an opportunity to ask you some more questions; and  
we'll ask  
8 that you listen and answer their questions.

9 Ms. Wilkinson?

10 MS. WILKINSON: Thank you, your Honor.

11 VOIR DIRE EXAMINATION

12 BY MS. WILKINSON:

13 Q. Good morning, ma'am.

14 A. Hi.

15 Q. As the Judge told you, I'm one of the attorneys  
that's

16 responsible for presenting the evidence against Terry  
Nichols

17 on behalf of the Government, and my name is Beth  
Wilkinson.

18 A. Right.

19 Q. I just wanted to ask you a few questions and go  
back to a

20 little bit about your family. I see from reading your  
21 questionnaire that you have four kids?

22 A. Yes.

23 Q. Do you have a set of twins?

24 A. No. Two boys and two girls.

25 Q. Two boys and two girls? And two are still  
teenagers, I

1451

Juror No. 798 – Voir Dire

1 see; is that right?

2 A. Yes.

3 Q. You also mentioned that you have one grandchild.

4 A. Yes.

5 Q. Does your grandchild live in Colorado?

6 A. Yes, she does.

7 Q. Do you get to spend much time with her?

8 A. I don't. The mother -- the mother and father are  
not

9 together and she is remarried, so she's basically kind  
of

10 starting out a new life.

that  
11 Q. Okay. And do you see your other children, the ones  
12 are not living at home anymore?  
13 A. Yes. Yes.  
14 Q. Do they live in Colorado, also?  
15 A. Yes, they do.  
center, if  
16 Q. I'd like to go back to your work at the day-care  
17 I could. You worked there for several years. Is that  
right?  
18 A. Yes, I did. Four.  
19 Q. And did you enjoy that work?  
20 A. Yes.  
the  
21 Q. You've done quite a few things, it looks like, over  
22 past couple years outside of the home. If you didn't  
have to  
23 worry about how much money you earned, which job would  
you say  
24 you found most rewarding?  
just  
25 A. In the day care, there was a lot of creativity,

1452

Juror No. 798 – Voir Dire

feeling of  
1 planning and keeping the day busy; so it gave you a  
2 accomplishment.

with the 3 Q. Did you have direct responsibility for interacting

4 kids every day?

5 A. Yes.

coverage 6 Q. I think you told the Judge that you've seen some

bombing -- 7 about the McVeigh case and about the Oklahoma City

8 A. Yes.

9 Q. -- would that be correct?

10 A. Yes.

11 Q. Where do you get most of your news from?

12 A. Television, the 5:00 news.

17. If 13 Q. Okay. We asked you one general question on page

asked 14 you could take a look at that, Question No. 80. And we

and you 15 you about your opinion of the accuracy of news stories;

interesting. 16 said, "About 60 percent," which I thought was

number, 17 Could you tell me how you arrived at that -- not the

18 obviously, but your impressions.

assuming 19 A. Well, again, this is just my opinion. I -- I am

20 that a majority of what is reported to us is accurate.

21 Q. But some of it is not?

22 A. Yes. I believe some of it is not.

23 Q. Based on that opinion, do you think you could

easily set

Nichols 24 aside anything that you've heard about this case or Mr.

you are 25 or the bombing and leave that outside the courtroom if

1453

Juror No. 798 - Voir Dire

1 asked to come in and be a juror?

2 A. Yes.

3 Q. And could you uphold your oath that you'd be asked  
to take

4 that you would listen to all the evidence with an open  
mind and

5 not consider any of that other information?

6 A. Yes.

7 Q. Would you have any problem doing that?

8 A. No.

9 Q. There is one question that asks you about  
attendance at gun

10 shows, and you notated it yourself and said "4H  
contests." Do

11 you recall that?

12 A. My son was in archery this year in 4H, my 13-year-  
old, and

13 we did attend -- my one and only in my life -- an  
archery show,

14 which they did have skeet shooting going on at the same  
time.

15 So that's my total involvement.

16 Q. With firearms --

17 A. This last summer, yes. Yes.

18 Q. I'd like to go back to one question which kind of overlaps

19 on trials and the media. You said that you had watched the

20 O. J. Simpson trial a bit on television; is that right?

21 A. Some of the excerpts on the news, because I work daily.

22 Q. So you didn't have time to watch it on Court TV or anything

23 like that?

24 A. No, no.

25 Q. What was your impression of that trial?

1454

Juror No. 798 - Voir Dire

1 A. A lot of media hype, basically.

2 Q. Did you agree, or disagree, as to the verdict in that case?

3 A. I think I disagreed.

4 Q. What about the McVeigh case? Did you follow the trial of

5 Timothy McVeigh very closely?

6 A. I really did not.

7 Q. And do you recall how you felt when you heard about the



8 verdict and the sentence in that case?

9 A. I really felt as if I had to assume that what they  
found  
10 was correct, only by not really knowing a lot of what  
went on  
11 in it. I didn't have a whole lot to base that on.

12 Q. Would it be fair, then, to say that you were  
respecting  
13 that the jury did the job that they were supposed to  
do?

14 A. Yes.

15 Q. In other words, you didn't know what the evidence  
was?

16 A. Yes.

17 Q. But you assume they had done the same thing you'd  
be asked,  
18 to come -- come in with an open mind?

19 A. Correct.

20 Q. His Honor went over the procedures for a penalty  
phase, if  
21 it were to come to that in this case. There would be  
basically  
22 a second trial or hearing.

23 A. Yes.

24 Q. And did you understand that during that, you would  
have to  
25 do the same thing again, although you may have found a

Juror No. 798 – Voir Dire

as to 1 defendant guilty, you'd still have to have an open mind  
decide a 2 all the facts and circumstances before you could ever  
3 penalty question?

4 A. Yes.

5 Q. Could you do that?

6 A. Yes.

to page 7 Q. You said in your questionnaire, if you could turn  
27 and 8 124, which -- excuse me -- Question 124, which is pages  
the 9 28. Those are those same questions you were talking to  
10 Judge about.

11 If you can turn to page 29, which is the final  
12 question, you were asked did you have any religious or  
moral or 13 personal beliefs that could affect your ability; and  
you said, 14 "I think I could come to a decision based on evidence  
presented 15 to me to form any of these sentences, if the evidence  
16 warrants."

17 It sounds like you basically could follow the  
law the 18 Judge told you, which is you wouldn't predetermine any  
penalty.  
19 Is that right?

20 A. Correct.

21 Q. And you would wait to see what evidence or the  
information

22 in that penalty phase showed you before you made a  
decision?

23 A. Yes.

24 Q. It's one thing obviously to consider that evidence  
and

25 listen to it and say you could, as you said, come to  
any

1456

Juror No. 798 - Voir Dire

1 decision depending on what the evidence warrants. It's  
another

2 thing obviously to actually do it. And what we need to  
know

3 from you is could you make that decision with your  
fellow

4 jurors and if the evidence warrants determine that  
someone be

5 sentenced to death and come into a courtroom and  
announce that

6 verdict that you had sentenced another human being to  
death?

7 A. Yes.

8 Q. We have one question in the questionnaire which is  
on page

9 34, if you could take a look at the list, that lists a  
lot of

10 people to see if you know any of them. Do you see

that, that

11 long list of people that --

12 A. Yes.

13 Q. And down at the bottom, you said that you had heard  
of --

14 obviously, I take it to mean you don't know these  
people, just

15 heard of them?

16 A. Correct.

17 Q. Which is what the question asked of you. Timothy  
McVeigh,

18 Terry Nichols, and Michael and Lori Fortier. Can you  
tell me

19 what you've heard about Michael and Lori Fortier?

20 A. Basically just news accounts that was involved with  
the

21 trial, the previous trial.

22 Q. Are you familiar with any of the details of their  
23 testimony?

24 A. I'm really not. I know the names. I've heard the  
names.

25 Q. Okay. And here you say you've heard of Terry  
Nichols; and

1457

Juror No. 798 - Voir Dire

1 then when you turn to the next couple pages asking for  
an

2 opinion, you say you don't have an opinion on him and

you don't

3 know any of the details.

4 A. That is correct. I really don't know anything on  
this

5 as -- on what's going on on this aspect of the  
situation.

6 MS. WILKINSON: Okay. I think that's all I  
have, and

7 I appreciate you answering my questions. Thank you.

8 THE COURT: Mr. Tigar?

9 MR. TIGAR: Thank you.

10 VOIR DIRE EXAMINATION

11 BY MR. TIGAR:

12 Q. Good -- yes. Good morning. My name is Michael  
Tigar.

13 We've been introduced. I'm one of the lawyers asked by  
the

14 court to help Terry Nichols in this case.

15 You said that you live on 11 acres and you  
have

16 animals. Does your -- do your kids have 4H projects  
with the

17 animals, or --

18 A. We attempted to when we had horses, but we couldn't  
19 transport them, so that kind of put an end to that.

20 Q. Took care of that.

21 A. Yes.

22 Q. And the -- you say the goat is a pet?

23 A. Yes.

24 Q. Male or female?

25 A. Male.

1458

Juror No. 798 - Voir Dire

1 Q. Male. Not a wether but a regular --

2 A. It's a miniature, pigmy goat.

3 Q. And the chickens? Do you raise them for eggs or  
meat or --

4 A. No. They're pets.

5 Q. They're pets?

6 A. They're all pets.

7 Q. I see. Okay. And the donkey, too.

8 A. Yes.

9 Q. And the -- you mentioned in your questionnaire that  
you

10 listen to the radio and to Peter Boyles and Tom  
Martino. I'm

11 not from here. I think I know who Peter Boyles is.  
How about

12 Tom Martino?

13 A. He's kind of a troubleshooter for products and --

14 Q. I see. Well, on the Peter Boyles -- that is a talk  
show,

15 the Peter Boyles one?

16 A. Yes.

17 Q. Have you ever heard -- have you heard any

discussion of

18 this case on that program?

19 A. I haven't on this case at this point.

20 Q. I see. Did you hear anything about the McVeigh  
case? Was

21 it talked about?

22 A. Periodically, yes, they would have a brief synopsis  
on

23 there from court reporters.

24 Q. I see. Can you remember anything in particular  
about it?

25 A. On the McVeigh trial?

1459

Juror No. 798 - Voir Dire

1 Q. Yes.

2 A. Nothing that comes to mind that's specifically  
noteworthy

3 other than the decision.

4 Q. Right. Did Peter Boyles agree with the decision,  
or --

5 A. I don't remember. I believe he did, to my own  
6 recollection.

7 Q. I'm sorry. Now, when the McVeigh case was going  
on, did

8 you talk about it at home with your family?

9 A. We really didn't. We really didn't a whole lot.  
We knew

10 it was going on. And it was not really an issue at  
that time.

11 It didn't have anything to do with our lives, and it  
was not

12 other than it was in the news periodically and, of  
course, the

13 decision.

14 Q. And how about the verdict when the decision came  
out, the

15 verdict and the death penalty? Did you talk that over  
with

16 your kids or with your husband?

17 A. Yes. My husband just said if a court -- his  
opinion was

18 that if this is what the court has decided, which was  
kind of

19 my opinion, too -- if this is what has come down, where

20 assuming the courts are going to, you know -- they're  
the ones

21 hearing the evidence. We weren't hearing it; they were  
in the

22 courts -- that they would come down with the correct  
decision.

23 Q. Now, in the O. J. Simpson case, did you disagree  
with what

24 the jurors found?

25 A. My husband didn't really have an opinion either  
way. He



1 didn't really want to be -- didn't care about it.

2 I think I had formed a kind of an opinion from  
what I  
3 heard in the media, so -- and I felt like it was not a  
totally  
4 correct decision.

5 Q. Now, why do you think -- as you thought it over in  
your  
6 mind, what do you think was wrong with the process that  
would  
7 lead you to assume that the McVeigh case -- that was  
right but  
8 that the Simpson verdict just raised questions in your  
mind?

9 A. Well, I honestly felt the -- there was more privacy  
as far  
10 as it wasn't as publicized as the O. J. trial was.

11 Q. Thought the O. J. trial was a circus?

12 A. A little bit, yes.

13 Q. Okay. A lot of people have said that, and there is  
no  
14 right or wrong answer. I'm just trying to find out. A  
lot of  
15 people have expressed very thoughtful criticisms of  
that.

16 A. Yes.

17 Q. And I'm trying to find out if you thought the  
jurors in  
18 that case didn't -- didn't follow their instructions or  
were  
19 biased in some way or something like that.

20 A. I think the media was too prevalent in it, in that  
21 particular case.

22 Q. Now, in this case, there has been a lot of media  
coverage.

23 No secret. Right?

24 A. Yes, sir.

25 Q. Could you -- if you're seated as a juror, could you  
just

1461

Juror No. 798 - Voir Dire

1 wipe away everything that you thought or heard or read  
and say,

2 "I start with a clean -- a clean slate"?

3 A. Yes, sir. As I stated before, I -- I really don't  
know

4 charges. I don't know facts on this aspect of the case  
5 whatsoever.

6 Q. And would you be able to insist, if the Court  
instructed

7 you, that the Government, in order to prevail, would  
have to

8 prove their case beyond a reasonable doubt?

9 A. Yes, sir.

10 Q. So if you had a reasonable doubt, would you  
hesitate to say

11 not guilty?

12 A. Yes, sir.

13 Q. You would hesitate -- I probably didn't say that --

14 A. I would not hesitate.

15 Q. I'm sorry. I don't think I said that right.

16 One issue -- I know you talked with the  
prosecutor

17 about the day-care center where you worked.

18 A. Yes, sir.

19 Q. If there was evidence in this case of the deaths of  
a lot

20 of children and some graphic pictures -- heart-  
wrenching

21 pictures, we're talking about here -- would you be able  
to see

22 that evidence and still look at this issue: Did the  
Government

23 prove beyond a reasonable doubt that Terry Nichols  
committed

24 these offenses?

25 A. Yes, sir, I could.

1462

Juror No. 798 - Voir Dire

1 Q. You think you could do that?

2 A. Yes, sir.

3 Q. Okay. And now, I would like to talk a little bit  
about the

4 robbery up there at your bank. Who responded to that  
-- I'm

5     sorry. That's "Dragnet" talk. What law enforcement  
officer

6     showed up first?

7     A. Jefferson County police.

8     Q. And then the FBI came shortly after?

9     A. Yes.

10    Q. Now, as you understand it, will the FBI be wanting  
to talk

11    to you again if they find a suspect?

12    A. I don't have any idea at -- I have not heard any  
13    communication whatsoever on anything.

14    Q. Okay.

15    A. The little that they have come back and dealt, they  
have

16    dealt with the bank president and the vice president,  
who were

17    also there, were actually more involved than some of  
the rest

18    of us.

19    Q. Now, were you told that you might sometime have to  
be a

20    witness in a proceeding arising out of this robbery?

21    A. That's never been discussed.

22    Q. In your own mind, do you think that you might have  
to be a

23    witness?

24    A. I -- I suppose I might be asked some questions,  
yes.

25    Q. Now, because of your talking about this with the  
FBI and

1463

Juror No. 798 – Voir Dire

1 the police and the other folks in the bank, you have  
some

2 appreciation, I guess, of how this eyewitness  
identification

3 process works. Is that fair?

4 A. Yes, sir.

5 Q. Well, if there is evidence in this case and we get  
some

6 witnesses that say they saw somebody and there is a  
dispute

7 about whether that testimony was influenced by other  
people

8 that were there or even by law enforcement, would you  
be able

9 to evaluate that without regard to your own  
experiences?

10 A. I'm not sure I understand what you're saying.

11 Q. Okay. Well, for instance, in a case involving a  
medical

12 malpractice case, a civil case like that, if you have a  
doctor

13 on the jury, there is always a risk that the doctor is  
going to

14 say, Well, I know about that condition; why, I treated  
somebody

15 back in '06 about it.

16 Here's a case in which there might be some

eyewitness

17 testimony and there might be a real dispute; that is,  
one side  
18 or the other will present a witness who will say, I saw  
19 so-and-so, and the other side will say, Well, no, you  
didn't  
20 really see that person and, in fact, the testimony was  
21 influenced because other people talked to you and tried  
to  
22 convince you that your identification is wrong.

23 If you heard that sort of a dispute in court,  
would  
24 you be bringing your own experiences in evaluating  
whether that  
25 eyewitness person who says they saw somebody was  
telling it

1464

Juror No. 798 - Voir Dire

1 right, or would you be able to do it just on the basis  
of the  
2 evidence? That's probably not a better question, but  
that's  
3 the best I can do.

4 A. Alls I can say is I would hope I would be able to  
look at  
5 it from the situation as it's presented.

6 Q. Now, the FBI agents that you met: Did you -- what  
did you  
7 think of them?

8 A. Of the -- I'm sorry.

9 Q. The FBI agents who came out to investigate.

10 A. I'm not sure I really had an opinion. They asked  
Tell us --

11 questions. They basically just asked one question,  
know, it

12 they didn't offer any further information or -- you  
sided from

13 was basically, Tell me what you saw. It was all one-  
14 my situation.

15 Q. Do you have a bank camera?

16 A. Yes, we do.

17 Q. So they got the film off the bank camera?

18 A. Yes.

19 Q. Did you look at the bank camera footage as a part  
of the  
20 process?

21 A. No, sir, we were not doing that.

22 Q. Have you had experience in your job in reviewing  
the bank  
23 camera film for any reason?

24 A. No, sir.

25 Q. In other occasions?

1465

Juror No. 798 - Voir Dire

1 A. No, sir.

2 Q. You just know it's there?

3 A. Yes, sir.

Tim

4 Q. Okay. Well, you have heard about Terry Nichols and

hearing

5 McVeigh and the Fortiers; right? What can you remember

6 about Michael and Lori Fortier?

there

7 A. I just -- I know they're husband and wife and that

the

8 was some testimony -- I don't know a whole lot about

9 involvement. I remember hearing the names.

just

10 Q. Okay. Well, you say you don't know a whole lot. I

11 would like you to remember as best you can what you can

12 remember about their testimony. Then I want to ask you

13 something else about it, but --

testified,

14 A. I don't remember particulars. I do know that he

it.

15 and I don't -- I don't really know particulars about

16 Q. Okay.

17 A. Okay.

you

18 Q. All right. And how about Terry Nichols? What can

with

19 remember about him from hearing or reading or talking

20 friends?

connection

21 A. The only thing I know is that it's -- it's in



all I 22 with the same crime. I do know -- and this is about  
the extent 23 know -- that he was not placed at the scene. That's  
background. 24 of all I know. I don't know the -- any other

is Terry 25 Q. Okay. So as you -- as you sit there today, there

1466

Juror No. 798 - Voir Dire

I can 1 Nichols. Are you able to look him in the eye and say,  
2 give Terry Nichols a fair trial?

3 A. Yes, sir.

is 4 Q. Okay. One more little bunch of questions, and that  
5 on -- if you'd turn to page 28, please, of your  
questionnaire.

us that 6 Now, you notice under C and D there, you told  
7 life in prison without the possibility of ever being  
released 8 and the punishment of death -- and in murder cases,  
either of 9 those could be appropriate. Right?

upon to 10 Now, understand that if you're ever called  
you'll 11 make that decision, you'll have a lot of evidence and

Court; 12 have instructions, very detailed instructions from the

were in 13 but here, you're just, you know, being asked if you

14 Congress making the laws, how would you do it.

you sit 15 How would you distinguish between -- just as

murder 16 there, again, without hearing things, what kinds of

17 cases you think would be appropriate for life without  
18 possibility of release or for the death penalty?

want to 19 A. I think if it's -- I don't know the terminology I

20 use here.

me, 21 Q. Don't worry about the terminology. Just share with

22 please.

has set 23 A. Planned ahead. If someone has planned ahead and

be the 24 out to possibly murder someone, knowing that's going to

times that 25 outcome, that would be a factor. I think there are

1467

Juror No. 798 - Voir Dire

necessarily 1 murder is -- that it's what happens; it's not

out to 2 planned in some crimes; it's not -- someone doesn't set

3 do it on purpose.

condemned  
4 Q. Have you been following the press coverage of the  
scheduled  
5 man in Colorado that has -- the execution of whom is  
6 for next week?

7 A. Yes, I've heard a little bit about that.

about  
8 Q. Now, that is a situation -- so that we can talk  
you agree  
9 something not this case -- that is a situation which  
10 that that was a just sentence?

11 A. Yes, I do.

view?  
12 Q. And what did you -- what did you base that on, your

set out  
13 A. What I have heard publicized that there was kind of  
torture  
14 and predetermined that someone -- it was kind of a  
15 situation; it was predetermined.

gentleman,  
16 Q. Did you also hear about the background of that

was  
17 Mr. Davis, before he committed the crime for which he  
18 sentenced to death?

other than  
19 A. I just heard a little bit. I don't know details  
20 he had some other run-ins I think with the police.

at a  
21 Q. Right. Now, would it be relevant to you in looking  
22 case like that to look at the background of a person

and look

23 at, for example, if in that case there was evidence  
that he had

24 committed other violent crimes before that one? Would  
that be

25 relevant to you?

1468

Juror No. 798 - Voir Dire

1 A. I think it would be a factor leading up to it.

2 Q. And if, on the other hand, he were convicted of a  
murder,

3 premeditated murder, but had previously had a blameless  
life --

4 that is, had no record, talking about this other  
gentleman --

5 would that be something that you would, you know, just  
in your

6 mind, if the judge had told you it was okay to do it,  
be able

7 to consider?

8 MR. MACKEY: Judge, I'd like to object.

9 THE COURT: Overruled.

10 That means you can go ahead and answer. We  
always

11 have a little exchange.

12 JUROR: I'm sorry. I'm not sure.

13 BY MR. TIGAR:

14 Q. Okay. If you're selected as a juror, one of the

things

15 that takes place is that lawyers will make objections  
to

16 questions, to the witnesses, and then the Judge will  
rule; and

17 it's -- you know, that's what we're -- that's what  
we're

18 supposed to do.

19 A. I'm just not sure when I'm supposed to answer or  
not.

20 Q. I understand. Well, you can go ahead and answer  
that; and

21 it was in that case we're talking about, if you heard  
that this

22 person who was convicted of this premeditated murder  
had had a

23 blameless life up to that point and the Judge told you  
it's

24 okay to consider that in deciding the punishment, could  
you

25 give that fair consideration?

1469

Juror No. 798 - Voir Dire

1 A. I think so, yes.

2 Q. You say "I think so." Is there some hesitancy?

3 A. Well, if the Judge has said that it is allowed,  
then I

4 think it is part of -- it's a factor of determining the

5 sentence.

6 Q. Okay. All right. And you were asked by counsel  
for the  
7 Government whether you could come in and announce a  
decision  
8 about a death penalty in the case, if you recall that.  
If,  
9 based on all the evidence that you heard, all the  
information  
10 presented by both sides and based on what the Judge  
told you in  
11 the instructions, you decided with your other jurors,  
No, I  
12 think that it's something other than a death sentence,  
either  
13 life without release or a sentence to be determined by  
the  
14 Judge was right, would you have any trouble in coming  
in with  
15 that?

16 A. No, sir.

17 Q. You wouldn't have any trouble going home to your  
family and  
18 saying, This is what I did, that's my moral response?

19 A. Yes.

20 Q. And individually as a juror, if back in the jury  
room you  
21 decided, Gee, you know, I've listened to all of it and  
I hear  
22 what the Judge has said and some jurors agreed with one  
view of  
23 the -- you know, what the punishment was and you had a

No, I'll 24 different view, would you have any problem in saying,  
convince me 25 listen to you, but this is my view and unless you

1470

Juror No. 798 – Voir Dire

that? 1 different, I'm going to stick to it? Could you do

2 A. Yes, I could.

much for 3 MR. TIGAR: All right. Well, thank you very  
4 answering our questions.

question 5 THE COURT: You have now been asked all the  
now; 6 you're going to be asked, so you're going to be excused

whether you're 7 but we have to leave you in an uncertainty as to

when 8 going to be called on and, indeed, an uncertainty about

appreciate, 9 you're going to know, because, as I'm sure you

Friday and 10 having sat with us here in the courthouse all day

many people 11 most of the morning, we can't plan just exactly how

take. So we 12 we're going to be talking with or how long it will

on this 13 ask of you now to leave here assuming that you will be

can do 14 jury and be required to do the things that you say you  
that 15 with an open mind, and we want you to keep it that way;  
concerning 16 is, be very careful now about discussing anything  
through, with 17 this case, including the process you've just been  
and be 18 anybody, including your family and friends, co-workers,  
19 also extremely careful as you watch the news or read  
newspapers  
that could 20 or magazines or whatever to stay away from anything  
influence you. 21 be related to this case and possibly appear to

22 Will you do that, please.

23 JUROR: Yes, sir.

24 THE COURT: All right. You're excused for  
now, and  
25 we'll be in touch with you.

1471

1 JUROR: Thank you.

2 (Juror out at 11:46 a.m.)

3 MR. TIGAR: Your Honor, I -- we would most --  
sorry --

4 we would most respectfully ask that if any agent of the  
Federal



5 Government is in contact with this juror in any way  
that some  
6 mechanism be established so that we could be informed  
of that.

7 THE COURT: Yes. I wonder if the Government  
counsel  
8 could contact the FBI and have them let you know if  
there is  
9 some follow-up.

10 MR. MACKEY: We'll do so.

11 THE COURT: I think that's appropriate.

12 We're going to take 718 next.

13 Sir, if you'll raise your right hand and take  
the oath  
14 from the clerk here.

15 (Juror No. 718 affirmed.)

16 COURTROOM DEPUTY: Thank you.

17 THE COURT: Please be seated there in the  
chair by the  
18 microphone; and you can swivel that around and make  
yourself  
19 comfortable with respect to the microphone as you  
choose.

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q. You took that oath earlier out at Jefferson County  
a couple  
23 weeks back on September 17. Do you recall?

24 A. Yes, sir.

25 Q. And you and others appeared out there at the

auditorium

1472

Juror No. 718 - Voir Dire

and 1 building, and I was there and gave some introductions  
you who 2 explanations about this matter and introduced people to  
today, so 3 were there with me; and they're here with us again  
couple 4 let me reintroduce these people and also introduce a  
5 more.

here, 6 You recall meeting Mr. Lawrence Mackey, right  
for the 7 and Ms. Beth Wilkinson at this first table as attorneys  
Ryan 8 Government. They're joined this morning by Mr. Patrick  
9 and Mr. Geoffrey Mearns as additional lawyers for the  
10 Government in this case.

Nichols 11 Also, you recall meeting Mr. Michael Tigar and  
12 Mr. Ronald Woods, attorneys for Terry Lynn Nichols; Mr.  
13 as well.

of 14 There are a few other people here in your line  
15 sight. They're assisting the lawyers in the case.

summons that 16 And you know, of course, from the first

17 you got that your name came up through a computer  
chance system  
18 as possibly being asked to serve on the jury of the  
trial of  
19 United States against Terry Lynn Nichols. And I just  
want to  
20 review with you a couple of the things that I said when  
we were  
21 together, which is to explain the background of the  
case about  
22 an explosion of a federal building in Oklahoma City,  
Oklahoma,  
23 on April 19 of 1995, resulting in the loss of life and  
injuries  
24 to people in that building; that the Government filed  
charges  
25 in Oklahoma City on a man named Timothy James McVeigh  
and Terry

1473

Juror No. 718 – Voir Dire

1 Lynn Nichols and others not named in the charges  
alleging that  
2 they were involved in some conspiracy or plan to bomb  
that  
3 building; that they were guilty of acts in carrying it  
out,  
4 including the murders of eight law enforcement agents  
in the  
5 building.  
6 You remember that, do you?

7 A. Yes, sir.

How the  
to be  
to  
tried by  
not be  
the same  
evidence;  
earlier,  
18 recommendation of a death sentence. You knew that?

8 Q. And I also explained the procedural background:  
9 defendants entered pleas of not guilty, creating issues  
10 tried before juries, and that the case got moved over  
11 Denver, Colorado, and that there was a separate trial  
12 ordered -- trials, so that Timothy McVeigh would be  
13 one jury, Terry Nichols by another, and that it would  
14 fair to proceed with charges against both of them in  
15 trial because of differences to be expected in the  
16 that Terry Nichols -- that Timothy McVeigh was tried  
17 resulting in a guilty verdict and that -- the jury's  
18 recommendation of a death sentence. You knew that?

19 A. Yes, sir.

considered  
anything  
very  
real  
the

20 Q. And of course, I explained that that can't be  
21 now in the trial of Terry Nichols, because to consider  
22 about the McVeigh case in this case would violate the  
23 order that required separate trials and that in a very  
24 sense we have to begin all over and we don't know what

You 25 evidence is going to be in the trial of Terry Nichols.

1474

Juror No. 718 - Voir Dire

1 understand that?

2 A. Yes.

a jury 3 Q. And so we're talking with you and others to select

trial 4 to give a fair trial to Terry Nichols. And what a fair

under the 5 is is to recognize fundamental principles of our law

presumption of 6 United States Constitution, beginning with the

accused in 7 innocence, and that any person in our country who is

not guilty 8 any court of any crime is presumed to be innocent or

guilty, the 9 of that crime. And before that person can be found

government, has 10 prosecution, whoever it is, whatever level of

11 to come in with evidence to support the charge.

burden or 12 And no defendant in a criminal case has any

silent and 13 duty of proving anything at trial, can simply remain

14 challenge the evidence brought in against him. And no

or 15 defendant need take the witness stand and be a witness

16 explain anything. And juries are told regularly that  
in the  
17 event of a trial in which a defendant does not testify,  
they  
18 can't hold that against him or even discuss it in their  
19 deliberations. You follow me on these points?

20 A. Yes.

21 Q. And what the presumption of innocence means is that  
before  
22 a jury can convict any person of a crime, they must be  
23 satisfied that the evidence that they heard and saw at  
the  
24 trial showed that person to be guilty of the essential  
elements  
25 of the crime charged as is given in the court's  
instructions;

1475

Juror No. 718 - Voir Dire

1 that is, what has to be proved. They have be  
satisfied, all of

2 the jurors, unanimously that what they heard and saw  
showed,

3 yes, the defendant has been shown guilty beyond a  
reasonable

4 doubt.

5 So if at the conclusion of it all the jury has  
a

6 reasonable doubt about the defendant's guilt under the  
law and

7 evidence, they must find him not guilty. Do you accept  
that as  
8 principles that would guide you if you were on this  
jury?

9 A. Yes, sir.

10 Q. Now, I want to talk a little about your answers to  
the  
11 questionnaire we gave; and we asked you to fill it out,  
and you  
12 did that; and, you know, that as I told you we would  
do, copies  
13 have been provided to the lawyers but with the  
obligation of  
14 keeping this information away from public exposure. So  
what  
15 you wrote here has only been given to the lawyers and  
me so  
16 that we can go through this process and that we do all  
that we  
17 can to protect your privacy, including not using your  
name  
18 here, also arranging for you to go and come into the  
courthouse  
19 without being photographed and all those things so that  
you  
20 could have some privacy.

21 And also here now, where we are in open court,  
you  
22 understand your answers, of course, are public. Do you  
23 understand that?

24 A. I understand.

would, 25 Q. Okay. We're not going to be asking you things that

1476

Juror No. 718 - Voir Dire

1 I think, affect your privacy interests; but if we do in  
some 2 way that is of concern to you, you let us know.

3 A. Okay.

4 Q. Now, you live, what, near Silverthorne now?

5 A. Yes, sir.

6 Q. And are you living out in the -- away from town in  
the 7 mountains?

8 A. Yeah, it's in the mountains. It's a residential  
area but 9 not far.

10 Q. Yeah. Okay. You originally are from Miami?

11 A. Yes, sir.

12 Q. And you -- let's see. You came to Colorado how  
long ago?

13 A. Originally in '73.

14 Q. And then you were in Arkansas before that?

15 A. No. I was in North Carolina. Went from Florida --  
I moved 16 around several times.

17 Q. All right. I'm looking at page 6, and you've got  
your



18 questionnaire there, I think.

19 A. Okay. Let's see.

20 Q. This is where I got --

21 A. Oh, no. I moved from Florida to Bahamas.

22 Q. I'm sorry. Bahamas. I need new glasses.

23 A. I worked there a few years and then back to Miami  
and then

24 to Colorado.

25 Q. Okay. When you were in the Bahamas, were you in  
some kind

1477

Juror No. 718 - Voir Dire

1 of sport fishing or commercial fishing or anything like  
that,

2 the tourist things?

3 A. I did a lot of that, but I managed apartment  
buildings for

4 a developer there.

5 Q. Okay. And then back to Miami and then to here.

6 A. Yes.

7 Q. Now, you -- you are remarried. First marriage was  
a

8 divorce?

9 A. That's correct.

10 Q. And you have one daughter from that marriage.  
She's in

11 college?

12 A. I have a daughter and a son.

13 Q. Oh, and a son?

14 A. Yes.

15 Q. The son is living with you now?

16 A. Yes.

17 Q. Both from the first marriage?

18 A. That's right.

19 Q. Okay. You describe your business -- well, let me  
first ask

20 about your background before coming to Colorado. What  
kind of  
21 work did you do in Miami?

22 A. Well, when I first graduated, I -- from college, I  
taught

23 school. And just through personal acquaintances, I met  
the

24 gentleman who owned the businesses in the Bahamas. I  
was

25 looking to get out of Miami, having been born there,  
looking

1478

Juror No. 718 - Voir Dire

1 for something new, and moved there for two years and  
then came

2 back to Florida, and on a job offer from some other old  
friends

3 from Florida, worked with them for two or three years.  
The

start 4 company went bankrupt; and at that point, I decided to  
place 5 anew in -- and Colorado had always sounded like a great  
another 6 to try. So my wife and I moved out here, stayed with  
Summit 7 friend for two, three months; and then I found work in  
8 County and ended up staying there.

9 Q. So you've been in Summit County ever since?

10 A. Right, except for I was there for three or four  
years, and

11 then two more companies went bankrupt and I went back  
to

12 Florida for a few years and then in '81 came back to  
Colorado,

13 where I've been ever since.

14 Q. Now, when you were in college there at the  
University of

15 Miami, you were taking a major in education, expecting  
to be a

16 teacher, were you?

17 A. Well, I was -- I majored in political science and  
sort of

18 evolved into education, yes.

19 Q. Were you expecting to be a teacher while you were  
in

20 school?

21 A. Well, my original plan was to go to law school, but  
it

22 didn't work out.

23 Q. Why? What happened to that?  
24 A. Oh, I'm not sure. I -- I guess I was just tired of  
school.  
25 I didn't want to put in another three years and money,  
etc.

1479

Juror No. 718 - Voir Dire

1 Q. Okay. When you were living in Miami -- and I'm  
looking at  
2 page 19 -- and then it goes on over here later, too --  
you ran  
3 into a problem with the law.  
4 A. Yes, sir.  
5 Q. And as I understand it -- and we're not going to  
dwell on  
6 this, but I want to ask you a little bit about this.  
You  
7 entered into a plea agreement, did you?  
8 A. That's right.  
9 Q. And you pleaded guilty to a conspiracy?  
10 A. That's right.  
11 Q. Were there others charged in that same case?  
12 A. Yes. Many.  
13 Q. Many?  
14 A. I'd say probably 25 people.  
15 Q. Did this relate at all to the time that you were in  
the

16 Bahamas?  
17 A. Indirectly, yes. Some people I met there evolved  
into the  
18 people that I was into this other thing with, yes.  
19 Q. All right. And that involved bringing things into  
the  
20 country, importation.  
21 A. Right.  
22 Q. Did anybody go to trial, any of the group that  
included  
23 you?  
24 A. Yes.  
25 Q. And did you participate in the trial of that person  
or

1480

Juror No. 718 - Voir Dire

1 those persons as a witness?  
2 A. Yes.  
3 Q. Was that part of the plea agreement?  
4 A. Yes, it was.  
5 Q. And in connection with the plea -- we're kind of  
doing this  
6 20-questions thing, but it's so that you don't have to  
go into  
7 all the details; but I'm not trying to put words in  
your mouth,  
8 you understand, so if I ask a misleading question, I

hope

9 you'll straighten this out.

10 A. Well, as long as I'm -- as long as I have the  
privacy to

11 know that my children don't -- you know, they're not  
aware of

12 those problems --

13 Q. That part of your life?

14 A. -- 10 years ago, so I'd like them --

15 Q. I understand.

16 A. -- to keep it that way.

17 Q. Did your agreement involve an agreement for a  
particular

18 outcome before --

19 A. As far as I was concerned?

20 Q. Yeah.

21 A. No. There was no commitment. They wouldn't --  
exactly

22 make a commitment, no.

23 Q. So the matter was left to a decision?

24 A. A decision by the judge, yes.

25 Q. Yes. And you had a lawyer?

1481

Juror No. 718 - Voir Dire

1 A. Yes, I did.

2 Q. This is a person you're a close friend with still?

3 A. No.

4 Q. That's a different lawyer?

5 A. Right.

'81, I  
6 Q. Now, how long ago was this? Was this in 1980 or

7 think you said?

8 A. '81 was when it started. It went on for several  
years.

9 Q. You mean before a disposition was arrived at?

10 A. Yes.

11 Q. And did some of the people who were connected with  
you end

12 up doing time?

13 A. I don't know. There was -- oddly enough, I didn't  
really

14 know any of the people that went to trial, so I never  
knew them

15 later. So I don't know.

16 I assume so.

17 Q. But you don't know?

18 A. I don't know for sure.

19 Q. And with respect to your own situation, there were  
some

20 requirements and restrictions placed on you?

21 A. Yes, sir.

22 Q. And you satisfied all of those things, did you?

23 A. Yes, I did.

24 Q. All before you came to Colorado?

25 A. I was actually here --

1482

Juror No. 718 - Voir Dire

1 Q. No, that's right, and you went back?

2 A. I was here satisfying those things.

3 Q. I'm sorry. I got my dates mixed --

4 A. I had moved here when --

5 Q. When the allegations were made?

6 A. Right. It was like a year after I had moved here.

7 Q. So you went back to answer those things.

8 A. Yes.

9 Q. And then there was some -- when you were here in  
Colorado,  
10 there was some supervision of you.

11 A. Yes, there was.

12 Q. Presumably through people who work for this court.

13 A. That's right.

14 Q. And were there any problems with your complying  
with all of  
15 the conditions and requirements?

16 A. No.

17 Q. I don't mean whether you had problems doing it and  
whether  
18 it restricted you. I mean, were there allegations made  
that



19 you weren't complying?

20 A. Oh, no, not at all.

21 Q. Or anything like that. I'm sorry I mis --

22 A. No, I handled it all the way I was supposed to and

--

23 Q. It was all completed on schedule, was it?

24 A. Yes, it was.

25 Q. Which ended then when?

1483

Juror No. 718 - Voir Dire

1 A. I would say around '83.

2 Q. Around '83.

3 A. Probably '83.

no

4 Q. Okay. And would it be correct that there have been

with

5 consequences since that and that you've had no contact

6 these same people that got named?

7 A. That's correct.

in the

8 Q. So in your view, is this right that all of that is

9 past and the distant past?

10 A. It's definitely in the past.

business

11 Q. Okay. Now, I'm a little uncertain about what your

12 is now.

13 A. I'm in the amusement game business.  
14 Q. Yeah, but that doesn't mean a lot to me.  
15 A. I buy pool tables, pinball machines, video games,  
and place  
16 them in commercial establishments.  
17 Q. Okay. Like restaurants and bars and --  
18 A. Correct.  
19 Q. -- and all over -- well, what geographical area do  
you do  
20 this in?  
21 A. Well, now it's the Front Range, from Colorado  
Springs all  
22 the way up to Fort Collins.  
23 Q. Okay.  
24 A. I have an association with a company in Boulder, a  
friend  
25 of mine. Their company operates my equipment.

1484

Juror No. 718 - Voir Dire

1 Q. Who goes around and services the equipment?  
2 A. We have employees that do that.  
3 Q. And you have an arrangement where some of the money  
goes to  
4 the place in which the machines are located and some to  
your  
5 business?  
6 A. Exactly.

7 Q. Split it?

8 A. Right.

9 Q. How long have you had this business?

10 A. About -- since about '82. '82.

11 Q. And does this have a time commitment with you, you  
know, on

12 some sort of a regular schedule?

13 A. Well, I'm --

14 Q. Let me ask it this way.

15 A. Okay.

16 Q. You know what being on the jury would involve,  
being here 9

17 to 5 every weekday, Saturday, Sunday excluded. What  
would that

18 mean to your business?

19 A. Well, as long as I could do a few hours each  
evening and

20 work on Saturday, I could -- I probably would be fine.

21 Q. Okay. Now, after you came out to Jefferson County  
and

22 completed this questionnaire and when this was subject  
to

23 another random draw as to when you were going to be  
notified to

24 come in and we had trouble finding you --

25 A. Yes, sir.

Juror No. 718 - Voir Dire

1 Q. -- were you out of the country?

2 A. Yes, I was.

3 Q. Okay. And, you know, this is -- please understand  
this is

4 an innocent question, but was that on a scheduled trip?

5 A. Yes. I had a vacation planned. I -- my son was  
supposed

6 to get my messages and call me if I had any -- I  
thought I had

7 two days' notice -- and then he would tell me and then  
I would

8 just call and say, well, you know, I'll be there, or  
can I make

9 it the next day, or should I change my flight? And he  
wasn't

10 able to get a hold of me.

11 Q. Okay.

12 A. But as soon as I did get the message, I called

13 Mr. Manspeaker at home and --

14 Q. And we made arrangements for you to be here today?

15 A. Right.

16 Q. Okay. Your wife now is a teacher?

17 A. She's a cosmetologist.

18 Q. Sorry. Was a teacher -- no, you were a teacher.

19 A. No, I was a teacher.

20 Q. Yeah. Sorry about that.

21 A. That's all right. It's a long time ago.

22 Q. I guess I need a lunch break here.  
23                   Yeah. You did teach for a little while in a  
middle  
24 school?  
25 A. I taught in middle school. I taught social  
studies.

1486

Juror No. 718 – Voir Dire

1 Q. And where that? Was that in Miami?  
2 A. In Miami.  
3 Q. In a public school?  
4 A. Yes, sir.  
5 Q. Okay. Your wife now has a business of her own in  
6 Breckenridge?  
7 A. That's right.  
8 Q. And I want to go through a couple of things with  
you  
9 additionally. One of the things, page 24 -- well,  
actually 23,  
10 Questions 103, 104, and over on page 24, 105. I take  
it that  
11 all relates to what we've just been talking about in  
Miami?  
12 A. Yes.  
13 Q. Is that right?  
14 A. Yes, that's right.

15 Q. As you look back on all that happened there, you  
know, from

16 the perspective of where you are now and what's  
happened to you

17 in life since then, do you have some resentment about  
what

18 happened in terms that you were treated unfairly or the  
19 government was wrong or anything like that?

20 A. No. The years have somewhat modified my opinions  
on that.

21 Q. When it happened, you were pretty upset about it, I  
trust?

22 A. Well, yes, sure.

23 Q. And you think, do you, that looking at page 24,  
Question

24 105, that the way that was done was not necessary?  
That's what

25 you said.

1487

Juror No. 718 - Voir Dire

1 A. Yes. I still think that.

2 Q. Overreacted and --

3 A. Overreacted. I was, you know, living in a house, I  
had a

4 car, telephone.

5 Q. All they had to do was call you up and you'd have  
gone in?

6 A. Yes.

7 Q. Is that what you're saying?

8 A. That's what I'm saying, yes. Of course, they may  
not have

9 known that, so . . .

10 Q. We understand that. And I'm not making any  
judgments here

11 one way or the other. We just want to know your -- you  
know,

12 your perception and then your reaction to it sort of

13 long-range.

14 So at the time, you were pretty -- well, I  
guess you

15 were pretty shaken when this happened.

16 A. Yes.

17 Q. And frightened?

18 A. Yes, sir.

19 Q. Would that be right? Because you didn't know what  
they

20 were going to do.

21 A. Right.

22 Q. Okay. Now, you do have a friend who is a criminal  
defense

23 lawyer.

24 A. That's right.

25 Q. Here in Colorado.

1 A. Yes, sir.

2 Q. We're not asking you to identify him or her right  
now, but

3 what do you know about this lawyer's practice? I mean,  
do you

4 know certain cases that he or she has defended?

5 A. Not by name, no. He doesn't work in the federal  
system.

6 Q. You know that --

7 A. Yes.

8 Q. -- much? And is it somebody up in your county?

9 A. Yes.

10 Q. And practices mostly in the state courts in that  
region?

11 A. That's correct.

12 Q. Okay. Do you know whether that lawyer's practice  
is

13 exclusively in criminal cases?

14 A. I think it is.

15 Q. And do you know whether that lawyer practices  
alone, only

16 has himself in the office?

17 A. He shares an office with, I believe, two other  
attorneys

18 who mutually share a secretary.

19 Q. Do they do the same kind of work, if you know?

20 A. No, they don't.

21 Q. Different sort of law practice?



22 A. Right.  
23 Q. Now, you know a little bit about what happens in  
the  
24 criminal justice system, the way trials get conducted.  
I mean,  
25 you've never been through a trial, as I understand it.  
Is that

1489

Juror No. 718 - Voir Dire

1 true?  
2 A. That's right.  
3 Q. But you know from the things we've talked about,  
these  
4 basic principles, that juries decide whether the  
evidence  
5 supports the charges?  
6 A. Right.  
7 Q. And I'm assuming you probably talked a lot about  
that with  
8 the lawyer you had when you had a situation.  
9 A. Yes.  
10 Q. And we're not going to ask you anything about those  
11 conversations. Of course, they're privileged. But  
when a jury  
12 does reach a result in a case, if that result is to  
find a  
13 person guilty, then normally the judge does the  
sentencing.

14 You understand that?

15 A. Yes, sir.

16 Q. And before a sentence is imposed, there is a  
presentence

17 report and the process of gathering a lot of  
information from

18 both sides --

19 A. Right.

20 Q. -- presented to a judge at a sentencing hearing,  
and a

21 judge decides with respect to that particular person  
and that

22 offense what's a just sentence.

23 A. Yes, sir.

24 Q. Now, there is a difference in federal law where the  
offense

25 is such that by statute, there is the possibility of a  
sentence

1490

Juror No. 718 - Voir Dire

1 to death. And federal law recognizes that a decision  
about a

2 death sentence or life in prison with no chance of ever  
being

3 released, or there is the possibility of a lesser  
sentence if

4 the jury decides neither of those is just and turns it  
back to

5 the judge -- but the life-and-death decision in federal

courts

6 is made by a jury. We don't have judges make such  
decisions.

7 You're aware of that generally, I trust.

8 A. Well, generally, yes. Technicalities, I don't --

9 Q. Yeah. Well, we're only talking generally now, and  
we have

10 to because we don't know what's going to happen in this  
case.

11 I mean, Mr. Nichols is presumed to be not guilty, and  
we may

12 never get to any sentencing decision; but we only have  
one

13 chance to find out what jurors think, and that's why  
some

14 questions were asked in this questionnaire about what  
you think

15 coming in, so to speak, with no detailed information  
about the

16 law or the process about a sentence to death or a  
sentence to

17 life without release, and that's why the questions on  
pages 27

18 to 29. So let's turn to those, please.

19 And just take a moment to refresh yourself  
about these

20 questions and your answers.

21 A. Okay.

22 Q. Now, is the first time when you answered this  
questionnaire

23 on the 17th of September that you gave real serious  
thought to

24 this matter of punishment by life or death?

25 A. No.

1491

Juror No. 718 - Voir Dire

1 Q. Thought about it in the past. In any particular  
2 circumstance, or with respect to what you heard or read  
about a  
3 particular case, or, you know, what occasioned your  
giving  
4 thought to it?

5 A. Just, you know, the principle of -- of death  
sentence, you  
6 know, in different cases that -- I can't even name any  
7 specifics.

8 Q. Well, back in college when you were studying  
political  
9 science --

10 A. Right.

11 Q. -- some of it probably had to do with criminal  
justice in  
12 some way?

13 A. Yes. More constitutional and the -- you know, the  
law  
14 itself.

15 Q. Well, in any of that course work or classroom  
exercises,  
16 did you discuss punishment, what is appropriate

punishment?

17 A. Well, yes. I don't remember if we specifically  
discussed

18 the death penalty.

19 Q. Okay.

20 A. But, you know, through just being alive this long,  
you

21 know --

22 Q. And knowing that this is a matter much debated in  
different

23 states and --

24 A. Yes.

25 Q. -- different states have different laws --

1492

Juror No. 718 - Voir Dire

1 A. Right.

2 Q. -- on the subject.

3 And of course, we asked you here without  
regard to any

4 particular law just what you think, as this says, "If  
you had

5 the power to decide what the law ought to be, what  
would you

6 say?"

7 So after you completed the answers that you  
wrote

8 here, have you thought more about it?

9 A. Well, not -- my opinion hasn't changed.

10 Q. Okay. You anticipated the question.

11 A. Yeah, sure.

12 Q. Would you answer these questions the same way today  
as you

13 did when you wrote your answers?

14 A. Yes.

15 Q. So what you wrote here is, I guess, summarized  
pretty well

16 on page 29 in what you wrote right there under Item E?

17 A. Yes. It may have been a little brief, but yes.

18 Q. Well, you know, that's a pretty -- that's a  
statement that

19 I guess we could consider, well, if it's too easy, what  
would

20 you do? So what do you mean when you say "it's too  
easy"?

21 A. Well, I feel that in my opinion, it's a lot harder  
to spend

22 your life in prison than it is to die. I think that  
would be

23 worse than death, and there is probably circumstances  
where

24 life in prison is what someone should have to do.

25 Q. You see life in prison without the possibility of  
release

1 as more severe than death.

2 A. Oh, yes. That's my opinion, yes.

3 Q. Now, I will spend a moment on the process to let  
you know

4 what the law is; and what the law is is, of course --  
this

5 isn't a question for the jury until there is a finding,  
a

6 verdict of guilty. And this question of punishment  
isn't

7 involved in that trial; but if after a trial a guilty  
verdict

8 results, then in a case involving the possibility of  
capital

9 punishment, there is a new trial, really, in the sense  
of a

10 second trial, a hearing before the jury on the question  
of what

11 the sentence ought to be. And the questions are death,  
life in

12 prison without any release possibilities, or something  
else.

13 If there is something else, it goes back to the judge;  
but the

14 jury decides life or death.

15 And before making that decision, the jurors  
have to

16 hear additional information, sort of like judge  
sentencing,

17 only here, it is extensive information. First of all,  
the

18 prosecutors put on what they believe to be aggravating  
factors,

19 information that suggests yes, death is the right  
punishment

20 for this person for this crime.

21 The defense puts on information in front of  
the jury,

22 witnesses and exhibits and the like that suggest no,  
death is

23 not deserved; that -- for this particular person for  
this

24 particular offense.

25 And that's information about that person's  
background,

1494

Juror No. 718 - Voir Dire

1 life history, if you will, all of the things that have  
2 happened, the family relationships, work history,  
everything,

3 you know, that makes each person a unique being.

4 And then the jury is asked, all right, look at  
all of

5 this, think it over, talk it over; and then each one of  
you

6 make a decision about what the punishment should be for  
this

7 person. And considering -- and the court gives  
instructions

8 about what can be considered as aggravating and what  
can be

9 considered as mitigating factors.



choice. 10 But in the end, the choice is a moral judgment

person 11 Each person on the jury has to make it: Should this  
12 live or die?

jury, would 13 Now, if you were asked to serve on such a

one of 14 you be open to consideration of the death sentence as

prison 15 the possibilities and also the sentence of life in

16 without release?

as 17 A. The -- my opinion on the death penalty is not quite

it's a 18 simple as I put here. I feel that as civilized people,

that I 19 very uncivilized way to handle punishment. And I feel

penalty. 20 would -- I'm not sure that I could go for the death

I'm not 21 I'm not sure that I could recommend the death penalty.

22 sure I have the right to do that.

about 23 Q. Now, you know, there are a lot of different views

24 this.

25 A. Of course.

1 Q. As we've just talked about.

2 A. Sure.

3 Q. And we're just asking you, you know, for your  
honest view

4 of yourself. And there are people who say, well, if  
somebody

5 got killed, we ought to put that person to death who  
did it.

6 Some say, I don't care what the crime was, we don't  
have the

7 right to take anybody's life; no death penalty. And  
then there

8 is everything in between. And there are different  
reasons.

9 Now, you've expressed a different reason for  
some

10 opposition to the death penalty. But what we have to  
explore

11 with you a little is despite your own view of that,  
would you

12 be open to consideration with your other jurors as to  
what is a

13 deserved punishment for a particular defendant and a  
particular

14 crime and consider both possibilities?

15 A. I could consider the possibilities.

16 Q. Well, could you do it? I mean, could you make the

17 decision -- and of course, we don't know what's going  
to

18 happen, so it's awkward to ask these questions --

19 A. Right.

20 Q. -- but make a decision that a particular person  
should die

21 for a particular crime by capital punishment?

22 A. I can't imagine myself doing that.

23 Q. Could you explain a little bit more about why?

24 A. I just don't feel that I -- that I can be that kind  
of a --

25 the judge in that -- it's not my right to make that  
decision

1496

Juror No. 718 - Voir Dire

1 about somebody else's life.

2 Q. Now, do you have any kind of religious view that  
enters

3 into this thought process?

4 A. Well, it's not so much religious.

5 Q. Or a moral view?

6 A. It's a moral viewpoint. Like I say, I think that  
what I

7 put here was that life imprisonment was to me, having  
seen the

8 inside for five or six days -- that would be a much  
worse

9 punishment for me, to consider my life here with no  
possibility

10 of parole than --

11 Q. And that was before trial -- that time you spent?

12 A. Right.

13 Q. You got arrested and held.

14 A. That's correct. No, I had never seen the inside of  
a jail

15 before, and that's not somewhere I would want to have  
to be --

16 have to know that I would be with no possibility of  
parole for

17 the rest of my life. To me, that would be -- I mean,  
I'd

18 rather know that I was going on to something else.

19 THE COURT: Okay. Well, we're going to take a  
recess

20 now, so please -- we'll provide you lunch, of course.

21 JUROR: Okay.

22 THE COURT: And then maybe ask you some  
questions --

23 the lawyers ask you some questions afterwards, so  
please don't

24 talk about this with other persons who have been called  
in.

25 Okay?

1497

1 JUROR: Yes, sir.

2 THE COURT: You're excused for now.

3 (Juror out at 12:26 p.m.)

4 THE COURT: Okay. You want to visit with him

some, I

5 trust, both sides, or not?

6 Well, maybe you can talk about it and let me  
know when

7 we come back.

8 All right. We'll take an hour and a quarter,  
whenever

9 that is. Court is in recess.

10 (Recess at 12:26 p.m.)

11 \* \* \* \* \*

12

13

14

15

16

17

18

19

20

21

22

23

24

25

	1		INDEX
	2	Item	
Page	3	Jurors	
	4	Juror No. 473	
1362	5	Voir Dire Examination by The Court	
1384	6	Voir Dire Examination by Mr. Mearns	
1390	7	Voir Dire Examination by Mr. Tigar	
1406	8	Voir Dire Examination by The Court	
	9	Juror No. 231	
1408	10	Voir Dire Examination by The Court	
	11	Juror No. 798	
1429	12	Voir Dire Examination by The Court	
1450	13	Voir Dire Examination by Ms. Wilkinson	
1457	14	Voir Dire Examination by Mr. Tigar	
	15	Juror No. 718	
1471	16	Voir Dire Examination by The Court	
	17		* * * * *
	18		REPORTERS' CERTIFICATE
	19		We certify that the foregoing is a correct

transcript from

20 the record of proceedings in the above-entitled matter.  
Dated

21 at Denver, Colorado, this 6th day of October, 1997.

22

23

---

Paul Zuckerman

24

25

---

Kara Spitler