

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

ffffffffff  
9

10                   REPORTER'S TRANSCRIPT  
                     (Trial to Jury: Volume 13)

11  
ffffffffff  
12                   Proceedings before the HONORABLE RICHARD P.  
MATSCH,  
13                   Judge, United States District Court for the District of  
14                   Colorado, commencing at 9:00 a.m., on the 6th day of  
October,  
15                   1997, in Courtroom C-204, United States Courthouse,  
Denver,

16                   Colorado.

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24 Proceeding Recorded by Mechanical Stenography,  
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## 1 APPEARANCES

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3 District of Oklahoma, 210 West Park Avenue, Suite 400,  
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4 City, Oklahoma, 73102, appearing for the plaintiff.

5 LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNS,  
and

<sup>6</sup> JAMIE ORENSTEIN, Special Attorneys to the U.S. Attorney

7 General, 1961 Stout Street, Suite 1200, Denver,  
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8 80294, appearing for the plaintiff.

9 MICHAEL TIGAR, RONALD WOODS, ADAM THURSCHWELL,  
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.

19 in, please.

20 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

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Juror No. 473 - Voir Dire

1 VOIR DIRE EXAMINATION  
2 BY THE COURT:  
3 Q. You took that oath once before, and you almost took  
it on  
4 Friday when we had you in here by mistake, in a little  
mix-up.  
5 We apologize for that and also for making you wait all  
day  
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,

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

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Juror No. 473 - Voir Dire

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

2 recall that before asking you to complete the  
questionnaire

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

4 that came with the jury summons.

5 You remember that?

6 A. Yes.

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

8 with you.

9 A. Yes, I do.

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

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

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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

7 separate trials so that Mr. McVeigh and Mr. Nichols  
would have

8 separate trials and separate consideration of the  
evidence

9 against each of them by separate jury and the need for  
that

10 because of the differences with respect to the  
defendants; and

11 of course you're aware that Mr. McVeigh was already  
tried in

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

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

20 exception for this purpose.

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

to 22 and my immediate supervisor was not available last week

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

24 be negotiable.

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

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Juror No. 473 - Voir Dire

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

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

3 there, or what are you saying?

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

5 and I do have a clientele base --

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

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?

I got  
24 A. My immediate family did, your Honor. That was how

25 into the banking industry.

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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

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

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1 looked at your answers, and of course you realize that  
counsel

2 have received them, too; but under restriction that we  
are not

3 sharing them with anybody else. We're maintaining your  
privacy

4 here, referring to you without your name being used and  
also

5 not publicizing your answers here, but of course you  
understand

6 your answers here in the courtroom are in the open, as  
it were,

7 and subject to public knowledge.

8 So as I ask you some questions and other  
counsel ask

9 you some questions, we may do so in ways that are  
somewhat

10 indirect. But with respect to this, as I understand  
it, you've

11 had back trouble and you've had a couple of surgeries?

12 A. Yes.

13 Q. How comfortable or uncomfortable are you right now  
sitting

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.

you've

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

South

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

time, and

22 Dakota; right?

23 A. That's correct.

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

course

25 then we take breaks midmorning and midafternoon, and of

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able to sit

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

2 and pay attention?

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

Are you

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

5 taking medication for that daily?

6 A. No.

with an

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

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

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

you've

4 begins, where we asked you about organizations of types  
5 employing members of your immediate family. And on 11

to your

6 got agencies using social workers. Is that referring

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.

for a

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

And

13 small agricultural bank in South Dakota at that time.

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.

mean farm

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

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.

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

2 going to plant?

3 A. That's correct.

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

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?

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

11 livestock.

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

13 with Monfort, ConAg are there?

14 A. That's right.

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

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

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abusive

1 assistant director of a women's shelter in Greeley.

2 Q. All right. These are for women who have been in  
type of

3 relationships who seek to be separated from them, that

4 thing?

5 A. That's right, your Honor.

in audit

6 Q. You mention on page 20 that there was a difficulty

way that

7 with the IRS and you expressed your opinion about the

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.

is: Do 12 Q. Well, do you have -- you know, the obvious question

result of 13 you have some residual resentment or something as a

14 that?

15 A. I don't think so.

agency? 16 Q. But you don't think it was handled properly by the

dispute; 17 A. Well, your Honor, I think everybody has a right to

to go 18 just one of the decisions made, I think, that you have

19 with it.

20 Q. How far did that go? Did it go into a court  
proceeding?

and 21 A. Just about. I ended up just settling out of court

a matter 22 paying it. It wasn't a real big deal. I think it was

23 of 6- or \$800.

South 24 Q. Now, as I mentioned, you did serve on a jury in

answered 25 Dakota, and what I guess -- on page 26 is when you

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?

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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  
has any 20 burden or duty of proving anything or establishing his  
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  
25 the jury, do you recall whether the defendant  
testified?

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1 A. Yes, he did.  
2 Q. He did. And so the jury discussed his testimony  
along with  
3 all of the rest of the testimony from the other  
witnesses;  
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 --

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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  
mind? 22  
A. Lots of times. 23  
Q. Yeah. So what is your assessment of your ability  
to hear 24 this case fairly and impartially right now? 25

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

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.

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 being out at Jefferson County Fairgrounds' auditorium about

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

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

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- things or 1 jury selection. There's a lot -- you'll overhear  
or in 2 people are talking at work.  
had 3 Q. What kinds of things have people been saying to you  
was the 6 some person from Boulder that was being interviewed; it  
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?  
to talk 13 A. My reaction to those folks is we're just not going  
14 about it.  
heard or 15 Q. Okay. Well, did you hear them out as to what they  
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.

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1 Q. So you realize that ordinarily in criminal cases,  
after a

2 Court to jury returns a verdict of guilty, it is then up to the

3 and that determine what sentence is appropriate for that person

4 be particular crime and all of the circumstances have to

5 more considered. And what a judge does in sentencing is get

6 guilty information about the accused and in a situation with a

7 or she verdict, he no longer is accused, he's been convicted,

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

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.

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

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

11       a factor in the jury's decision with respect to the  
adequacy of

12       the evidence; you understand that.

13       A. Yes.

14       Q. But if there is a conviction, then the jury must  
hear a

15       good deal more in the same way that I've talked about  
judges

16       hearing more information and making individualized  
decisions.

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.  
you  
21 Q. Now, the question here for you to answer is whether  
and  
22 could make such a decision based on all of the facts  
of a  
23 circumstances and be open-minded and consider both  
the  
24 possibilities: Life or death or even the possibility  
25 lesser sentence which would go to the court to decide

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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  
to decide  
6 open to that.  
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

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

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

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

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.

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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?

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

the                 16 Q. Does that help you one way or another in  
                      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  
                      20 last couple weeks, when you start -- when you start  
looking at          social                21 the real possibility of serving on this jury and the  
                      22 responsibilities that come along with that, I think it  
opens                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

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even have         1 Court's instructions this morning, in fact, we don't  
                      2 any evidence at this point from which you can determine  
one way              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

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at B, you 1 the questionnaire. In response to the question there

death 2 said in substance that in your youth you questioned the

for us? 3 penalty. Could you expand on that a little bit more

or 20 4 A. I think at a younger age, I'd probably say that 15

would 5 years ago, because of my religious upbringing, I really

but I've 6 have questioned the death penalty. I hate to say it,

20 7 seen -- you know, with rising crime rates over the last

a 8 years and things like that, it appeared to me there was

penalty 9 rollback at one point in time where we ruled the death

10 out and crime went up.

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

way of 12 death penalty is really a evil and somewhat necessary

me that 13 taking care of our system. And, you know, it bothers

time, if it 14 we would take any human life; but at some point in

about 15 lowers the crime rate -- people have to stop and think

take an 16 their action. And I guess my feelings are, when you

something 17 aggressive action like taking lots of life, rape,

it's 18 like that, I think you're -- you know, I think that

that. 19 justified. I mean you take a life, you need to look at

procedures 20 Q. The Court this morning has explained some of the

the 21 or the process that we would follow if -- that is if

this 22 defendant is convicted and we get to a penalty phase in

aggravating 23 trial. And the Court explained a little bit about

24 factors and mitigating factors. Do you recall those

25 instructions?

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.

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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

parts.

wanted to

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

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

ask.

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is Mary

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

2 Jane in Winter Park, and it's probably one of the most

3 difficult -- it's -- the terrain's pretty difficult.

how did

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

5 they select the foreman?

6 A. The jury picked it.

job or

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

other

8 that your experience in making decisions affected the

position in

9 jurors and they looked up to you because of your

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 you'd on the criminal justice system. And I know you said

17 Ramsey followed some trials: Oklahoma City, O. J., and the

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 thought it was to trial. I just -- based on what I saw, I just

23 kind of a goofy deal, and I really think he was guilty.

24 found him Q. Now, let's take a look at that case. The jurors

25 not guilty; right?

the

2 Q. Do you have a question in your mind whether some of

they

3 jurors may not have been quite honest with -- about how

swayed

4 felt about the case going into it, or that they were

5 unduly; how do you feel about how they did?

really

6 A. That thing was so sensationalized, it would be -- I

good

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,

11 Q. Well, now, it's okay. We can take it. I just

Grisham,

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

Denver, I

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

with a

17 Q. I understand. And the lawyer you work with in

is Tim

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

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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 I was           A. I -- you know, based on the O. J., and that's what

you got       8 coming off in this; you know, it really looks to me if

you           9 a lot of dollars to back up your legal counsel with, if

it           10 have the best, you know, the best that money can buy,

it's far      11 appears to me that you can get away with a lot more or

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

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

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

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

25 again, maybe the evidence isn't there.

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

2 particular there ought to be enough evidence against some

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

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

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

15 What magazines do you read?

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

17 while, look at The Wall Street Journal.

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

19 any other magazine that you read?

20 A. Really haven't.

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

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

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

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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.

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

20 when you got your summons?

21 A. It was interesting.

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

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

24 find backup support?

25 A. At the time, I was.

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

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

3 company would be willing to help you out with?

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

5 give me 20. At this point in time -- I think that's a

what's  
6 negotiable issue at this point in time. I'm not sure

7 going to happen after 20 days.

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

9 parameters of the negotiation are?

as they  
10 A. I believe that if my company believes in the system

time  
11 do, our holding company will probably give me unlimited

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."

had  
16 Now, I want to ask about the first part. You

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?

over a  
22 A. You know, from the beginning when -- and it's been

think  
23 period of years, so I don't have all the details; but I

24 from the time that they went out looking for the three

and C at  
25 suspects -- and I think they referred to them as A, B,

1       the time. I can't remember. But it was difficult for  
me to

2       believe that someone -- you know, that this wouldn't be  
a

3       conspiracy case. I just think -- for the atrocity that

4       happened here, for one person to pull that off, I  
really felt

5       that it would be difficult.

6       Q. So that was your first impression. Then when's the  
first

7       time you can remember hearing or seeing anything about  
Terry

8       Nichols?

9       A. It was probably a couple of weeks after the arrest  
or at

10      the time they picked up Mr. Nichols.

11      Q. Okay. Now, what do you remember about how Mr.  
Nichols came

12      in contact with the authorities, if you do?

13      A. I don't.

14      Q. And then you saw -- so beginning, then, you saw  
publicity,

15      I guess newspapers, television, radio, and so on?

16      A. Yes.

17      Q. When can you remember, if you can, the first time  
thinking,

18      you know what, he's guilty?

19      A. I think it was -- I think probably coming up to the  
McVeigh

20      case, as it was coming in, the media blitz that was

done on it.

that's 21 Just some of the little things that came out. I think

22 probably when I got my preconviction.

things 23 Q. All right. Now, and can you remember some of those

24 that came out?

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

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recall, 1 know -- actually it's one of those things that, as I

that. 2 were some old Army buddies or some affiliations with

here. You 3 Q. Let me turn to some of these publicity questions

4 said also, I think, you watched Channel 9 News; is that  
5 correct?

6 A. Correct.

and right 7 Q. Could you turn to page 36 of your questionnaire,

a lot 8 at the bottom you -- Question 158, you say you've read

summarize," 9 about the Oklahoma City bombing. It says, "Please

10 and you say, "A lot"?

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

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 and a media blitz going on out there, with the speculation  
and

22 this day everything going on out there. It would be hard in

23 that was on and age not to have heard a lot. I mean everything

24 Nichols the news, you know, that related to Mr. McVeigh or Mr.

25 vacuum not for months. I mean you'd have to be in an absolute

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1 to have heard a lot of media.

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

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

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I have 1 person, but until I look at the facts and analyze what  
decision.

2 in front of me, it's really difficult to make a final

my mind 3 Therefore, you know, I've been known to have to change  
4 because of fact.

which 5 Q. Now, that's -- so there are cases in your life in

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,  
23 Question 164. You say, "Can you think of any reason"  
-- the  
24 question is, rather, "Can you think of any reason that  
would  
25 prevent you from being able to render a fair and  
impartial

1401

Juror No. 473 - Voir Dire

1 verdict based solely on the evidence and the laws as  
the Court  
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

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

information 7 render a fair and impartial verdict because of the

8 presented over the last few years."

9 Is that what you honestly felt that day?

10 A. Yes, I did.

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

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

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

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

15 a reasonable one; right?

16 A. Yes.

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

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

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

20 A. "Lots of life."

21 Q. L-O-T-S?

22 A. Uh-huh.

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

24 need to look at that?

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

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.

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

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

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

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

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

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

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

14 next Monday?

15 A. Not a lot.

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

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

## Juror No. 473 - Voir Dire

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

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

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

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

the 5 organizations like the American ag movement and some of

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

have 7 steam.

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

have 9 agreed with their policies and their politics, you

10 understand where they were coming from?

11 A. Sure. Sure.

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

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

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

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

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?

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

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

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?

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

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.

5 Q. Indeed. Is Posse Comitatus and that -- the  
ideology

6 associated with it, is there a lot of talk about it up  
in Weld

7 County?

8 A. No. That one stems from my agricultural  
involvement in

9 South Dakota. I don't know -- I believe that's the  
incident

10 that happened up in North Dakota with the shootout over  
the tax

11 thing.

12 make -- 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:

18 Q. I just wanted to ask you one follow-up, because we  
talked

19 about your having been on a jury before. And as I  
recall you

20 telling us that the defendant testified in that case.

21 A. Yes.

22 Q. Did you? And I think you mentioned something to  
Mr. Tigar

23 that you would hope that the defense would want to put  
on

24 evidence. I can't remember the exact words, but  
something to

25 that effect.

1407

Juror No. 473 - Voir Dire

1 A. Well, I would think -- I would kind of like to hear  
both

2 sides of the story.

3 Q. But you understand that you could hear both sides  
of the

4 story from cross-examination --

5 A. Sure.

6 Q. -- and from --

7 A. Sure.

8 Q. -- the testimony of witnesses even if they were  
only called

9 by the Government?

10 A. Yes.

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

12 Do you understand that there is no obligation on a  
defendant to

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

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

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

12 JUROR: Thank you.

13 THE COURT: 231.

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

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:

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

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

23 answers.

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

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

1409

Juror No. 231 - Voir Dire

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

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 first Let me call to your attention here at this

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

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

21 by Mr. Patrick Ryan and Mr. Jeffrey Mearns.  
Ronald  
22 You recall meeting Mr. Michael Tigar and Mr.  
present  
23 Woods, attorneys for Terry Nichols. Terry Nichols was  
read  
24 and is, of course, present here again.  
25 Now, I don't want you to think that we didn't

1410

Juror No. 231 - Voir Dire

1 your first answer, the first questionnaire, or consider  
it to  
2 be a matter of importance. It's just that, you know,  
jury  
3 service involves a lot of interruption of people's  
regular life  
4 and work; and so we need to talk with you about it some  
more.  
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 photographed come in and out of the courthouse without being

19 privacy and all that, all as a matter of trying to protect your

20 are in as much as we can. You recognize, of course, here we

21 the open court now and your answers are public. I mean,

22 answers that you give now.

23 that So we won't be asking you, I think, anything

24 over a few would be uncomfortable for you; but we do want to go

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 --

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

4 Right?

5 A. Yes, sir, I am.

6 Q. And you work with an excavation business?

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

8 mainly a housing project subcontractor.

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

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

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?

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

18 hours that I work.

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

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

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

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

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

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  
are you?  
17 developer the duties -- you're opening up foundations,  
18 A. Yes, sir. All the housing project work: We dig

basements,

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

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

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

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

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

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

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

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

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

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

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

22 A. Yes, sir, I do.

23 Q. You have some horses?

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

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

1414

Juror No. 231 - Voir Dire

1 that?

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

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

6 couldn't be honestly true with you. I'm just taking a  
guess.

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.

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

15 defendant wasn't at fault in some way?

16 A. That's right.

17 Q. And there were injuries in the case?

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

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

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

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

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

remember 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.

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

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

18 Do you remember like that?

19 A. I don't.

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

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

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

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

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

recall that?

25 A. Yes.

1418

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that 1 Q. I talked about this all coming out of an explosion

when a 2 took place in Oklahoma City on April the 19th of 1995,

and 3 federal office building blew up and people were killed

filed in 4 injured; that there was then an indictment, charges

general way; 5 Oklahoma City; that I described those charges in a

James 6 that the Government was accusing a man named Timothy

not named 7 McVeigh and also Terry Nichols here and other persons

and to 8 in the charges with conspiring to blow up that building

murder 9 do things to carry out that objective and also with the

building. 10 of eight law enforcement agents who were in the

You remember that?

12 A. Yes, sir.

of not 13 Q. And I also said that Mr. Nichols entered his pleas

because he's 14 guilty creating the issues for trial and that just

also           15 charged, you can't consider that against him. And I  
Denver       16 explained how the case got moved from Oklahoma City to  
would hear   17 and why and also that separate trials were ordered for  
                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.  
it.           23 Q. I know you remember this, but I've got to repeat  
have to       24 That's just kind of the way things go in court: You  
                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  
that has       3 decision about the evidence with respect to him, but  
                4 nothing to do with this case to be tried by a separate  
jury  
altogether      5 with evidence relating to Mr. Nichols which may be

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

24 court it's in, 'cause it's constitutionally required by  
our

25 United States Constitution -- that the defendant is  
presumed to

1420

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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

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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.

8 Q. So when you say "as I should be," you know you have  
to be

9 open-minded if you serve as a juror in a fair trial.

10 A. Yes, sir, I realize that.

11 Q. Now, tell us -- this is what you thought when you  
answered

12 the questions on September the 17th. Now, is it any  
different

13 today?

14 A. It's probably about the same.

15 Q. Well, we want you to be honest with us. You're not  
on

16 trial here for having an opinion or something like  
that. You

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.

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

20 the in most criminal cases judges decide the punishment for

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

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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?

anybody to 15 A. Well, I tell you, I've never had to sentence

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

--

people. 18 Q. Well, that isn't the question, whether it bothers

19 This is a very tough question for people.

20 A. It is a tough question. And after considering  
everything,

penalty. 21 I would have probably voted, you know, for the death

22 I would have.

then 23 Q. Now, let me just explain a little about that, and

noon. 24 we'll take a recess here, but we'll get you out before

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

1424

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give 1 not trying to argue with you in any way; I just want to

2 you the context of what happens, just as I've described

a trial

3 and the presumption of innocence and so forth.

4 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

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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.)

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

20 moment.

21 (At the bench:)

court 22 (Bench Conference 13B1 is not herein transcribed by

23 order. It is transcribed as a separate sealed  
transcript.)

24

25

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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

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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

others came     6 County Fairgrounds on September 17, where you and

others            7 to the auditorium building and I introduced myself and

know who        8 who were with me. And I want to do that again so you

9 is here in the courtroom in front of you today.

here at          10 You recall meeting Mr. Lawrence Mackey, who is

for the          11 the first table with Ms. Beth Wilkinson as attorneys

Patrick Ryan    12 Government. They are joined this morning by Mr.

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  
questions --

24                   A. Okay.

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

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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

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

identified by 10 the courthouse without being photographed and

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

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

13 that's the nature of the proceeding.

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

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

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

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

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

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

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

21 Oklahoma City, charging a man named Timothy McVeigh and

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

of some 23 indictment with entering into a conspiracy or agreement

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

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

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were in            1 charges of murder of eight law enforcement agents who

to these            2 the building, federal law enforcement agents, and that

got --            3 charges, Mr. Nichols pleaded not guilty; that the case

Oklahoma City    4 and so did Mr. McVeigh. The case got moved from

the two            5 here to Denver. The Court ordered separate trials for

of                 6 named defendants, Mr. McVeigh and Mr. Nichols, because

the                7 differences in the evidence or expected differences in

view that        8 evidence with respect to each of them and the Court's

together.        9 there couldn't be a fair trial if both men were tried

10                I told you all those things.

11                A. (Juror nods head.)

12                Q. Yes?

13                A. Yes, sir.

respect            14 Q. And that the trial with respect to -- a trial with

and the          15 to Mr. McVeigh has already been held here before a jury

the                16 jury's verdicts in that case, finding him guilty under

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

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

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

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

1433

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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

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1 finds evidence that was produced, the juror finds -- the jury  
2 that there is still a reasonable doubt as to whether  
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.  
if you 9 Q. Do you accept those as rules that would govern you  
10 were to serve on this jury?  
11 A. Yes, your Honor.  
understand 12 Q. So as he sits here this morning with us, you  
13 Mr. Nichols is presumed to be not guilty.  
14 A. Yes, sir.  
and some 15 Q. Now, I want to talk a little about your background  
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

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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

but page 12 expand on anything here with respect to these answers;

medication, 13 4 under Question 18, we asked you something about

-- I 14 and you answered. Do you want -- please feel free to

to read 15 don't want you to be put at a disadvantage. I want you

16 what you wrote.

your 17 The way I understand that, you take some daily  
18 medications and nothing about them would interfere with

may 19 being with us here from 9 to 5 or whatever the hours

20 finally turn out to be every day?

21 A. No, sir.

22 Q. No problem.

Is that 23 Now, you're -- you're in a second marriage.

24 right?

25 A. First marriage.

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Question 1 Q. First marriage. Well, I'm sorry. I got the wrong  
2 understanding here. The reason I ask that is page 2,

why I'm 3 7. Apparently you misunderstood the question. You see

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.

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bank.

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

2 A. Yes.

in a day

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

4 care?

5 A. Yes, sir.

Where is

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

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?

kindergarten.

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

telephone

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

16 calling?

17 A. Yes, sir.

you

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

19 telemarketing?

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

21 from people's homes.

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

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

25 stores and are resold for a small fee.

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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.

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

12 was in combat in Vietnam?

13 A. Yes, sir, he was.

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

15 A. A little. Not a whole lot.

16 Q. Is that a matter -- and, you know, this is an  
awkward

17 troubling to question, but that is a matter that seems to be  
him now?

18 A. No. I think --

19 Q. Put it behind him?

20 A. Yes, it's behind him.

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

22

23

24

25 A. Yes, sir.

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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

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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 weight and  
23 what you remember, describing height and apparent

24 any outstanding characteristics and so forth?

25 A. Yes, sir.

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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

thought 14 recollect has changed. My remembering what exactly I

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  
a

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  
that

23 recollection as you did when you were interviewed? Is  
what you're saying?

24

25 A. Yes, sir, I think that's true.

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leading

1 Q. Now, don't let me lead you. I'm not -- I'm asking  
you to

2 questions, but I'm not trying to give you an answer for  
little.

3 say yes or no. I'm simply trying to draw it out a  
something of

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  
there?

7 A. There was eight of us.

8 Q. Did you talk with each other about what you saw and  
sort of

9 compare notes before you were interviewed?

10 A. No, sir. After, we were allowed to, after a period  
of

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.

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

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

12 the description of the person?

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

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

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

16 things were --

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

18 A. Yes, sir.

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

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

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

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

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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  
juror 22 You understand that?  
the 23 A. Yes, sir.  
24 Q. If, on the other hand, the jury is satisfied, every  
reaches this decision and it's a unanimous verdict that

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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

be 6 determination -- that is to say, what punishment should

hearing 7 imposed -- the judge holds a hearing. And before that

of the 8 happens, information is collected about circumstances

That 9 offense and also things that are about the defendant:

10 person's background, sort of life story, his  
upbringing, family

things 11 relationships, work history, experiences in life, the

12 that make each one of us, our own lives, unique.

and by 13 And then arguments are presented to the court

a 14 the prosecution and the defense; and the judge reaches

Do you 15 punishment decision, a sentence, unique to that person.

16 understand that?

17 A. Yes, sir.

a 18 Q. And in a case now where there is the possibility of

federal case 19 sentence to death because of the statute and in a

is the 20 in Federal Court, that isn't the end of it because it

to 21 jury that decides the basic question on sentencing as

the 22 whether the sentence should be and the options given to

being 23 jury are life in prison without any possibility of ever

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

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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.

a 14 And there is on the next page, 29 -- there is  
a

15 further question and answer.

wrote. And 16 All right. You have in mind now what you  
wrote. And

given 17 taking you back to that time when you confronted these  
questions and gave the answers, had you before that day  
given

punishment in 19 serious consideration to what you think about  
punishment in

20 criminal cases?

21 A. No, sir.

matter for 22 Q. And had the subject of the death penalty been a  
matter for

this? 23 your, you know, consideration and deep thought before  
this?

24 A. No, sir.

a book 25 Q. And the reason I'm asking is sometimes people read  
a book

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the news 1 or watch a movie or learn about a particular case in  
the news

that's 2 or something and that generates discussion about it; so  
that's

3 why I asked.

that you 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

about     21     you view changed in any way, or do you have more to say

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

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1      innocent until the evidence is proved against them.

2      Q. All right. But now we're not talking about that  
part of

3      the case; we're talking about suppose a defendant has  
been

4      Now what     proved guilty, a jury has said guilty in a verdict.

5      to           happens is the jury has to hear more and decide on what  
to

6      recommend on punishment.

7      A. Yes, sir.

8      Q. And let me just go through this process in  
explanation

9      about. The     to -- make sure you understand what we're talking

10     when it's     jury may not consider the issue of punishment at all

11     reasonable     deciding whether the evidence shows guilt beyond a

12     involve jury   doubt. We tell juries that. In cases that don't

13     of           sentencing, of course, they don't know what the range

14     evidence       sentence might be and they can't consider that. The

15     the jury       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

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1                   the sentencing phase with open minds.

2                   so that                   Of course, they have found a defendant guilty,

3                   way. And               much is decided; but then what to do about it, in a

4                   second                  they have to consider now information provided at this

5                   this:                 hearing. And the information provided then goes like

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.

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if 1 Now, the question of you is whether you could,  
consider 2 asked, approach that question with an open mind and  
3 all of the information given to you before making that  
4 decision.

5 A. Yes, sir, I feel I could.  
sides have 6 THE COURT: Okay. Now, the lawyers on both  
we'll ask 7 an opportunity to ask you some more questions; and  
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.  
that's 15 Q. As the Judge told you, I'm one of the attorneys  
Nichols 16 responsible for presenting the evidence against Terry

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

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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.

16 Q. I'd like to go back to your work at the day-care  
center, if

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.

21 Q. You've done quite a few things, it looks like, over  
the

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?

25 A. In the day care, there was a lot of creativity,  
just

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1 feeling of 1 planning and keeping the day busy; so it gave you a

2 accomplishment.

3 Q. Did you have direct responsibility for interacting  
with the

4 kids every day?

5 A. Yes.

6 Q. I think you told the Judge that you've seen some  
coverage

7 about the McVeigh case and about the Oklahoma City  
bombing --

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.

13 Q. Okay. We asked you one general question on page  
17. If

14 you could take a look at that, Question No. 80. And we  
asked

15 you about your opinion of the accuracy of news stories;  
and you

16 said, "About 60 percent," which I thought was  
interesting.

17 Could you tell me how you arrived at that -- not the  
number,

18 obviously, but your impressions.

19 A. Well, again, this is just my opinion. I -- I am  
assuming

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

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1 asked to come in and be a juror?

2 A. Yes.

to take 3 Q. And could you uphold your oath that you'd be asked

mind and 4 that you would listen to all the evidence with an open

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?

old, and 12 A. My son was in archery this year in 4H, my 13-year-

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  
the  
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?

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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 basically it were to come to that in this case. There would be

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

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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.

moral or 11 If you can turn to page 29, which is the final  
12 question, you were asked did you have any religious or

you said, 13 personal beliefs that could affect your ability; and

presented 14 "I think I could come to a decision based on evidence

15 to me to form any of these sentences, if the evidence  
16 warrants."

law the 17 It sounds like you basically could follow the

penalty. 18 Judge told you, which is you wouldn't predetermine any

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

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another 1 decision depending on what the evidence warrants. It's

know 2 thing obviously to actually do it. And what we need to

fellow 3 from you is could you make that decision with your

someone be 4 jurors and if the evidence warrants determine that

announce that 5 sentenced to death and come into a courtroom and

death? 6 verdict that you had sentenced another human being to

7 A. Yes.

on page 8 Q. We have one question in the questionnaire which is

lot of 9 34, if you could take a look at the list, that lists a

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

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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.

this  
4 A. That is correct. I really don't know anything on

situation.  
5 as -- on what's going on on this aspect of the

have, and  
6 MS. WILKINSON: Okay. I think that's all I

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:

Tigar.  
12 Q. Good -- yes. Good morning. My name is Michael

the  
13 We've been introduced. I'm one of the lawyers asked by

have  
14 court to help Terry Nichols in this case.

with the  
15 You said that you live on 11 acres and you

16 animals. Does your -- do your kids have 4H projects

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.

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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

Martino. 10 listen to the radio and to Peter Boyles and Tom  
I'm

How about 11 not from here. I think I know who Peter Boyles is.

12 Tom Martino?

13 A. He's kind of a troubleshooter for products and --

show, 14 Q. I see. Well, on the Peter Boyles -- that is a talk

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?

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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

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and say,

1 wipe away everything that you thought or heard or read

2 "I start with a clean -- a clean slate"?

know

3 A. Yes, sir. As I stated before, I -- I really don't

4 charges. I don't know facts on this aspect of the case  
5 whatsoever.

instructed

6 Q. And would you be able to insist, if the Court

have to

7 you, that the Government, in order to prevail, would

8 prove their case beyond a reasonable doubt?

9 A. Yes, sir.

hesitate to say

10 Q. So if you had a reasonable doubt, would you

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.

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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

officer            5    sorry. That's "Dragnet" talk. What law enforcement

                      6    showed up first?

                      7    A. Jefferson County police.

                      8    Q. And then the FBI came shortly after?

                      9    A. Yes.

to talk            10   Q. Now, as you understand it, will the FBI be wanting

                      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.

have                15   A. The little that they have come back and dealt, they

who were           16   dealt with the bank president and the vice president,

the rest            17   also there, were actually more involved than some of

                      18   of us.

be a                19   Q. Now, were you told that you might sometime have to

                      20   witness in a proceeding arising out of this robbery?

                      21   A. That's never been discussed.

to be a            22   Q. In your own mind, do you think that you might have

                      23   witness?

yes.                24   A. I -- I suppose I might be asked some questions,

FBI and            25   Q. Now, because of your talking about this with the

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some 1 the police and the other folks in the bank, you have

identification 2 appreciation, I guess, of how this eyewitness

3 process works. Is that fair?

4 A. Yes, sir.

some 5 Q. Well, if there is evidence in this case and we get

dispute 6 witnesses that say they saw somebody and there is a

people 7 about whether that testimony was influenced by other

be able 8 that were there or even by law enforcement, would you

experiences? 9 to evaluate that without regard to your own

10 A. I'm not sure I understand what you're saying.

medical 11 Q. Okay. Well, for instance, in a case involving a

doctor 12 malpractice case, a civil case like that, if you have a

going to 13 on the jury, there is always a risk that the doctor is

somebody 14 say, Well, I know about that condition; why, I treated

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

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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

11 questions. They basically just asked one question,  
Tell us --

12 they didn't offer any further information or -- you  
know, it

13 was basically, Tell me what you saw. It was all one-  
sided from

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?

2 Q. You just know it's there?

3 A. Yes, sir.

4 Q. Okay. Well, you have heard about Terry Nichols and  
Tim

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

22 with the same crime. I do know -- and this is about  
all I

23 know -- that he was not placed at the scene. That's  
the extent

24 of all I know. I don't know the -- any other  
background.

25 Q. Okay. So as you -- as you sit there today, there  
is Terry

1466

Juror No. 798 - Voir Dire

1 Nichols. Are you able to look him in the eye and say,  
I can

2 give Terry Nichols a fair trial?

3 A. Yes, sir.

4 Q. Okay. One more little bunch of questions, and that  
is

5 on -- if you'd turn to page 28, please, of your  
questionnaire.

6 Now, you notice under C and D there, you told  
us that

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?

10 Now, understand that if you're ever called  
upon to

11 make that decision, you'll have a lot of evidence and  
you'll

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

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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.

4 Q. Have you been following the press coverage of the  
condemned

5 man in Colorado that has -- the execution of whom is  
scheduled

6 for next week?

7 A. Yes, I've heard a little bit about that.

8 Q. Now, that is a situation -- so that we can talk  
about

9 something not this case -- that is a situation which  
you agree

10 that that was a just sentence?

11 A. Yes, I do.

12 Q. And what did you -- what did you base that on, your  
view?

13 A. What I have heard publicized that there was kind of  
set out

14 and predetermined that someone -- it was kind of a  
torture

15 situation; it was predetermined.

16 Q. Did you also hear about the background of that  
gentleman,

17 Mr. Davis, before he committed the crime for which he  
was

18 sentenced to death?

19 A. I just heard a little bit. I don't know details  
other than

20 he had some other run-ins I think with the police.

21 Q. Right. Now, would it be relevant to you in looking  
at a

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

to 15 that takes place is that lawyers will make objections

rule; and 16 questions, to the witnesses, and then the Judge will

we're 17 it's -- you know, that's what we're -- that's what

18 supposed to do.

not. 19 A. I'm just not sure when I'm supposed to answer or

that; and 20 Q. I understand. Well, you can go ahead and answer

that this 21 it was in that case we're talking about, if you heard

had had a 22 person who was convicted of this premeditated murder

it's 23 blameless life up to that point and the Judge told you

you 24 okay to consider that in deciding the punishment, could

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?

then I 3 A. Well, if the Judge has said that it is allowed,

4 think it is part of -- it's a factor of determining the

5 sentence.

for the 6 Q. Okay. All right. And you were asked by counsel  
decision 7 Government whether you could come in and announce a  
If, 8 about a death penalty in the case, if you recall that.  
information 9 based on all the evidence that you heard, all the  
told you in 10 presented by both sides and based on what the Judge  
No, I 11 the instructions, you decided with your other jurors,  
either 12 think that it's something other than a death sentence,  
the 13 life without release or a sentence to be determined by  
in with 14 Judge was right, would you have any trouble in coming  
15 that?  
16 A. No, sir.  
family and 17 Q. You wouldn't have any trouble going home to your  
room you 18 saying, This is what I did, that's my moral response?  
I hear 19 A. Yes.  
20 Q. And individually as a juror, if back in the jury  
view of 21 decided, Gee, you know, I've listened to all of it and  
22 what the Judge has said and some jurors agreed with one  
23 the -- you know, what the punishment was and you had a

24 different view, would you have any problem in saying,  
No, I'll

25 listen to you, but this is my view and unless you  
convince me

1470

Juror No. 798 - Voir Dire

1 different, I'm going to stick to it? Could you do  
that?

2 A. Yes, I could.

3 much for MR. TIGAR: All right. Well, thank you very

4 answering our questions.

5 question THE COURT: You have now been asked all the

6 now; you're going to be asked, so you're going to be excused

7 whether you're but we have to leave you in an uncertainty as to

8 when going to be called on and, indeed, an uncertainty about

9 appreciate, you're going to know, because, as I'm sure you

10 Friday and having sat with us here in the courthouse all day

11 many people most of the morning, we can't plan just exactly how

12 take. So we we're going to be talking with or how long it will

13 on this ask of you now to leave here assuming that you will be

14       jury and be required to do the things that you say you  
can do

15       with an open mind, and we want you to keep it that way;  
that

16       is, be very careful now about discussing anything  
concerning

17       this case, including the process you've just been  
through, with

18       anybody, including your family and friends, co-workers,  
and be

19       also extremely careful as you watch the news or read  
newspapers

20       or magazines or whatever to stay away from anything  
that could

21       be related to this case and possibly appear to  
influence you.

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.

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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       yourself      microphone; and you can swivel that around and make

19       choose.        comfortable with respect to the microphone as you

20                   VOIR DIRE EXAMINATION

21          BY THE COURT:

22       a couple      Q. You took that oath earlier out at Jefferson County

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

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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?

How the  
to be  
to  
tried by  
not be  
the same  
evidence;  
earlier,  
considered  
anything  
very  
real  
the

7 A. Yes, sir.

8 Q. And I also explained the procedural background:  
defendants entered pleas of not guilty, creating issues  
tried before juries, and that the case got moved over  
Denver, Colorado, and that there was a separate trial  
ordered -- trials, so that Timothy McVeigh would be  
one jury, Terry Nichols by another, and that it would  
fair to proceed with charges against both of them in  
trial because of differences to be expected in the  
that Terry Nichols -- that Timothy McVeigh was tried  
resulting in a guilty verdict and that -- the jury's  
recommendation of a death sentence. You knew that?

19 A. Yes, sir.

20 Q. And of course, I explained that that can't be  
now in the trial of Terry Nichols, because to consider  
about the McVeigh case in this case would violate the  
order that required separate trials and that in a very  
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.

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Juror No. 718 - Voir Dire

1 understand that?

2 A. Yes.

3 Q. And so we're talking with you and others to select  
a jury

4 to give a fair trial to Terry Nichols. And what a fair  
trial

5 is is to recognize fundamental principles of our law  
under the

6 United States Constitution, beginning with the  
presumption of

7 innocence, and that any person in our country who is  
accused in

8 any court of any crime is presumed to be innocent or  
not guilty

9 of that crime. And before that person can be found  
guilty, the

10 prosecution, whoever it is, whatever level of  
government, has

11 to come in with evidence to support the charge.

12 And no defendant in a criminal case has any  
burden or

13 duty of proving anything at trial, can simply remain  
silent and

14 challenge the evidence brought in against him. And no

15 defendant need take the witness stand and be a witness  
or

in the 16 explain anything. And juries are told regularly that  
they 17 event of a trial in which a defendant does not testify,  
18 can't hold that against him or even discuss it in their  
19 deliberations. You follow me on these points?  
20 A. Yes.  
  
before 21 Q. And what the presumption of innocence means is that  
the 22 a jury can convict any person of a crime, they must be  
23 satisfied that the evidence that they heard and saw at  
elements 24 trial showed that person to be guilty of the essential  
25 of the crime charged as is given in the court's  
instructions;

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Juror No. 718 - Voir Dire

1 that is, what has to be proved. They have been  
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

that as 7 evidence, they must find him not guilty. Do you accept

jury? 8 principles that would guide you if you were on this

9 A. Yes, sir.

the 10 Q. Now, I want to talk a little about your answers to

and you 11 questionnaire we gave; and we asked you to fill it out,

do, copies 12 did that; and, you know, that as I told you we would

obligation of 13 have been provided to the lawyers but with the

what 14 keeping this information away from public exposure. So

me so 15 you wrote here has only been given to the lawyers and

that we 16 that we can go through this process and that we do all

name 17 can to protect your privacy, including not using your

courthouse 18 here, also arranging for you to go and come into the

you 19 without being photographed and all those things so that

20 could have some privacy.

you 21 And also here now, where we are in open court,

22 understand your answers, of course, are public. Do you

23 understand that?

24 A. I understand.

25 Q. Okay. We're not going to be asking you things that  
would,

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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?

I moved 15 A. No. I was in North Carolina. Went from Florida --

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  
kind of  
20 about your background before coming to Colorado. What  
taught  
the  
21 work did you do in Miami?  
22 A. Well, when I first graduated, I -- from college, I  
was  
looking  
23 school. And just through personal acquaintances, I met  
24 gentleman who owned the businesses in the Bahamas. I  
25 looking to get out of Miami, having been born there,

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Juror No. 718 - Voir Dire

then came  
friends  
The  
1 for something new, and moved there for two years and  
2 back to Florida, and on a job offer from some other old  
3 from Florida, worked with them for two or three years.

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?

years, and            10 A. Right, except for I was there for three or four

to                    11 then two more companies went bankrupt and I went back

Colorado,            12 Florida for a few years and then in '81 came back to

                      13 where I've been ever since.

University of        14 Q. Now, when you were in college there at the

to be a              15 Miami, you were taking a major in education, expecting

sort of              16 teacher, were you?

                      17 A. Well, I was -- I majored in political science and

in                    18 evolved into education, yes.

                      19 Q. Were you expecting to be a teacher while you were

                      20 school?

it                    21 A. Well, my original plan was to go to law school, but

                      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.

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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.

6 Q. Now, how long ago was this? Was this in 1980 or  
'81, I

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.

you end  
11 Q. And did some of the people who were connected with

12 up doing time?

really  
13 A. I don't know. There was -- oddly enough, I didn't

knew them  
14 know any of the people that went to trial, so I never

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.

some  
19 Q. And with respect to your own situation, there were

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.

4 Q. Okay. And would it be correct that there have been  
no

5 consequences since that and that you've had no contact  
with

6 these same people that got named?

7 A. That's correct.

8 Q. So in your view, is this right that all of that is  
in the

9 past and the distant past?

10 A. It's definitely in the past.

11 Q. Okay. Now, I'm a little uncertain about what your  
business

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.

you do

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.

friend

24 A. I have an association with a company in Boulder, a  
friend

25 of mine. Their company operates my equipment.

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Juror No. 718 - Voir Dire

1 Q. Who goes around and services the equipment?

2 A. We have employees that do that.

goes to

3 Q. And you have an arrangement where some of the money

your

4 the place in which the machines are located and some to

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 middle Yeah. You did teach for a little while in a

24 school?

25 A. I taught in middle school. I taught social  
studies.

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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 actually 23, additionally. One of the things, page 24 -- well,

10 it that Questions 103, 104, and over on page 24, 105. I take

11 Miami? all relates to what we've just been talking about in

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.

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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

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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  
when a jury

11 conversations. Of course, they're privileged. But

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 and that judge decides with respect to that particular person

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 sentence is such that by statute, there is the possibility of a

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1 about a to death. And federal law recognizes that a decision

2 being death sentence or life in prison with no chance of ever

3 sentence if released, or there is the possibility of a lesser

4 back to the jury decides neither of those is just and turns it

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    one never get to any sentencing decision; but we only have

13    some chance to find out what jurors think, and that's why

14    you think questions were asked in this questionnaire about what

15    about the coming in, so to speak, with no detailed information

16    sentence to law or the process about a sentence to death or a

17    pages 27 life without release, and that's why the questions on

18    to 29. So let's turn to those, please.

19    about these And just take a moment to refresh yourself

20    questions and your answers.

21    A. Okay.

22    questionnaire Q. Now, is the first time when you answered this

23    thought to on the 17th of September that you gave real serious

24 this matter of punishment by life or death?

25 A. No.

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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 --

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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

would  
19 I guess we could consider, well, if it's too easy, what

easy"?  
20 you do? So what do you mean when you say "it's too

to spend  
21 A. Well, I feel that in my opinion, it's a lot harder

would be  
22 your life in prison than it is to die. I think that

where  
23 worse than death, and there is probably circumstances

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.

you know

3 Q. Now, I will spend a moment on the process to let

this

4 what the law is; and what the law is is, of course --

a

5 isn't a question for the jury until there is a finding,

isn't

6 verdict of guilty. And this question of punishment

verdict

7 involved in that trial; but if after a trial a guilty

capital

8 results, then in a case involving the possibility of

of a

9 punishment, there is a new trial, really, in the sense

of what

10 second trial, a hearing before the jury on the question

life in

11 the sentence ought to be. And the questions are death,

else.

12 prison without any release possibilities, or something

but the

13 If there is something else, it goes back to the judge;

14 jury decides life or death.

have to

15 And before making that decision, the jurors

sentencing,

16 hear additional information, sort of like judge

the

17 only here, it is extensive information. First of all,

factors,

18 prosecutors put on what they believe to be aggravating

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,

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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 somebody of yourself. And there are people who say, well, if

5 got killed, we ought to put that person to death who  
did it.

6 have the Some say, I don't care what the crime was, we don't

7 then there right to take anybody's life; no death penalty. And

8 reasons. is everything in between. And there are different

9 some Now, you've expressed a different reason for

10 explore opposition to the death penalty. But what we have to

11 would you with you a little is despite your own view of that,

12 what is a be open to consideration with your other jurors as to

13 particular deserved punishment for a particular defendant and a

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 to decision -- and of course, we don't know what's going

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

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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 seen the put here was that life imprisonment was to me, having

8 worse inside for five or six days -- that would be a much

9 possibility punishment for me, to consider my life here with no

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?

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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 know when Well, maybe you can talk about it and let me

7 we come back.

8 whenever All right. We'll take an hour and a quarter,

9 that is. Court is in recess.

10 (Recess at 12:26 p.m.)

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transcript from

Dated            20    the record of proceedings in the above-entitled matter.

21    at Denver, Colorado, this 6th day of October, 1997.

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23

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24

Paul Zuckerman

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25

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Kara Spitler