

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

ff

9  
10   REPORTER'S TRANSCRIPT  
  (Trial to Jury: Volume 15)

11  
ff

12   Proceedings before the HONORABLE RICHARD P.  
MATSCH,  
13 Judge, United States District Court for the District of  
14 Colorado, commencing at 8:45 a.m., on the 7th day of  
October,  
15 1997, in Courtroom C-204, United States Courthouse,  
Denver,  
16 Colorado.

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23  
24  
Transcription  
Street,  
629-9285

Proceeding Recorded by Mechanical Stenography,  
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12 Defendant Nichols.

13

\* \* \* \* \*

14

PROCEEDINGS

15

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

16

THE COURT: Be seated, please.

17

Good morning.

18

ALL: Good morning, your Honor.

19

THE COURT: We'll resume with 348.

20

(Juror No. 348 was recalled to the stand.)

21

VOIR DIRE EXAMINATION CONTINUED

22

BY THE COURT:

23

Q. Good morning.

24

A. Good morning.

25

Q. I have just a few more questions of you before --

and then

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you'll be

1 counsel will have a few questions of you, and then

2 done with this part of the process.

with

3 I'd like to go back for a moment to your work

compensation

4 your employer and the work that you do on workers'

5 in these -- principally in the three states that you've

6 identified; right?

7 A. Right.

8 Q. Are there differences there in the way claims are  
handled  
9 in those states like through a industrial commission  
and then  
10 with hearing examiners and all that? Does it differ in  
the  
11 three states?

12 A. A little bit. Each state has a different law.

13 Q. Uh-huh.

14 A. And so you have to follow those. But basically you  
get  
15 your summons and petition and it goes through the legal  
16 process.

17 Q. Yeah. Now, at what stage in the process are you  
involved?

18 A. Like I said, I handle -- I do handle them from the  
19 beginning to the end. A lot of times I get them in the  
middle,  
20 once they are represented or they go litigated or they  
lose  
21 enough time from work; and I will handle it through to  
the end,  
22 until settlement or some type of closure.

23 Q. And you make a sort of factual assessment of the  
claim at  
24 some point; right?

25 A. Correct.

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1 Q. And then do you get legal -- a legal opinion about  
it from  
2 the lawyers retained by your employer?

3 A. Usually I'll call in the legal counsel when it goes  
4 litigated. If there's something that I'm not quite  
sure of, I  
5 don't understand or make sure I'm doing it correctly, I  
will  
6 call and ask for advice.

7 Q. Then of course in all of this you are there to  
serve the  
8 interests of your employer?

9 A. Correct.

10 Q. And need to -- well, let me ask you. I'm not  
trying to now  
11 cause you to disclose any of the, you know, settlement  
12 strategies of your employer or something like that.

We're not  
13 asking you about that. But is your performance  
evaluated in  
14 accordance with how many claims you allow or disallow  
or  
15 anything like that?

16 A. No.

17 Q. And when you assess the status of the claim, you're  
going  
18 to give the benefit of the doubt to your employer, I  
take it?

19 A. That's correct.

20 Q. And let the lawyers dispute it.

21 A. Correct.

22 Q. Okay. And when we talked yesterday, I think you brought up

23 the subject of one of the things that has happened to you all

24 the time in your work is you've had a preconceived idea or a

25 notion of how it was going to come out and then you had to

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1 change your assessment?

2 A. That's right.

3 Q. Yeah. But of course I didn't want to carry too far with

4 that as an analogy to a juror because you know a juror has to

5 be impartial and weigh the evidence and follow the instructions

6 of the court. So you understand that, I trust?

7 A. Yes, I do.

8 Q. Now, we talked a bit yesterday about a juror's role in a

9 case and how the first task is to determine whether the  
10 evidence proves the crime charged beyond a reasonable doubt.

11 You'll recall that discussion, of course.  
12 A. Yes.  
13 Q. And in cases that do not involve the possible  
penalty of  
14 death, criminal cases, what the jury does is hear the  
trial,  
15 hear the evidence, make a decision, not guilty. Of  
course if  
16 it's not guilty, that's the end of it. If the decision  
is that  
17 the crime has been proved beyond a reasonable doubt,  
the jury  
18 returns a guilty verdict, and then that is the end of  
it for  
19 the jury and the court takes over the task of  
sentencing the  
20 defendant.

21 And that's something that's done as a result  
of an  
22 additional hearing that happens before the court  
without a  
23 jury. And before that hearing, additional information  
is  
24 collected, not only with respect to more information  
concerning  
25 the offense itself and the circumstances of it, but a  
lot of

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1 information concerning the defendant, the person who's

been

2 found guilty. And that information is of the type that  
goes  
3 into that person's life history, really where he or she  
was  
4 born and raised, what kind of a family background there  
is --  
5 was and is, and family relationships, employment  
history, prior  
6 criminal record, if any; all of these things that go up  
to make  
7 each human being's life different from all others and  
make us  
8 all individuals, individual.

9 And then there's a hearing at which the  
prosecution  
10 may speak and the defense and argue, if necessary, and  
then the  
11 judge makes a particularized decision that is  
particular to  
12 that individual, taking into account the offense and  
taking  
13 into account all that has been shown about the  
offender, so  
14 sentencing is a very individualized judgment.

15 Now, it is different when the crimes charged  
involve  
16 the possibility of a sentence to death or life in  
prison  
17 without any possibility of ever being released. Under  
federal  
18 law -- and this differs among the states, also -- but  
here



19 we're talking -- we're in a Federal Court talking about  
federal  
20 laws, and the federal law is true in all Federal  
Courts, of  
21 course. But the federal statutes say that a decision  
of life  
22 or death for a person is a decision not to be left to  
judges;  
23 that goes to juries. Understand?  
24 A. Yes, I do.  
25 Q. And you knew that earlier, I trust?

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1 A. Yes.  
2 Q. And you knew that when you got your jury summons  
that this  
3 case involved crimes for -- charges of crimes for which  
death  
4 is a possible punishment?  
5 A. Yes, I did.  
6 Q. And so when you came to page 28, 27 and 28 of the  
7 questionnaire, it didn't surprise you that we asked you  
some of  
8 your views of the death penalty, I trust; is that  
right?  
9 A. Correct.  
10 Q. Okay. Now, I'd like you to take time to read to

11 yourself -- you know, I refer to page 27 because that's  
this  
12 preliminary statement that's in the questionnaire, of  
course,  
13 that Mr. Nichols is assumed to be not guilty and that  
we ask  
14 you these questions not because of an anticipated  
outcome but  
15 of the need to know something in advance of your views.

16 So take a moment to read what you wrote us.

17 You have in mind the subject matter. Before  
answering  
18 these questions, has the subject of the death-penalty  
and life-  
19 in-prison-without-release punishment for murder been  
something  
20 that you've thought very much about?

21 A. Not a whole lot before this.

22 Q. All right. And of course you're aware of a broad  
range of  
23 disagreement of people, differing attitudes and  
opinions about  
24 this subject and that the law has changed from time to  
time and  
25 the issue gets debated and gets debated particularly in  
places

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1 where a death sentence is about to be carried out,  
which is

2 happening in Colorado in the state system now. I'm  
sure you're

3 aware of that.

4 A. Yes, I am.

5 Q. Okay. And the reason I asked about your previous  
thinking

6 about it is simply, you know, some people have been  
exposed in

7 some way or another to that question in their lives  
because

8 sometimes they read a book or watched a movie or  
they've had an

9 interest in it. And what I hear you saying now is you  
didn't

10 focus on it that much before we asked you to. Is that  
fair

11 assessment?

12 A. That's pretty fair assessment.

13 Q. Okay. Now, since you answered the questionnaire on  
the

14 17th of September, have you thought some more about it?

15 A. Yes, I have.

16 Q. And, you know, that's a natural reaction to this,  
knowing,

17 too, that you're going to be asked some more. As you  
are here

18 with us this morning, do you have any different  
opinions from

19 what is expressed here in this questionnaire?

20 A. Pretty much the same.

21 Q. Okay. And here the way I understand what you  
wrote, you  
22 were focusing on the crime, what kinds of crime. And  
of course  
23 that's the thrust of the question, what kinds of crime  
would in  
24 your mind make a penalty of life in prison without ever  
being  
25 released appropriate and what kind of crime would make  
a death

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1 sentence appropriate.  
2 Now, I want to advise you of the procedure  
that is  
3 actually followed in court when a defendant -- in  
Federal Court  
4 when a defendant has been found guilty of a crime for  
which  
5 these punishments are possibilities.  
6 And as I said, under federal law, it's a  
matter for a  
7 jury's decision. And really the jury has three  
choices. One  
8 is life in prison without the possibility of ever being  
9 released, and it means just that, there's no parole or  
any kind  
10 of release. The second is death. And the third is  
some lesser  
11 punishment than either of those two in which event the

jury

12 returns the issue back to the court. So those are the  
choices.

13 The life-or-death choice depends entirely on the jury's  
14 decision.

15 Now, just as I have described the process for  
16 sentencing in other kinds of criminal cases where  
there's a

17 guilty verdict, where more information is provided, so,  
too, in

18 this situation where there -- that is, in jury  
sentencing --

19 more information is provided. And that is done in  
really a

20 second trial. The first trial the question is: Does  
the

21 evidence support the charge beyond a reasonable doubt.  
The

22 jury doesn't consider punishment at that stage. And  
they have

23 to focus simply on the questions about what the  
Government has

24 to prove and whether they've done it.

25 Now, if there's a guilty verdict, then we turn  
to the

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1 question of punishment; and at this stage -- again,  
just like a

and 2 trial, both sides of course are here and represented  
3 present information, the Government producing  
information with  
4 witnesses and exhibits and the like just as at trial,  
which we  
5 refer to normally as aggravating factors and which  
suggest to  
6 the jury that death is a justified punishment, not only  
for the  
7 crime but for the defendant.

8 At the same hearing, the defense presents  
information  
9 that we refer to as mitigating factors which go to  
suggest that  
10 death is not a deserved punishment for this person.  
And it is  
11 there that the information includes the same kinds of  
things  
12 that I mentioned before in judge sentencing: A lot  
about the  
13 background of the defendant, who he is, what he is,  
what he's  
14 done in life, those things.

15 And then the court gives some detailed  
instructions  
16 and advises the jury what aggravating factors are there  
to be  
17 considered and what mitigating factors may be  
considered and  
18 then gives some questions to the jury that sort of aid  
in the  
19 analysis of the particular information that is

provided. And

20 of course we can't do that in advance because, just as  
not

21 knowing the evidence in advance, I can't tell you what  
these

22 are going to be, if there were a conviction, because,  
you know,

23 we have to talk, therefore, not about Mr. Nichols, but  
we have

24 to talk about the general process. Follow me?

25 A. Yep. Yes.

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1 Q. Then what the jury has to do is, after these  
instructions,

2 discuss all that they have seen and heard and then make  
a

3 decision, and that decision, of course, is a life-or-  
death

4 decision, whether the defendant should live or die.  
And that

5 decision is not something that can be done by some sort  
of

6 formula, or some sort of arithmetical analysis or  
equation or

7 something. It is really at bottom a moral judgment to  
be made

8 by jurors. But before making it, they have to consider  
all of

9 the aggravating and mitigating circumstances or

factors. You

10 follow that?

11 A. Yes, I do.

12 Q. And do you believe that you could do that?

13 A. I think so.

14 THE COURT: Okay. Now we have questions from  
counsel,

15 beginning with Mr. Ryan for the Government.

16 MR. RYAN: Thank you, your Honor.

17 VOIR DIRE EXAMINATION

18 BY MR. RYAN:

19 Q. Good morning.

20 A. Good morning.

21 Q. My name is Pat Ryan. I'm the United States  
Attorney in

22 Oklahoma City. I'm here with other prosecutors to  
present the

23 evidence against Mr. Nichols in this trial.

24 I have just a few questions for you 'cause his  
Honor

25 covered most of mine, but for the last 16 hours, I've  
been

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1 trying to think of what vacation spot you'd rather be  
at in

2 November than spend your time with us.



3 A. Europe.

4 Q. Where are you going or where were you going?

5 A. Where may I be going?

6 Q. Where are you going to go in the spring?

7 A. London and Paris.

8 Q. Have you ever been over to Europe?

9 A. No, I haven't.

10 Q. Now, you have two small children.

11 A. Yes.

12 Q. They must be starting to get pretty active.

13 A. Very.

14 Q. What kind of things are they into?

15 A. Everything.

16 Q. Are they into any sports or dance, things like  
that?

17 A. One does some sports in the spring and summer. The  
little

18 one is preschool age, so . . . .

19 Q. Now, you have a sister who is a lawyer?

20 A. Correct.

21 Q. And a sister-in-law who is a lawyer?

22 A. Correct.

23 Q. And we talked about your sister yesterday, the one  
that

24 practiced up in Eaton and was a municipal judge,  
apparently in

25 Alt for some time. What about your sister-in-law:

What does

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1 she do?

2 A. She owns a law firm here in Denver.

3 Q. Is she your brother's wife?

4 A. No. My husband's brother's wife.

5 Q. And she practices here in Denver. Do you know the  
nature  
6 of her practice?

7 A. Work comp., personal injury, liabilities.

8 Q. As far as you know, she doesn't do criminal work?

9 A. Not that I know of.

10 Q. One of the things that you mentioned in your  
11 questionnaire -- and if you want to turn to Question  
104, it's  
12 on page 23 -- see at the bottom of the page there?

Could you

13 tell me what that's about?

14 A. My mother-in-law just talked about this just about  
a month

15 or so ago. I hadn't even realized this had happened,  
but she

16 just told me of a break-in in their house, just a petty  
theft.

17 Q. No, I was referring to -- let me go back here.

18 A. Oh, this one.

19 Q. You see where it says --

20 A. Oh.

21 Q. Uses the word "shooting."

22 A. Yeah. How in depth do you want me to get?

23 Q. Just very general. I'm just simply trying to  
determine

24 what effect this had had on you, if any.

25 A. There was a shooting. My brother-in-law was  
questioned

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1 regarding it. It had to do with his ex-wife and  
spouse,

2 friend.

3 Q. You weren't present?

4 A. No.

5 Q. You wouldn't foresee, I take it, that this would  
have any

6 effect on how you might view this case?

7 A. No, it was completely different.

8 Q. Now, do you recall where you were on April 19 of  
1995?

9 That's the day that the Murrah Building was bombed.

10 A. I was at work.

11 Q. Did you hear it on the news?

12 A. Yes, we did.

13 Q. On television --

14 A. On the media. Radio.

15 Q. When was the first time that you saw any images on  
16 television?

17 A. Probably that evening.

18 Q. Okay. What was your reaction?

19 A. Unbelief. Unbelief.

20 Q. Did you have a emotional response?

21 A. Yeah.

22 Q. What was it?

23 A. Overwhelming grief, sadness.

24 Q. Now, with respect to publicity, we talked about  
that some

25 yesterday, or you did with his Honor. You talked about  
the

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1 fact that you had -- I think the words you used were  
that you  
2 had seen a little bit on -- in the media about this  
case; is  
3 that right?

4 A. A little, yes.

5 Q. But as you sit here today in the -- would you like  
a glass  
6 of water?

7 A. No, I'm fine.

8 Q. Okay. As you sit here today in the jury box, you  
realize,

9 of course, that no witness has testified?

10 A. On this --

11 Q. In this case?

12 A. I haven't even followed it.

13 Q. Well, we haven't started the trial. We haven't  
even picked

14 a jury yet.

15 A. Right; there isn't --

16 Q. There's not been any evidence put forth against Mr.  
Nichols

17 at all; you realize that of course. Do you believe  
that you

18 will be able to afford him the presumption that he sits  
here

19 innocent today of the charges and require the United  
States to

20 present evidence that will satisfy you as to his guilt,  
if we

21 can?

22 A. I thought about that last night; and I think, yes,  
I can.

23 Q. All right. Now, you understand that, you know, as  
lawyers

24 for the United States, it's our intent to produce that  
evidence

25 and to convince you that he's guilty; and in the same  
-- by the

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of this  
is  
not what  
believe is

1 same vein, it's our intent to ask the jury at the end  
2 case to return a sentence of death in the event that he  
3 found guilty. But his Honor has explained to you it's  
4 the United States wants; it's what you as a juror  
5 the morally correct sentence. Do you appreciate that?  
6 A. Yes.  
7 Q. And there's a process. His Honor explained the  
process  
8 that the law demands that a juror engage in.  
9 A. Correct.  
10 Q. And one of the principles is there is no automatic  
death  
11 penalty, no matter how serious the crime, no matter how  
many  
12 people were killed, no matter how heinous. You still  
must  
13 listen and consider all of the evidence before arriving  
at a  
14 decision. Can you do that?  
15 A. I've never had to, but I would say yes.  
16 Q. Because the taking of a person's life is a serious  
matter.  
17 You would agree with that, wouldn't you?

18 A. Yes. Yes.  
19 Q. And so if I were to ask you, you know, what kind of  
verdict  
20 you would render in this case or any other case in  
which you  
21 hadn't heard what the circumstances were, the  
mitigation, the  
22 role of the defendant and all of that, do you think  
there's any  
23 way you could answer that question before the evidence  
is  
24 heard?  
25 A. No.

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1 Q. So can you in good conscience tell both counsel for  
the  
2 United States and counsel for Mr. Nichols that you can  
give all  
3 parties a fair trial here?

4 A. I believe so.

5 MR. RYAN: Thank you very much.

6 THE COURT: Mr. Tigar.

7 VOIR DIRE EXAMINATION

8 BY MR. TIGAR:

9 Q. Good morning.

10 A. Good morning.

you had 11 Q. I wasn't clear; which of the -- you were going --  
12 planned this trip with two sisters; is that correct?  
13 A. That's correct.  
14 Q. Is that the New York sister and the Greeley sister?  
15 A. It's the Eaton sister and the Fort Collins sister.  
York, I 16 Q. Oh, I see. All right. The sister who lives in New  
17 don't want to disclose where that is, but what part of  
the 18 state is that?  
19 A. Upstate.  
20 Q. Upstate? Up near Albany?  
21 A. Correct.  
22 Q. You say she lives on a farm and has critters?  
23 A. Yes.  
24 Q. What kind does she have, if you know?  
25 A. They have couple cows and some chickens and a horse  
or two

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1 and just the basic --  
2 Q. I see. As in milk cows or beef, if you know?  
3 A. Beef, I believe.  
4 Q. Beef. So they -- what, buy a steer at the sale and  
then



5 keep it over or --

6 A. I believe so, yes. Personal reasons.

7 Q. Now, in college -- would you look at page 7 of your

and

8 questionnaire. You said your favorite subject was math

9 law. What kind of law did you study?

10 A. Business.

11 Q. Business law?

12 A. Yeah.

13 Q. And do you use that in your work?

workers'

14 A. I may. It was a little different type, since I do

15 comp. I think it helps.

what

16 Q. And your least favorite subjects, could you tell me

17 was the -- what made those the least favorite?

18 A. The professors.

ethics

19 Q. And the ethics and social studies: What kind of an

20 course was that?

I did

21 A. You know, I don't really remember. I just remember

22 not like it. It wasn't presented very well.

that you

23 Q. I want to ask some about this -- the kind of work

right?

24 do. I guess you talk to lawyers almost every day;

25 A. Yes.

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1 Q. Now, if a claim -- when a claim comes to you, say  
out of  
2 Nebraska -- that's one of your states?  
3 A. Correct.  
4 Q. And will there already be an administrative process  
going  
5 on, or will you have the claim, usually, before that  
process  
6 starts?  
7 A. I have it before.  
8 Q. And usually are the people that you're talking to  
--  
9 they're employees of some part of your company; is that  
right?  
10 A. Correct.  
11 Q. And they're represented by lawyers?  
12 A. Not always. Not always.  
13 Q. Oh, sometimes you talk directly to the employee?  
14 A. Correct.  
15 Q. Now, when you talk to lawyers, are these states  
where the  
16 lawyer gets a fee from the public treasury, or will the  
lawyer  
17 be getting -- be looking to the worker client to get a  
fee?  
18 A. From the worker.

system 19 Q. All right. And does that -- how do you think that  
20 works? I mean do you think it's fair --  
21 A. I've seen a lot of unfair trials.  
22 Q. Pardon?  
23 A. I've seen a lot of unfair trials.  
24 Q. You have. What was unfair about them?  
lot of 25 A. Well, it's very employee-oriented, takes an awful

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front of 1 proof from us to defend it. I've seen people go up in  
2 the judge and actually say it didn't happen at our  
facility, 3 yet the judge rules in their favor. Certain things  
like that. 4 Q. And as -- do you have any judgment about the kind  
of 5 lawyers that take those sorts of cases?  
6 A. Yes, I do.  
7 Q. And what is that?  
8 A. They're in it for the money, basically. They're  
the small 9 claims that don't . . . they're not really there to  
help the 10 employee. Put it -- we could help them just as well  
without

11 it.

12 Q. How do you think that system could be improved,  
then?

13 A. I don't know.

14 Q. Do you think that you could -- you could help the  
employees

15 just as well without their having --

16 A. In certain cases, yes, we can.

17 Q. Now, you said that you watch TV between one and  
three hours

18 a day; is that right?

19 A. Approximately.

20 Q. Okay. And I'd like you, if you would, please, to  
turn over

21 to some of these media answers. Let's see, that would  
be

22 page -- excuse me -- shall we try page 36, please.

23 If you look at Question 157, I know you talked  
about

24 this yesterday. You do have a co-worker who did visit  
the

25 Murrah Building site; correct?

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1 A. Correct.

2 Q. And -- about when was that?

3 A. The spring, I believe it was.

having 4 Q. The spring. And what was her sense of -- from  
5 visited there?  
6 A. Sadness, very much.  
7 Q. She related that to you?  
8 A. Oh, yes.  
9 Q. You say, "Oh, yes"?  
feelings 10 A. Yes, she did. She's very adamant about her  
11 towards it.  
12 Q. Towards what?  
13 A. Towards the bombing.  
of 14 Q. I see. And had you talked to her about the trial  
15 Timothy McVeigh?  
16 A. I don't think so.  
17 Q. Was her --  
18 A. I mean just --  
19 Q. I'm sorry?  
think I 20 A. -- just regular talk through the office. I don't  
21 ever really sat down there and talked with her.  
Timothy 22 Q. Was her visit before or after the verdict in the  
23 McVeigh case?  
24 A. Before.  
25 Q. Pardon?

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1 A. Before.

2 Q. Well, could you look at page 33. I'd like to take  
a look

3 at Question 144.

4 "If you have read or heard anything about the  
Oklahoma

5 City bombing, please indicate where you heard or read  
it." And

6 then you checked these. Now, TV news, where do you --  
what TV

7 news do you look for?

8 A. As I said, it's basically just whatever channel we  
have on.

9 I don't really --

10 Q. Do you have -- you'll forgive my ignorance of this.  
Do you

11 all have cable up there in Weld County?

12 A. Yes, we do.

13 Q. Do you -- I figured you did. But then what  
stations do you

14 get, what news stations? Do you get the Denver ones?

15 A. Oh, yes.

16 Q. So you get Denver media as well as whatever local  
stations

17 there are?

18 A. Correct.

19 Q. Do you have a favorite TV news program?  
20 A. No.  
21 Q. Then it said -- oh, do you have TV in your office?  
22 A. No.  
23 Q. Then it says radio news. When do you -- what time  
of day,  
24 if there is one, do you listen to radio news, usually?  
25 A. Usually when I'm running the kids around, I listen  
to the

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1 radio.  
2 Q. Okay. And there are news programs on?  
3 A. Uh-huh, yes.  
4 Q. Is there a radio in your office?  
5 A. Quite a few.  
6 Q. Quite a few. So different people have them at  
their  
7 workplace?  
8 A. Correct.  
9 Q. And that in fact, you heard about the Oklahoma City  
bombing  
10 because somebody in your office had the radio on; is  
that  
11 right?  
12 A. Correct.

13 Q. Did you happen to have the radio on at that time --

14 A. No, I don't have --

15 Q. -- in your space?

16 And then it says newspaper. I noticed you  
mentioned

17 earlier in the questionnaire you read The Greeley  
Tribune. Any

18 other newspapers that you read?

19 A. No.

20 Q. So whatever you would have read in the newspaper,  
would

21 have been in The Greeley Tribune; is that right?

22 A. Correct.

23 Q. And then magazines. What magazines do you remember  
reading

24 about the case?

25 A. I don't know. I just -- you see it everywhere.

1655

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1 Q. Right.

2 A. I'm sure it was probably in a . . . I don't know.

3 Q. What news magazines do you read?

4 A. I'll pick up a magazine, usually, wherever I am and  
flip

5 through it, so I really couldn't -- I don't read one

6 specifically. But if I'm sitting somewhere and they're



around,

7 I will --

8 Q. I have one of those supermarket check-out line  
9 subscriptions to most of the magazines I read. You're  
not --

10 A. No.

11 Q. You don't do that. You read them at friends'  
houses?

12 A. No.

13 Q. Okay. Just wherever you are?

14 A. I read -- like doctors' offices.

15 Q. Okay. The doctor's office and the dentist's  
office?

16 A. Correct.

17 Q. Waiting-room subscription?

18 A. Correct.

19 Q. I've got one of those, too. And can you -- is  
there  
20 anything that stands out in your mind about those?

21 A. No.

22 Q. Then you say that you talked to -- had  
conversations and

23 heard other people discussing the case. And I'd like  
to focus

24 on that a little bit. Has this -- since you got your  
first

25 jury summons, have you talked about the possibility  
that you

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1 might be serving, with people in your office?

2 A. I've informed my manager, yes.

3 Q. And what did your manager say and what did you say,  
if you

4 remember?

5 A. "Really?" I said, "Yes." Not a whole lot. I told  
him I

6 couldn't discuss it, just that I may be called down.

7 Q. Now, did you talk about it with your husband?

8 A. Yes.

9 Q. Okay. And anybody else?

10 A. Oh, all the co-workers know.

11 Q. They all know?

12 A. They all know.

13 Q. And what have they said to you about it?

14 A. They've all had their opinions.

15 Q. And what -- everybody has an opinion; right?

16 A. Oh, yeah.

17 Q. All right. Well, could you share with me what  
those

18 opinions were.

19 A. Basically that he's guilty, to narrow it down.

20 Q. Okay. Did anybody -- nobody said he's not guilty  
that

21 you've --

22 A. No.

23 Q. And now, these co-workers in your office, how many  
people

24 would you put in that group of co-workers; that is,  
people that

25 you see on a fairly regular basis in your office?

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1 A. Approximately 15.

2 Q. Going back to the -- to April 19, when you were  
asked what

3 your first feelings were, you said of overwhelming  
grief. What

4 was it that struck you as the most grief-producing, the  
most

5 tragic parts of that bombing as --

6 A. Children.

7 Q. The children. And do you know how it was that  
children

8 came to be present in a federal building?

9 A. Day care.

10 Q. Day care. And when's the first time you can  
remember

11 seeing anything about Timothy McVeigh?

12 A. I'm not sure if it was a week or an -- I can't give  
an

13 absolute -- approximate date.

hearing 14 Q. What's the first thing you can remember seeing or

15 or reading about Terry Nichols?

it. It 16 A. It was sometime after . . . I can't put a time to

17 was after -- I'd say it had to be at least a week or  
two after.

came in 18 Q. Do you know, as you sit -- do you remember how he

19 contact with the authorities?

20 A. No, I don't.

whether 21 Q. What other facts do you know about -- do you know

22 he's married or not?

23 A. No.

respect 24 Q. You had mentioned in your questionnaire that with

there were 25 to interracial marriages, some work, some don't. If

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were 1 evidence that he has an interracial marriage and there

2 children of that marriage, would that concern you?

3 A. No.

that you 4 Q. Now, you mentioned that -- over here at page 34,

5 had heard of Michael Fortier and Lori Fortier. Can you

Michael 6 summarize for me, let me know what you've heard about  
7 and Lori Fortier?  
8 A. Yes. I'm not sure, just heard names throughout the  
news 9 media. That's why I just said I just heard the names.  
10 Q. All right.  
11 A. I don't really put faces or places with them.  
live? 12 Q. Okay. Do you know where Michael and Lori Fortier  
13 A. No.  
Fortier is 14 Q. Do you have a -- do you remember what Michael  
15 supposed to have said about this case?  
16 A. No.  
Question 17 Q. Now, if you turn to page 36, please. You say at  
18 158, "McVeigh and Nichols organized and followed  
through," and  
19 that's with --  
20 A. Oh, yes.  
not want 21 Q. -- with the bombing. Just basic facts, really did  
22 to hear all the details.  
of 23 Now, given your feeling that the loss of life  
24 innocent children, was this at the time you wrote --  
was this a  
25 strong feeling that you had that they followed through?

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1 A. What I wrote?

2 Q. Yes.

3 A. What do you mean?

4 Q. Did you feel strongly that based on what you read  
that

5 Terry Nichols organized and followed through with the  
bombing

6 along with Timothy McVeigh?

7 A. Yes.

8 Q. And then on the next question, 159, you say:  
"Please

9 summarize what you've seen, heard, read about Terry  
Nichols."

10 "Not much. Mostly he helped organize."

11 What was it -- what had you formed the opinion  
that he

12 did to organize, based on what you'd read?

13 A. That he helped gather materials. I just think  
gather

14 materials and help -- I don't know if he helped with  
the truck

15 rental or not.

16 Q. And then the next question you answer, "Based  
mostly on

17 media and friends, guilty of this crime"; right?

18 A. Correct.

19 Q. Now, as you sit there today, do you think that the  
sentence  
20 of death that the jury passed on Timothy McVeigh was  
21 appropriate?  
22 A. Yes, I do.  
23 MR. MACKEY: Objection.  
24 THE COURT: Overruled.  
25 BY MR. TIGAR:

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And  
cases in  
this  
1 Q. If you would turn to page 28 of your questionnaire.  
2 when you answered these questions about the kinds of  
3 which the death penalty should be imposed, did you have  
4 case in mind?  
5 A. Yes, I did.  
"Used on  
Correct?  
6 Q. And on your answer to Question 124B, you say:  
7 those who plan or follow through with murder."  
8 A. Correct.  
crossed out  
9 Q. And you'd written something originally and then  
10 and written "follow through"; right?  
11 A. Yes.

12 Q. Then when you got to page 36, you wrote that  
"McVeigh and  
13 Nichols organized," and here's that word again,  
"followed  
14 through with the bombing"; right?  
15 Based on everything you've heard and read,  
without  
16 hearing any more, do you think that the death sentence  
is the  
17 appropriate sentence for someone who organized and  
followed  
18 through this bombing that killed all these people?  
19 MR. MACKEY: Objection.  
20 THE COURT: Sustained.  
21 That's just a difference here between the  
lawyers with  
22 respect to the phraseology. Don't read a lot into it.  
We're  
23 going to -- if you're on the jury, we'll have a lot of  
24 differences like that.  
25 BY MR. TIGAR:

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1 Q. Well, there will be differences, lawyers will  
object and  
2 the Judge will sustain and so on.  
3 You remember Mr. Ryan asked you about  
specifically



4 your attitudes about this case. Do you remember that?  
5 Maybe not. If not, okay. Don't worry about  
it.

6 A. Okay.

7 Q. I'd like to follow up on his questions of you, as I  
have  
8 them here in my notes.

9 What did -- when the Judge said to you that  
there  
10 would be -- there might be evidence of aggravating  
11 circumstances, aggravating factors, do you recall that?

12 A. Uh-huh.

13 Q. What did that mean to you?

14 A. Did he say his personal life that would be brought  
in after  
15 the decision was made, guilty or not guilty?

16 Q. And what did the word "mitigating factors" means to  
you?

17 A. It was a part that you would bring in afterwards.

18 Q. After what?

19 A. After the verdict.

20 Q. And not talking about this case, but have you  
followed in  
21 the paper the -- Mr. Davis, the man who's going to be  
executed

22 next Monday?

23 A. Not real well, no.

24 Q. Do you have an opinion about whether that was  
appropriate?

25 A. Yes, I do.

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Juror No. 348 - Voir Dire

1 Q. Okay. And your opinion is that it is appropriate?

2 A. Yes.

3 Q. And what is it that leads you to that conclusion?

4 A. Such a senseless, brutal murder.

5 Q. Do you think that the death penalty is the appropriate

6 punishment for anyone convicted of a senseless, brutal murder?

7 MR. MACKEY: Objection.

8 THE COURT: Overruled.

9 BY MR. TIGAR:

10 Q. That you know, you can answer.

11 A. I have to take in the circumstances.

12 Q. What circumstances?

13 A. There's different circumstances with each crime.

14 Q. With each crime.

15 And what do you mean by that?

16 A. I would say if it was thought out, planned, innocent people

17 taken as opposed to an accidental type of crime.

18 Q. And so in any senseless or brutal murder where a lot of

19 innocent people died and there was no accidental aspect

to it,

20 you think the death penalty is the appropriate  
punishment?

21 MR. MACKEY: Objection, Judge.

22 THE COURT: Overruled.

23 JUROR: I really can't say because I don't --  
I don't

24 know them all. I wouldn't want to group them all  
together.

25 And it's hard to try and answer something like that.

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Juror No. 348 - Voir Dire

1 BY MR. TIGAR:

2 Q. I know it's hard to answer it hypothetically. I'm  
just

3 asking you if you would start out thinking that it is  
the

4 appropriate punishment.

5 A. Yes.

6 MR. TIGAR: Thank you very much.

7 VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q. And then starting out that way -- and again, I'm  
not trying

10 to lead you into any answers. But, you know, when you  
get all

11 of these questions from me and from lawyers on both  
sides, it

12 gets a little confusing, and sometimes it gets a little  
13 confusing with respect to your answers. And I am not  
14 criticizing you; please understand that.

15 But bottom-line-type question is whether you  
can --

16 and you have to assess this -- whether you can decide  
fairly in

17 this case based on all that you see and hear as  
evidence in the

18 case, both as to whether the evidence proves guilt and,  
if it

19 does, what is the justified sentence. And what is your  
answer

20 to that?

21 A. If I can do this?

22 Q. Yes.

23 A. Yes. I could.

24 THE COURT: All right. Now, we can't tell you  
about

25 selection yet because we need to talk to more people,  
as I'm

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1 sure you appreciate; but we will get back to you with  
2 information when we can. In the meantime, you'll have

to, I'm

3 afraid, be in sort of uncertainty. And that's part of  
the

4 process of selecting a fair jury, as I'm sure you  
appreciate.

5 It's not something we can do quickly.

6 So, please, go from here now with the  
assumption that

7 you're going to be on this jury and have the  
responsibilities

8 we've been talking about. And so be careful about the  
things

9 that you read, see, and hear so that you do not come  
into

10 contact with anything that could influence your  
fairness and

11 interfere with your duty to decide on the evidence and

12 information presented, and please do not discuss this  
process,

13 either, with anyone so you can come back to us if we  
ask you to

14 and do what you've just said you could do: Decide  
fairly.

15 Will you do that?

16 JUROR: Yes, I will.

17 THE COURT: All right. Thank you. You're  
excused

18 now.

19 712.

20 MR. TIGAR: I'd like to be heard at recess,  
your

21 Honor.

22 THE COURT: All right.



16 And at that time also with us were lawyers for  
both  
17 sides of the case and Mr. Nichols. And let me  
reintroduce  
18 people here so you know who's here with us. Mr.  
Lawrence  
19 Mackey at this first table, Miss Beth Wilkinson were  
there for  
20 the Government. They're joined now, this morning, by  
21 Mr. Patrick Ryan, Mr. James Orenstein, who were not  
there  
22 before but have now joined us.

23 You also recall Mr. Michael Tigar and Mr.  
Ronald Woods  
24 who are -- were previously introduced; and of course  
Terry  
25 Nichols, the defendant, was there.

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Juror No. 712 - Voir Dire

1 And then you'll recall that I gave you and the  
others  
2 present some explanation about the background of this  
matter  
3 and what may be involved in jury service, including  
that the  
4 case arises as the result of an explosion in a federal  
5 building -- office building in Oklahoma City, Oklahoma,  
on  
6 April the 19th, 1995, and charges were then filed by  
the

7 Government in Oklahoma City charging a man named  
Timothy James  
8 McVeigh and Terry Nichols and other persons not named  
in the  
9 indictment with a conspiracy to bomb that building and  
to kill  
10 and injure the people in it, and then the indictment  
charges  
11 acts carrying out such a plan and the murder of eight  
law  
12 enforcement agents in the building. Do you recall all  
that?

13 A. Yes.

14 Q. And then I described how the case was transferred  
from

15 Oklahoma to Denver here for trial and also that  
separate trials  
16 were ordered for Mr. McVeigh and for Mr. Nichols  
because the  
17 case could not fairly be considered with both of them  
on trial  
18 at the same time; each deserves separate and  
independent  
19 consideration of the evidence as it may relate to him  
without  
20 considering the other and therefore separate juries,  
the whole  
21 procedure being separated.

22 And of course you are aware -- I told you  
about the

23 fact that Mr. McVeigh was previously tried and found  
guilty and



24 sentenced to death and that that result cannot  
influence a jury

25 in this case or the Court or anybody else because  
that's why we

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Juror No. 712 - Voir Dire

1 have separate trials, so that we have separate  
consideration.

2 You follow along on that?

3 Yes?

4 A. Yes.

5 Q. Then we asked you to fill out this questionnaire.  
And you

6 did it, and you have it in front of you now. And  
please be

7 reassured once again that, as I told you there, your  
answers

8 are being kept private, not given to anybody but those  
of us

9 who are here involved in this process. And we will  
continue to

10 provide as much privacy for you and other members of  
the panel

11 and jury as we can, not using your name, bringing you  
in and

12 out of the courthouse so you can't be photographed, all  
of

13 that; but you recognize that here in the courtroom your  
answers

14 and my questions and the questions you'll get from

counsel are

15 public, this being a public courtroom.

16 Now, I'm going to go over with you some of the  
things

17 that you've answered here and ask you some follow-up  
questions

18 to a few of them. Certainly we're not going to go  
through the

19 whole questionnaire with you. And I'm also going to  
explain

20 some things about the process and ask you some  
questions that

21 are not on the questionnaire. Then the attorneys for  
each side

22 have an opportunity to ask some questions that they  
have.

23 Now, before we begin that, though, I want to  
also

24 review with you some of the fundamental principles of  
law that

25 are applicable here. I touched on these again when you  
were

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1 there for the questionnaire answering session, and of  
course

2 under the Constitution of the United States, in any  
trial, in

3 any criminal court, no matter who the defendant is or  
what the

4 charges against that person may be, there is the  
presumption of  
5 innocence as we refer to it; and that is to say that  
6 Mr. Nichols, like any other person who is accused, sits  
here  
7 with us this morning presumed to be not guilty of these  
8 offenses that have been charged, and that presumption  
carries  
9 throughout a trial and entitles him to an acquittal, a  
verdict  
10 of not guilty, unless a fair-minded jury decides the  
evidence  
11 shows him to be guilty. And as a part of that  
constitutional  
12 principle, it is up to the Government to produce the  
evidence.  
13 The Government makes the charges; let the Government  
try to  
14 prove it. So these lawyers for the Government would be  
15 expected to come forward with evidence to support these  
16 charges.  
17 And then it is a fundamental principle as well  
that no  
18 person accused has any burden or duty to prove anything  
at his  
19 or her trial; there is no obligation to call witnesses,  
and  
20 there's certainly no requirement that the person who is  
the  
21 defendant in the case testify in any way. In fact,  
what juries  
22 are told in cases that go to trial where there is no

testimony

23 from the defendant: You can't consider that at all;  
that's no  
24 kind of admission or doesn't give rise to any sort of  
25 inference. In fact, what is routinely said to the jury  
is:

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1 Don't talk about it; you can't even talk about it.  
Your job as  
2 the jury -- this is what we say in most cases -- is to  
decide  
3 whether the evidence before you proves guilt. And it  
isn't  
4 just a question of probably. It's a question of are  
you  
5 satisfied beyond a reasonable doubt that the evidence  
proves  
6 the crimes charged.  
7 The court gives, of course, specific  
instructions  
8 about what has to be proven. We call them the elements  
of the  
9 crime. And then, you know, when the trial is  
completed, then  
10 the jury is simply asked in a general way, but through  
specific  
11 instructions on the law, all right, has the crime been  
proved  
12 beyond a reasonable doubt. If not, say not guilty.

That's

You 13 your verdict. If so, then your verdict can be guilty.

14 understand all that?

15 A. Yes.

16 Q. You've heard that before.

17 A. Yes.

18 Q. And is it something you believe in?

19 A. Yes.

jury, would 20 Q. And would follow if you were selected for this

21 you?

22 A. Yes.

23 Q. A little about your background. Born and raised in  
24 Montana?

25 A. Correct.

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1 Q. And spent most of your time in the Anaconda?

2 A. Correct.

3 Q. Was your father working there in the mines?

4 A. No.

farm, I 5 Q. What kind of work -- he was born and raised on a

6 guess?

7 A. Yes.

8 Q. In Montana. And then what work was he doing when  
you were

9 growing up in the family?

10 A. Worked for the Job Corps Center, for the Forest  
Service.

11 Q. Oh. Okay. So the relationship to Anaconda doesn't  
have

12 anything to do with mining there?

13 A. No.

14 Q. Then you went to school there, Montana Tech, became  
-- got

15 a degree in mining engineering, and mining has been  
your work.

16 A. Correct.

17 Q. You were up in Gillette for three years. Was that  
in

18 connection with coal mines?

19 A. Yes.

20 Q. And you worked as a engineer there?

21 A. Yes.

22 Q. Now, the kind of mining that was done when you were  
-- you

23 were there for about three years, just before coming  
here; is

24 that right?

25 A. Yes.

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1 Q. Now, is that strip-mining or --

2 A. Strip-mining, yes.

3 Q. Okay. With explosives?

4 A. Yes. Large amount, yes.

5 Q. Now, did you have anything to do with the design of  
the  
6 explosive charges and the actual detonation?

7 A. Yes. Shortly after I came on, we bought a  
dragline, and we

8 got into blast casting which involves shots that have a  
million  
9 pounds of explosives or more in every shot.

10 Q. So that loosens up a lot of material?

11 A. Yes, it does.

12 Q. About how much?

13 A. Anything on the order usually from a shot, about a  
million  
14 yards of material.

15 Q. And we're talking about cubic yards?

16 A. Cubic yards, yes.

17 Q. And somebody has to design that carefully and  
determine

18 where to place the explosive material. Did you do that  
kind of  
19 work?

20 A. Yes, I did.

21 Q. And what type of explosives did you use?

common  
22 A. Ammonium nitrate and emulsion. Heavy ANFO is the  
23 term for it.  
product,  
24 Q. And did your company acquire that as a premixed  
25 commercial product?

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it on  
1 A. No, we bought the components separately and mixed  
2 trucks provided by the vendor and loaded it down the  
hole,  
3 ourselves.

4 Q. And you supervised that activity?

5 A. Yes.

parts  
6 Q. So you have knowledge of some formula as to so many  
7 of this and so many parts of that; is that true?

8 A. Correct.

company up  
9 Q. Okay. You -- did you work for more than one  
10 there?

company, but it  
11 A. No. It was -- it got bought out by another  
12 was all part of the same --

13 Q. Why did you leave Gillette?

14 A. An opportunity to come with a mining company down



here.

15 Q. All right. And as I understand it from page 31 --  
feel

16 free to take a look here so you can see what I'm  
looking at --

17 you do have -- at Question 134, you have an intention  
to learn

18 more about explosives, to become what I think you  
referred to

19 as a certified blaster?

20 A. Correct.

21 Q. What is that certification and who provides it?

22 A. Generally it's given by the states. Each state has  
their

23 own certification process, and provided you have two  
years of

24 blasting experience and can successfully pass a test,  
you can

25 become a certified blaster which enables you to  
basically

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1 detonate explosives.

2 Q. And that's something that you want to get because  
that

3 would help you in your advancement in the mining  
business?

4 A. Yes.

5 Q. What happened to you is that you went into

administration

6 instead of into the field; is that -- am I reading this  
7 correct?

8 A. Correct. My goal is to end up back at a project  
through

9 this company which somewhere in the next six months I  
could be

10 moving to Mexico and being the operations manager at a  
mine

11 there that we're going to start up.

12 Q. As I understand your present work -- and we're not  
asking

13 you to identify the company. Most of these companies  
are

14 relatively small. You're seeking to develop prospects  
with --

15 what, would this company then venture with somebody  
else,

16 producing, providing capital and so forth for a  
prospect to be

17 developed? Is it that kind of thing?

18 A. Yes. In this case it would be, and in some cases  
it would

19 be a hundred percent by our company.

20 Q. Sure. But I got the sense here without knowing it  
that

21 your company needs somebody -- some investors or joint  
22 venturers or something.

23 A. Correct, yeah.

24 Q. Now, is it your part of this task to assess the  
prospect in

25 engineering terms, what kind of a yield might be  
available and

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ore of 1 what kind of costs would be necessary to recover the

2 whatever kind it is?

3 A. Yes.

ore? 4 Q. And are you in a -- seeking a particular kind of

5 A. Yes, we are. Gold.

6 Q. All right. And are you traveling to Mexico?

7 A. Occasionally.

8 Q. Now?

9 A. Yes.

10 Q. And anticipate the possibility of moving there?

11 A. Correct.

12 Q. Did you say in about six months?

13 A. Up to six months. Depending upon the financing.

in 14 Q. Sure. Well, we won't ask you where are gold mines

15 Mexico because we don't want to start a stampede.

a very 16 As I have it, you're married here and you have

17 young son.

18 A. Yes.

19 Q. And when you got the summons for jury service for  
this  
20 particular case, and then again when you were out at  
Jefferson  
21 County filling out this questionnaire, you certainly  
became  
22 aware, I'm sure, that we're talking about a trial that  
may  
23 extend for several months in time, requiring you to be  
away  
24 from your work.  
25 A. Correct.

1675

Juror No. 712 – Voir Dire

1 Q. Did you talk about that with the people you work  
with?  
2 A. Yes.  
3 Q. And what response did you get?  
4 A. Basically a wait-and-see attitude to see if I got  
on the  
5 jury first.  
6 Q. But do you see your job being jeopardized by being  
on the  
7 jury?  
8 A. It could, yes, because of the progression of the  
project  
9 needed to move forward.  
10 Q. And of course they can't fire you --

11 A. Correct.  
12 Q. -- under federal law, you know that. But it's a  
question  
13 of -- you know, comes down to this: Whether your  
attention  
14 would be distracted by a concern about your future in  
the  
15 business while you're here with -- supposed to be here  
with us  
16 focusing on the case.

17 A. Correct.

18 Q. Is there that kind of concern going on?

19 A. Yes.

20 Q. Now, when you say the response was what you've  
described,  
21 is it that if you get selected for the jury, then there  
would  
22 be further discussion; they just want to talk about it  
only if  
23 it becomes a reality; is that --

24 A. Exactly.

25 Q. Okay. So it's negotiable, would you say?

1676

Juror No. 712 - Voir Dire

1 A. Yes.

2 Q. All right. We have it that -- or I have it,  
because you

3 told me, that -- and I'm looking at page 20 and also  
page 22.

4 Let's go to page 20. And then -- and I'm looking at  
Question

5 90, excuse me. And on page 21, there's page 101 --  
excuse me,

6 Question 101. Do you see the reference?

7 A. Yes.

8 Q. You've had some trouble in your neighborhood?

9 A. Yeah, when we lived in Wyoming, yes.

10 Q. Oh, that was in Wyoming, not where you live now?

11 A. No.

12 Q. So it was in Gillette?

13 A. Yes.

14 Q. Was it the same neighbor?

15 A. Yes, it was.

16 Q. Not a happy circumstance to live next door to those  
folks?

17 A. No, it wasn't.

18 Q. Okay. And you -- this all got closed out, I take  
it, when

19 you moved away?

20 A. Yes.

21 Q. Then on page 20, you have a close friend who's a  
lawyer?

22 A. Yes.

23 Q. Back in Anaconda; is that it?

24 A. Yes.

kind of 25 Q. Do you know what kind of work he or she does, what

1677

Juror No. 712 - Voir Dire

1 law?

2 A. I guess --

3 Q. What kind of a law practice, is what I mean.

cases, 4 A. I guess he does mostly civil -- you know, civil

5 lawsuits.

6 Q. Like personal injury and things like that?

7 A. Yes.

now in 8 Q. Okay. And you have some lawyers working with you

9 your company?

10 A. Correct.

the 11 Q. Do you know whether -- of course they're engaged in

objectives? 12 same work you are; that is, to seek the same

13 A. Correct.

with 14 Q. And I take it they're the ones who are involved

things? 15 seeking financing and going into the business end of

16 A. Yes, they have some involvement.

experience as 17 Q. Do you know if any of them had any earlier

18 prosecutors or defense lawyers in criminal cases?

19 A. Not to my knowledge.

Montana? 20 Q. Now, you have a mine of your own, I guess, in

21 A. Yes.

22 Q. And a mining claim, is it?

23 A. Yes, it is.

24 Q. And you go up there and do work on it for  
assessment work,

25 I think they call it?

1678

Juror No. 712 - Voir Dire

1 A. Yes.

2 Q. To keep the claim alive?

3 A. Correct.

4 Q. Has it produced any commercial -- well, I'm not  
talking

5 about under mining regulations what's called commercial  
ore,

6 but have you sold ore from it?

7 A. Yes.

8 Q. And what kind of a mine is it?

9 A. A sapphire.

10 Q. Did you discover this claim?

11 A. Yes. With my father and myself.



12 Q. So, what, is part of the time in your life you've  
been out

13 prospecting for possible ore recovery?

14 A. Yes.

15 Q. Have you done that, a lot of that?

16 A. Yes, I have.

17 Q. Do you have some geology training, I suppose?

18 A. Yes.

19 Q. So as you prospect looking for geological hints  
that there

20 might be valuable ore?

21 A. Yes.

22 Q. How long have you had this mine, mining claim?

23 A. We've had a claim since 1982.

24 Q. And do you have someone else doing some work there?

25 A. No.

1679

Juror No. 712 – Voir Dire

1 Q. So you run up there from time to time and spend a  
few days?

2 A. Correct.

3 Q. That kind of thing?

4 A. Correct.

5 Q. Making sure that you keep your claim alive?

6 A. Yes.

7 Q. Okay. Do you expect that to turn into something  
that would

8 involve you full-time at some future time?

9 A. At some future time, yes.

10 Q. Hope so, anyway, huh?

11 A. Nice retirement.

12 Q. Now -- excuse me. When you -- as I understand from  
what

13 you've told us -- when you married, you changed  
religion and

14 took the same faith as your wife.

15 A. Correct.

16 Q. And how long ago was that that you changed?

17 A. Five years.

18 Q. And that's, what, about the time you got married?

19 A. The time we got married, yes.

20 Q. And you're active in that church now?

21 A. Yes.

22 Q. And is that -- that's a church that sometimes calls  
people

23 to full-time service?

24 A. Correct.

25 Q. Has that happened with you?

1680

Juror No. 712 - Voir Dire

1 A. Not yet, but there's talk.

2 Q. Or your wife?

3 A. My wife, yes.

4 Q. She has served on a mission?

5 A. Not on a mission, no, but she's serving within the  
church.

6 Q. Now?

7 A. A calling, yes.

8 Q. And here in -- where you live?

9 A. Yes.

10 Q. So that's the kind of thing where you don't know  
until you

11 get a call, and then if you get a call, you go?

12 A. Correct.

13 Q. And about how much advance notice is provided, to  
your

14 understanding?

15 A. There's some advance notice.

16 Q. And some room to discuss that?

17 A. Yes.

18 Q. Now, you also have some religious views that could  
affect

19 you as a juror.

20 A. Yes.

21 Q. As I understand it from what you're saying, those  
views

22 would not affect your deciding whether the evidence  
supports

23 the charge, that part of what we're talking about; is

that

24 true?

25 A. I'm not sure if that's what I meant, but --

1681

Juror No. 712 - Voir Dire

1 Q. No, I'm separating two things here.

2 A. Okay.

I don't

3 Q. The way I understand what you've written -- and if

be

4 understand it correctly, you straighten me out; don't

5 hesitant about this.

6 A. Okay.

that you've

7 Q. Because I'm trying to summarize a lot of things

8 said.

9 A. Right.

But you

10 Q. So -- so that we can talk about it a little bit.

11 are concerned about the penalty --

12 A. Right.

13 Q. -- with respect to your religious views.

14 A. Right.

minute,

15 Q. There are, you know -- we'll talk about this in a

here. One

16 but there are two separate aspects to jury service

17 is this matter of deciding whether the evidence  
supports the  
18 charges that have been made, giving the defendant the  
benefit  
19 of any reasonable doubt after reviewing the evidence.  
And then  
20 because of the nature of the charges in this case, the  
21 possibility, if there were to be a finding of guilty  
based on a  
22 decision that the evidence proves it, the jury would be  
asked  
23 to make a punishment decision.  
24 Now, you're separating those two things in  
terms of  
25 your religious views affecting your ability to serve.

1682

Juror No. 712 - Voir Dire

1 A. Right.  
2 Q. All right. So as to the first aspect, you believe  
that you  
3 could hear the evidence and decide whether it supports  
the  
4 charge beyond a reasonable doubt.  
5 A. Yes.  
6 Q. And then the reason that we asked you these  
questions that  
7 you've responded to on page 28 and 29 . . . I don't  
want to

8 hurry you here. You can go back and look at those.

9 A. Okay.

10 Q. Then you told us more about it on page 36. Excuse  
me,

11 page -- yeah, I guess it is page 36. Let me make sure.  
Maybe

12 it was Question 56. I'm lost here. Forgive me a  
moment.

13 There are just too many questions, aren't there?

14 A. Yes, there are.

15 MR. TIGAR: Page 13 may be the one your Honor  
is

16 looking for.

17 THE COURT: Thank you, and it's Question 56.

18 Thank you, Mr. Tigar.

19 BY THE COURT:

20 Q. Page 13, Question 56.

21 All right?

22 A. Uh-huh.

23 Q. We have to ask you these questions because of the  
24 possibility of a guilty verdict or a punishment  
decision to be

25 made by a jury. So if you would just tell us now your  
thoughts

1683

Juror No. 712 - Voir Dire

1 about your ability to decide. And I'm not going to

talk about

2 the process. I just want to hear from you first: If  
you were  
3 in a situation where the jury found the defendant  
guilty and  
4 then the jury was asked to decide with respect -- you  
know,  
5 make a choice among three choices -- one is life in  
prison  
6 without any possibility of ever being released, one is  
death,  
7 and one is something less than both of those in which  
event the  
8 Court would decide. You got confronted with that  
situation in  
9 any case, tell us of your ability to choose between  
life and  
10 death.

11 A. In order to choose death, I would have to look at  
the  
12 actions of the person that was charged guilty and  
determine if  
13 other lives would be saved by putting that person to  
death.  
14 Otherwise, the -- you know, the next -- or the only  
alternative

15 I would consider would be life in prison.

16 Q. Now -- and is this consistent with your  
understanding of  
17 the teachings of your church?

18 A. Yes, we respect the laws as they exist. And, you  
know,

19 given the right to choose, that that's the way that I  
feel on  
20 that certain issue.  
21 Q. People of your faith serve in the armed forces and  
22 render -- and have over our wars and engaged in combat,  
killing  
23 other people because of saving lives in the long run;  
is that  
24 the premise?  
25 A. Correct.

1684

Juror No. 712 - Voir Dire

1 Q. Okay. And so you're applying, are you, the sort of  
same  
2 type of reasoning to the question of punishment as a  
juror?  
3 A. Yes.  
4 Q. Now, let me talk a little about the process so you  
5 understand. Oh, let me just ask you this, too. On  
page 28,  
6 you did write some answers. And I want to make sure  
you're  
7 aware of what you wrote, remember it.  
8 And that goes over onto 29, there, too.  
There's  
9 another question there that you responded to and  
explained your  
10 answer.



11 A. Yes.

12 Q. Okay. Got that in mind?

13 A. Uh-huh.

14 Q. The death penalty is something you've thought about  
before  
15 answering the questionnaire.

16 Before you changed your religious faith, did  
you have  
17 a different view?

18 A. No. It was essentially the same.

19 Q. And sitting here now -- and, you know, you've  
thought about

20 this some more perhaps since you answered the  
questionnaire,

21 have you?

22 A. Uh-huh.

23 Q. And discussed it with anyone else?

24 A. No.

25 Q. Discussed it with your wife?

1685

Juror No. 712 - Voir Dire

1 A. No.

2 Q. Before you got the jury summons, is this something  
that you

3 and she talked about?

4 A. Not much, no.

know, 5 Q. Okay. Well, since September the 17th and, you  
you've 6 considering what you wrote there and to the extent that  
asked 7 thought about it since, are your answers today -- if we  
8 you exactly those same questions, are your answers any  
9 different from what you wrote?

10 A. No.

by you, I 11 Q. So these are -- your answers are well thought out  
12 take it?

13 A. Yes.

14 Q. Now, what happens -- you've never been on a jury?

15 A. No.

to-day 16 Q. Or followed any criminal trials with sort of day-  
17 following?

18 A. No.

19 Q. Or have you?

have, 20 A. As far as appearing in the courtroom, but on TV I  
21 yes.

22 Q. What cases have you followed on TV?

New 23 A. The -- I guess the first bombing trial and then the  
know, 24 York City bombing trial; with my line of work, you  
could do 25 interested in how they got the explosives and what we

## Juror No. 712 - Voir Dire

1 to better secure our area, so I did follow it with some  
2 interest, yes.

-- what

3 Q. And in that regard, you followed the Timothy -- the  
4 the news reported about what was going on here in the  
5 McVeigh trial?

Timothy

6 A. Correct.

of what

7 Q. What did you -- what is your present understanding  
8 the evidence at that trial was about explosives?

9 A. I'm sorry?

what

10 Q. Do you remember what was reported in the news about  
11 the evidence was as to, first of all, what kind of  
12 and then how it was obtained?

explosive

13 A. Yes. I do.

14 Q. Tell us what you remember.

products

15 A. That ANFO, which is the combination of the two  
16 that were used, the ammonium nitrate and fuel oil, were

mixed

17 into a bomb and were detonated with det cord and a  
booster.

booster.

New York 18 Q. Okay. Now, and then with respect to the case in

19 City, what do you understand about that?

20 A. That they used a very similar combination of  
explosive and

21 initiating sequence.

22 Q. Is there anything that you remember hearing on the  
news or

23 reading about in the news, the explosives in both of  
those

24 situations, that seemed implausible to you or you had  
some

25 question about whether this could be true or anything  
like

1687

Juror No. 712 – Voir Dire

1 that?

2 A. No. Based upon my experience with explosives, I  
feel that,

3 you know, what happened really did happen and was the  
only

4 event that happened.

5 Q. Now, you in a way, in a very real way, are an  
expert with

6 explosives?

7 A. Right.

8 Q. And if there were testimony in the case about  
explosives

9 from people who say they are experts, would you listen

10 carefully to what they have to say?

11 A. Definitely.

12 Q. And if you disagreed with something there based on  
your  
13 experience, how would you handle that?

14 A. I would have to disbelieve it, I suppose.

15 Q. Well, would you become your own expert as far as  
the rest  
16 of the jurors are concerned and tell them, no, you  
know, tell  
17 them about your own knowledge?

18 A. I suppose I probably would.

19 Q. Well, let's get back to the penalty thing 'cause I  
kind of  
20 got derailed; but these are all important questions,  
and we  
21 appreciate your cooperation in answering them all.

22 In the cases that don't involve the jury's  
23 participation in sentencing, what happens is there's a  
trial,  
24 the jury decides whether the evidence proves guilt  
beyond a  
25 reasonable doubt; if not, the verdict is not guilty,  
the case

1688

Juror No. 712 - Voir Dire

1 is over. If the verdict is guilty because the jury  
does decide

2 the evidence does convince them beyond a reasonable  
doubt, then  
3 the verdict is guilty and in such a case without this  
penalty  
4 issue being involved of the death penalty possibility  
or life  
5 in prison without release, it's still over as far as  
the jury  
6 is concerned because the penalty decisions get made by  
a judge  
7 in cases of that type.

8                   And a judge doesn't just, you know, make a  
sentence  
9 based on the crime or what he or she has heard at the  
trial.

10 More information is gathered, and there's another  
hearing in  
11 front of the judge; and the information that's gathered  
12 includes more about the circumstances of the offense  
than was  
13 revealed through the evidence at trial and a lot more  
about the  
14 person found guilty, a lot more, including everything  
about  
15 that person, really: The background, sort of the life  
story,  
16 family relationships, work history, you know, what has  
gone on  
17 in that person's life. And that's all provided to the  
court,  
18 and there's a hearing at which both sides argue or  
suggest what

19 the sentence ought to be, and then the judge makes a  
decision:

20 This is the sentence appropriate to this person for  
this crime.

21 And it's a very individualized thing.

22 Now, when the issue is life or death, we don't  
have

23 judges decide that. That's a decision to be made by  
the jurors

24 who come in here sort of as the conscience of the  
community, as

25 we sometimes say, and that's accurate; that's what they  
are.

1689

Juror No. 712 – Voir Dire

1 But before the jury can decide on the issue of  
punishment,

2 using these choices that I've already outlined, they  
have to

3 hear a lot more. So there is a second trial, a penalty  
phase

4 trial; and it is at that time that, much like the cases  
that

5 I've talked about where a judge makes an individual  
decision,

6 the jury has to make an individual decision, and they  
hear from

7 the inform -- they hear information provided by the  
Government

8 in support of the view that death is deserved for this  
person

as 9 and this crime. We refer to that kind of information  
then 10 aggravating factors or aggravating circumstances, and  
presented 11 the -- with respect to the defendant, the jury is  
of these 12 with information about the person's background and all  
mitigating 13 things and anything else that might be considered  
consider all 14 circumstances. And then in the end the jury must  
judgment as to 15 of it and make what really comes down to a moral

be very 16 whether the person should live or die. And it has to  
understand 17 individual, to the defendant, to the juror. Do you  
18 that?

19 A. Yes.

that? 20 Q. Now, what is your assessment of your ability to do

the 21 A. I think I could, you know, go through and listen to  
22 evidence and come to a conclusion, yes.

justified would 23 Q. And your religious view about when death is

24 be a factor in it, as I take it?

25 A. Correct.



## Juror No. 712 - Voir Dire

1 Q. And in the way in which you've explained here, both  
in  
2 writing and here, as to whether lives would be saved by  
it? I

3 mean is --

4 A. If that assessment; if I could make that  
assessment, yes.

5 Q. Now, and whether lives would be saved by it --  
obviously in

6 a war situation we expect lives to be saved by the  
ending of

7 the conflict; and where war is involving this country,  
we think

8 in favor of the interests of the United States.

9 A. Correct.

10 Q. Right?

11 A. Correct.

12 Q. In a situation where there's a murder, how do you  
see the  
13 question of will lives be saved as being answered  
there?

14 A. If it's an individual murder, it would have to be  
based

15 upon the type of person and the personality, I suppose,  
that

16 that person would have. If it were, such as a serial  
killer,

17 you know, there would be potential for other lives to  
be saved

18 if that person were put to death.

19 Q. So would the focus in your mind be on -- I'm not  
trying to

20 talk for you; I'm just trying to get this in a  
framework where

21 we can understand your views.

22 A. Uh-huh.

23 Q. Would the focus be preventing this person from  
killing

24 again?

25 A. Correct.

1691

Juror No. 712 - Voir Dire

1 Q. Is that the principal issue, to you?

2 A. Yes.

3 THE COURT: Okay. Well, we're going to take a  
recess

4 before having counsel ask you some additional  
questions. Bear

5 with us a little while longer. We're going to take  
about a

6 20-minute break, and then we'll have the lawyers have  
an

7 opportunity to question you some more. So you can step  
out for

8 now. Thank you.

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

10 THE COURT: Mr. Tigar.

11 MR. TIGAR: Yes, your Honor.  
12 I wanted to register most respectfully my  
concern with  
13 the sustaining by the Court of the objection to my  
question of  
14 Juror 348.  
15 THE COURT: Yes.  
16 MR. TIGAR: The reason for that question is  
that  
17 Mr. Ryan in interrogating the juror had by summoning up  
a radio  
18 image of a report of the tragedy, caused her to cry.  
When she  
19 cried and was wiping her eyes, he then followed up with  
four  
20 case-specific questions, saying we're going to go get  
the death  
21 penalty in this case, we're going to try to prove this  
case,  
22 very case specific.  
23 Under those circumstances, your Honor, I  
thought I was  
24 entitled to ask her the question whether in this case  
she  
25 thought the case with this destruction that caused that  
much

1692

Juror No. 712 – Voir Dire

1 emotional response, the death penalty was the

appropriate

2 response; and that was why I asked that question,  
because I  
3 thought that in that specific circumstance, it was  
warranted.

4 And most respectfully, having then gone  
through the  
5 questions I was permitted to ask, I would suggest to  
your Honor  
6 a review of the transcript would show that your Honor  
asked her  
7 a closed-ended, "Oh, you can follow the law, can't you"  
kind of  
8 question which contrasted with the relatively more  
9 open-textured questions that your Honor has put to  
Juror 712.

10 I recognize that I'm objecting to your Honor's  
questions when I  
11 do that, but I'm doing that most respectfully.

12 THE COURT: Well, you're certainly entitled to  
do  
13 that. I'll adhere to my rulings in question. We'll  
discuss  
14 that juror, of course, when it comes time for motions  
to excuse  
15 jurors.

16 MR. TIGAR: I understand, your Honor. I want  
to make  
17 sure that our views were on the record in regard to  
that juror.

18 THE COURT: Understood.

19 20 minutes.

20 (Recess at 10:14 a.m.)

21 (Reconvened at 10:33 a.m.)

22 THE COURT: Please be seated.

23 I was told during the recess that our  
television

24 transmission to Oklahoma City has been interrupted.  
Something

25 has gone wrong and was -- the signal was down, if  
that's what

1693

Juror No. 712 - Voir Dire

1 they say, for about an hour. They're working on it.  
But

2 consistent with my announcement, I intend to go  
forward, and we

3 hope that they get the signal up again as fast as  
possible.

4 In the absence of some objection here, I  
intend to go

5 forward.

6 MR. TIGAR: Our view as to whether it should  
be

7 happening at all is already on the record, your Honor.

8 THE COURT: Yes.

9 MR. TIGAR: So . . .

10 MR. MACKEY: We have no objection.

11 THE COURT: Well, I think the persons  
observing there

12 were certainly told about that; and of course, Judge  
Perricone

13 is on the scene advising them, so we'll go forward.

14 We're ready to resume; and counsel for the  
Government

15 go first.

16 Ms. Wilkinson, you have some questions?

17 MS. WILKINSON: I do, your Honor.

18 THE COURT: Please proceed.

19 VOIR DIRE EXAMINATION

20 BY MS. WILKINSON:

21 Q. Good morning, sir.

22 A. Good morning.

23 Q. As the Judge told you, my name is Beth Wilkinson;  
and I'm

24 one of the prosecutors responsible for presenting the  
evidence

25 against Terry Nichols in this case.

1694

Juror No. 712 - Voir Dire

1 I have a couple areas that I want to talk to  
you

2 about, but if we could start with your training and  
experience

3 and expertise in blasting and explosives. I saw an  
answer to a

4 question you might imagine we don't get very often,

which is

5 your two favorite subjects in school were blasting and  
open-pit

6 design.

7 A. Correct.

8 Q. Is that right?

9 A. Correct.

10 Q. I think I know a little bit about blasting, but I  
don't

11 know much about open-pit design, so can you tell me  
what that

12 is?

13 A. Open-pit design takes, based upon the drilling data  
that

14 you do, a selected ore body, you look at the most  
economic --

15 the most economically valid sequence of mining it to  
bring it

16 to the mill and process it for a profit.

17 Q. Let me ask you a little bit about your knowledge  
about

18 explosives and that area. You said that you've  
witnessed and

19 actually participated in the loading and detonation of

20 million-pound shots of ANFO. Correct?

21 A. Correct.

22 Q. Just to make clear, that's not one shot in one  
hole; that's

23 a series of shots that add up to a million pounds?

24 A. Correct.

25 Q. Do you use a series of time-delayed fuses and  
blasting caps

1695

Juror No. 712 - Voir Dire

1 when you do that?

2 A. Correct.

3 Q. Do you use non-electric, or electric systems?

4 A. Non-electric.

5 Q. Are you familiar with the system called Primadet?

6 A. Yes.

7 Q. Is that a system that you use?

8 A. Yes.

9 Q. What type of time delay do you use for those type  
of large

10 shots?

11 A. We used down-the-hole and we used surface; but

12 down-the-hole were anywhere from 200 millisecond to  
1200

13 millisecond, and the surface were generally 9's or 42's  
or 100

14 milliseconds.

15 Q. Do you know how difficult it is to purchase that  
type of

16 blasting-cap system?

17 A. Yes.

18 Q. And what is your understanding of how easy or how



difficult

19 it is to obtain Primadet or some other blasting --  
excuse me --

20 blasting-cap system that has that type of time delay?

21 A. From my understanding, you have to have a certified  
-- be a

22 certified blaster or have the power to blast, you know,  
to

23 detonate the explosive.

24 Q. Do you store those type of blasting caps on site at  
your

25 mines?

1696

Juror No. 712 - Voir Dire

1 A. Yes.

2 Q. Do you store them in magazines?

3 A. Yes.

4 Q. What type of security do you have for those?

5 A. Generally they're in a remote location. The mine  
is

6 secured and they're generally steel construction or  
cast-iron

7 construction with the padlocks that are covered  
according to

8 code.

9 Q. You also told us that you use ANFO and emulsions.

10 A. Correct.

most  
11 Q. Is the emulsion the booster for the ANFO shot in  
12 cases?  
13 A. The emulsion is water-proofing agent for the ANFO  
14 dissolving in generally. It coats the prill and keeps it from  
15 water.  
those --  
16 Q. All right. What type of booster do you use with  
17 those large shots?  
18 A. Generally just a one-pound, you know, a dual one-  
pound --  
19 just standard booster type.  
20 Q. Okay. Some kind of high explosive?  
21 A. Yeah. It's a -- a high explosive, which allows the  
22 explosives to get up to the steady-state velocity very  
quickly.  
23 Q. Speaking of velocity, do you know the velocity of  
24 detonation for ANFO?  
25 A. ANFO is, I believe, 15,5 -- 15,500 feet per second.

1697

Juror No. 712 - Voir Dire

1 Q. Have you ever worked with emulsion called Tovex?  
2 A. Tovex, no. That is a specific brand?  
3 Q. It's a brand and it's a type of emulsion or gel.  
4 A. Not that brand in general, no.

5 Q. So you're not familiar with its makeup or --

6 A. No.

7 Q. Okay. You said in your questionnaire that you  
belong to

8 the Society of Explosives Engineers. Is that right?

9 A. Correct.

10 Q. And how -- how did you become a member of that  
society?

11 A. Just through school. It was usually standard if  
you were

12 in the blasting to sign up for the SEE, which is the  
initials

13 for that society, and, you know, then you could attend  
14 conferences and such.

15 Q. Do you receive a publication from that society?

16 A. Not currently. I haven't had my subscription moved  
to

17 Colorado yet.

18 Q. Have you ever attended conferences sponsored by  
that

19 society?

20 A. Yes.

21 Q. Have you ever heard anyone speak from a corporation  
called

22 El Dorado?

23 A. El Dorado? No.

24 Q. Are you familiar with El Dorado?

25 A. I've heard the name, yes.

Juror No. 712 - Voir Dire

has ever 1 Q. Have you ever -- do you know whether your company  
2 purchased explosives from El Dorado Chemical?

3 A. Not to my knowledge.

4 Q. How about ICI?

5 A. Yes.

6 Q. And have you -- because of your interest in  
explosives and

7 in following the World Trade Center case and this case,  
have

8 you heard anything about ICI Explosives as it relates  
to this  
9 case?

10 A. I've heard -- yes. I've heard things, yes.

11 Q. Tell me generally what you've heard.

12 A. That the product that was used was made by ICI  
Explosives.

13 Q. Product meaning the ammonium nitrate?

14 A. The prill, yes.

15 Q. And are you familiar with the manufacturing process  
of  
16 prills?

17 A. Generally, yes.

18 Q. Do you know the difference between low- and high-  
density  
19 prills?

20 A. Yes.

21 Q. Which prills would you choose as a blasting  
engineer to

22 detonate or to use as part of an ANFO shot?

23 A. You'd want a low-density prill.

24 Q. Let me turn to your knowledge generally of the  
pretrial

25 publicity surrounding this case; and obviously some of  
it deals

1699

Juror No. 712 - Voir Dire

1 with your knowledge of explosives. If you could turn  
to page

2 37 of your questionnaire.

3 A. Okay.

4 Q. To summarize what you said here, I think you've  
basically

5 told the Court that you have an opinion as to Terry  
Nichols'

6 guilt; is that true?

7 A. Yes.

8 Q. And could you tell me in your own words what that  
opinion

9 is?

10 A. Based upon, you know, my knowledge of explosives  
and that,

11 I guess I have formed an opinion that he was -- had  
some

12 involvement.

13 Q. Do you have an opinion as to what type of  
involvement he

14 had based on what you've read or heard?

15 A. In the making of the bomb is what I believe.

16 Q. Do you have an opinion as to whether an ammonium  
nitrate

17 and fuel oil improvised explosive device of the size  
that could

18 have caused that damage in Oklahoma City could be made  
by one

19 person or would need more than one person to construct  
that

20 device?

21 A. You would probably need more than one person to  
move -- if

22 in the case they were in barrels, to move it around,  
yes.

23 Q. So it's not the actual mixing and creating of the  
bomb, but

24 it's the heavy lifting involved?

25 A. Yes, the movement of the explosive.

1700

Juror No. 712 - Voir Dire

1 Q. Does that -- does that impact or was that part of  
what led

2 you to the conclusion that someone else, that being  
Terry

3 Nichols, was involved in the bombing?

4 A. Yes.

5 Q. Now, knowing all of that and knowing that you've  
read --

6 MR. WOODS: I object to that, your Honor.  
That's not

7 what he said; that somebody else other than Terry  
Nichols was

8 involved.

9 THE COURT: Well, I don't understand your  
objection,

10 Mr. Woods.

11 MR. WOODS: Her statement was that he said he  
had

12 concluded based on his knowledge that somebody else  
other than

13 Terry Nichols and McVeigh, the way I understood it, was

14 involved.

15 MS. WILKINSON: I didn't think I said that,  
your

16 Honor.

17 THE COURT: Well, let's clear it up.

18 MS. WILKINSON: Okay.

19 BY MS. WILKINSON:

20 Q. Tell me what your opinion is as to who was involved  
with

21 the bomb.

22 A. Based upon everything that I've read, I believe  
that it was

23 Timothy McVeigh and Terry Nichols.

read and 24 Q. Okay. And you base that in part on what you've  
25 heard generally about the bombing?

1701

Juror No. 712 - Voir Dire

1 A. Correct.

2 Q. And based on your expertise in explosives?

3 A. Correct.

4 Q. Which is rather unique, but --

5 A. Correct.

6 Q. -- impacts your decision in this case. Okay.

Trade 7 You also told us that you followed the World  
8 Center case; is that right?

9 A. Correct.

10 Q. And what is your opinion about that case?

were 11 A. As far as the guilty parties I believe did it and

12 involved with it, yes.

you that 13 Q. Okay. Now, I'm sure you heard his Honor instruct

all those 14 if you were selected as a juror, you'd have to leave

15 opinions outside the jury box and come in here and give

everything 16 Mr. Nichols a fair trial; that is, just forget about



17 that you know about explosives and what you've heard  
about the

18 case. Do you honestly think you can do that?

19 A. I think with my day-to-day involvement with  
explosives, it

20 would be hard. I mean in the mining industry, I'm  
planning,

21 I've got to design around explosives. It's just --  
it's a

22 frequent reminder of the case, I guess.

23 Q. And is that part of the reason why you followed the  
World

24 Trade Center case and this case?

25 A. Yes.

1702

Juror No. 712 - Voir Dire

1 Q. Is it discussed among your colleagues and some of  
your

2 other professionals in your industry?

3 A. Absolutely.

4 Q. And are you familiar with some of the questions  
that

5 Congress has asked about the explosive nature of  
ammonium

6 nitrate?

7 A. Yes.

8 Q. Has that impacted on your business?

9 A. Not yet, but it could.

10 Q. Something that you and your colleagues are  
concerned about?

11 A. You bet.

12 Q. I just want to turn finally to the death penalty.  
And as

13 his Honor explained, that is something that would  
happen in

14 this case only if a jury found that the Government  
proved

15 beyond a reasonable doubt that Mr. Nichols was guilty.  
In that

16 second phase, as you understand it, you would have to  
determine

17 the proper punishment for any defendant who was charged  
with a

18 capital crime; and I don't want to talk about this case  
because

19 we don't have any evidence yet.

20 A. Correct.

21 Q. If I understand your views, you think that the  
paramount

22 concern is whether someone could harm someone else  
again?

23 A. Correct.

24 Q. And if you could prevent that, you might be able to  
make a

25 decision about imposing the death penalty?

1 A. Correct.

2 Q. Now, if you learned from his Honor that life in  
prison  
3 meant just that, that it was life in prison, the person  
would  
4 be isolated and would never be released, would you then  
always  
5 choose to put the person in prison for life instead of  
6 sentencing him to death?

7 A. Could you repeat the question again? I'm sorry.

8 Q. I'm sorry. It's probably too long.

9           Assuming your views as I just stated it, which  
is that  
10 your only concern is whether this person can harm  
someone  
11 again --

12 A. Right.

13 Q. -- if you were told that life in prison, that  
penalty,  
14 meant what it says: that the person would spend their  
life in  
15 prison, they would never be released, therefore they  
couldn't  
16 get out and harm anyone else, would you always choose  
-- if you  
17 had to choose between the two penalties, death or life  
in  
18 prison, knowing that definition of "life in prison" --  
would  
19 you always choose life in prison?

20 A. More than likely, yes.

21 Q. And is that based on your religious views as well  
as your  
22 moral views?

23 A. Yes.

24 Q. In a penalty phase in a federal case, a juror has  
to be  
25 able to honestly consider all alternatives and not have  
any

1704

Juror No. 712 - Voir Dire

1 preconceived notions about which penalty they would  
choose.

2 Would it be fair to say that you do have preconceived  
notions  
3 about which penalty you would choose?

4 A. To a certain degree, yes, but I could -- it could  
change  
5 based upon the circumstances.

6 Q. Okay. Tell me those circumstances.

7 A. If I could be shown where, you know, the offender  
was  
8 deliberately trying to do this or, you know, would do  
it again  
9 at a moment's notice, yes.

10 Q. Would that be the only thing that you would  
consider could  
11 change your mind?

12 A. Probably.

13 Q. If you could turn to page 29 -- and this is the  
last  
14 question on the death penalty in the series of  
questions.

15 A. Uh-huh.

16 Q. Do you see your answer there?

17 A. Yes.

18 Q. You say, "I feel by applying the death penalty you  
are as  
19 guilty as the person who committed the crime."  
20 Do you still feel that way today?

21 A. To a certain degree, yes. It would be a very  
heavy,  
22 conscious thing for me to make.

23 Q. Well, I'm sure, as the Judge will tell you, that --  
of  
24 course it's a heavy decision, an important decision,  
and no one  
25 would take away the gravity of deciding between someone  
going

1705

Juror No. 712 - Voir Dire

1 to prison for life and sentencing them to death; but  
the  
2 question is really can you honestly tell us that you  
would  
3 consider both penalties and you could choose death or  
you could

4 choose life?

5 A. Yes, I could.

6 Q. Okay. If you could turn to page 22, Question 100,  
and this  
7 is the last question I have for you.

8 A. Okay.

9 Q. The Court asked you whether -- what you thought  
about the  
10 effectiveness of the criminal justice system, and you  
said it  
11 was adequate; that there are many -- too many  
technicalities  
12 that excuse defendants when they appear to be guilty.

Can you

13 tell me what you meant by that?

14 A. Basically, there is -- I guess in my opinion there  
has been  
15 cases that there has been clear guilt and based upon a  
16 technicality -- you know, granted, it's the legal  
system and we  
17 need to follow it but that sometimes defendants are  
excused  
18 based upon a sheer technicality, not based upon the  
evidence of  
19 the case.

20 Q. Well, listening to your answer, I have one more  
question.

21 A. Okay.

22 Q. You told the Court that you believe in following  
the

23 Court's instructions and your religion believes in  
respecting  
24 the law, but based on what you're saying here about  
25 technicalities and based on your views on the death  
penalty, if

1706

Juror No. 712 - Voir Dire

1 the Judge instructed you that you had to consider a lot  
of  
2 factors in determining the death penalty, not just the  
one that  
3 you consider the paramount one, could you do that, or  
would you  
4 always turn ultimately to the one factor that you  
focused on?

5 A. I would weigh heavy in all decisions, as in my  
profession.  
6 It's the same type of thing. You don't focus in on one  
thing;  
7 otherwise, you know, you could get burned in my case;  
but in  
8 this case, somebody could go to prison that would not  
go or  
9 should go to prison that didn't.

10 MS. WILKINSON: Thank you very much. I  
appreciate it.

11 THE COURT: Mr. Woods?

12 MR. WOODS: Thank you, your Honor.

13 VOIR DIRE EXAMINATION

14 BY MR. WOODS:

15 Q. Good morning.

16 A. Good morning.

17 Q. My name is Ron Woods, and I'm one of the lawyers  
asked by

18 the court to defend Terry Nichols in these charges that  
have

19 been brought.

20 Do you understand that Mr. Nichols stands  
charged with

21 the same offenses that Timothy McVeigh stood charged  
with?

22 A. Yes.

23 Q. Okay. Now, in addition to all of your interest in  
the

24 explosive and mining industry, you're apparently  
interested in

25 the Constitution?

1707

Juror No. 712 - Voir Dire

1 A. Some, yes.

2 Q. What -- you put on Question No. 38, page 8, that  
you study

3 the Constitution and what -- how do you do that? What  
prompted

4 your interest and what type of study do you do?

5 A. Sorry. Page --

6 Q. Page 8, Question 38.



7 A. Oh, page 8. Okay. I'm sorry.

8           Yeah. In high school, I was interested -- at  
least

9 with the teacher I had -- made it interesting and made  
us

10 understand the different aspects of the law.

11 Q. And have you kept up with it since by reading  
decisions

12 that come out of the Supreme Court or at least reading  
the news

13 accounts of them?

14 A. Not a lot, just ones that would affect generally my  
15 industry.

16 Q. Have you followed at all any Supreme Court  
decisions or

17 reporting of them concerning criminal law?

18 A. Not many, no.

19 Q. Okay. What do you consider technicalities that set  
20 defendants free?

21 A. Improper proceedings or, I guess -- I guess I can't  
really

22 quantify it in so many words; but it's just a feeling,  
an

23 opinion that I have.

24 Q. All right. And that opinion is that the system is  
working

25 adequately but there are too many technicalities that  
set

## Juror No. 712 - Voir Dire

1 guilty people free?

2 A. In certain cases, yes. Not many but a few  
instances. So I

3 think overall it works well; but there are instances,  
as humans

4 we are -- we do make mistakes.

5 Q. Right. And the system is run by humans?

6 A. Correct.

7 Q. Now, you mentioned that you had been to gun shows  
before.

8 Is that correct?

9 A. Yes.

10 Q. How many?

11 A. Two or three.

12 Q. Here in Colorado, or in Montana, or somewhere else?

13 A. In Montana.

14 Q. Were you going there for a particular purpose to  
purchase

15 any type of weapon, or were you going just as a  
spectator to

16 look around and see what was --

17 A. Generally as a spectator; and if something caught  
my

18 interest, it then would be different. But generally  
just to

19 look.

sale at 20 Q. Did you notice that things other than guns were for

21 these gun shows?

22 A. Yes.

observed 23 Q. And can you give me an example of what you saw and

24 at these gun shows?

25 A. Different types of, you know, military, you know,

1709

Juror No. 712 - Voir Dire

generally. 1 antigovernment type of things. I've seen those

2 Q. Now, military: What do you mean by --

3 A. Assault weapons.

4 Q. Military surplus goods?

5 A. Yes.

6 Q. And then the anti-American literature --

7 THE COURT: I think he said antigovernment.

8 JUROR: Antigovernment.

9 BY MR. WOODS:

of there? 10 Q. Antigovernment literature. What are you speaking

11 MR. WOODS: Thank you, your Honor.

and 12 JUROR: Basically as far as controlling guns

13 trying to take away people's rights.

14 BY MR. WOODS:

15 Q. Okay. Rights as to gun ownership, or other rights?

16 A. To gun ownership, yes.

17 Q. Did you see any publications relating to tax  
protest?

18 A. Not that I was paying attention to.

19 Q. Okay. Did you see any books for sale concerning  
20 explosives?

21 A. There were some, yes, but I didn't really look  
close at  
22 them.

23 Q. Did this knowledge on how to build an ANFO  
explosive:

24 Would you say that that's fairly widely known, or not,  
outside

25 the industry itself? It's not a limited knowledge  
that's known

1710

Juror No. 712 - Voir Dire

1 only by mining engineers, is it?

2 A. There are people that do know, but it -- it just  
depends

3 upon the type of person, I guess, if they're interested  
in it

4 or not.

5 Q. And you stated in your questionnaire that your  
father grew

6 up on a farm. Did you likewise grow up on the same

farm at

7 all?

8 A. No, I did not.

on the

9 Q. Did your father have any experience in explosives

10 farm?

11 A. Not to my knowledge. I don't think they used  
anything like

12 dynamite for tree stumps or anything.

13 Q. You've heard that being done, haven't you?

14 A. Oh, yes.

15 Q. In fact, have you seen government pamphlets that  
have been

16 put out for farmers on the use of explosives to remove  
stumps

17 and rocks?

18 A. Yes.

19 Q. Would it be correct to say that the knowledge  
concerning

20 ammonium nitrate explosives is fairly widely  
distributed and

21 available to someone who wants to find that  
information?

22 A. Oh, yes. You could easily find it.

23 Q. All right. And would it be fair to say that it's  
fairly

24 common in the farming industry?

25 A. As far as using the ammonium nitrate, yes; and  
there is

1711

Juror No. 712 - Voir Dire

1 other types of explosives that they do use, yes.

2 Q. Now, you mentioned that other types of explosives  
can only  
3 be purchased by someone with a blaster's license. Is  
that your  
4 understanding?

5 A. That's my understanding, yes.

6 Q. Okay. Have you heard of people that are selling  
dynamite  
7 as a regular commercial venture that -- what one has to  
do is  
8 fill out the BATF form and provide identification; that  
is, a  
9 driver's license?

10 A. For dynamite, yes.

11 Q. All right. What about other explosives?

12 A. To my knowledge, no. I mean generally when we  
bought it,  
13 we bought it through the corporation, so I wasn't aware  
of the  
14 forms that were always filled out.

15 Q. But if farmers wanted to purchase it, it is  
available from  
16 commercial sellers; is that correct?

17 A. Yes.

18 Q. And they certainly don't have a license?

19 A. No.

20 Q. But, of course, like in gun ownership, you have to  
fill out

21 forms when you purchase it. Is that your  
understanding?

22 A. Correct.

23 Q. Okay. Now, concerning the questionnaire, you  
mentioned

24 that close friends of yours had assisted in the aid and  
the

25 rescue scene in Oklahoma City right after the bombing.

1712

Juror No. 712 - Voir Dire

1 A. Not in the scene. Maybe I wrote it in the wrong  
section.

2 Q. Let's go to page 36, which is Question 154 and '5.

3 A. Okay.

4 Q. "Close friends assisted in aid for families and  
rescue

5 needs." You're correct. That was more limited.

6 And then the next question: "Did you or any  
member of

7 your family give any money, gifts in kind?"

8 And you said yes. "Yes. Money, foods and  
supplies."

9 A. Yes.

10 Q. Was that through the church?

11 A. Generally.

Oklahoma City

it

checked

federal

personal

correct

1713

again.

officer were

12 Q. Did you do anything personal relating to the  
13 tragedy by giving aid, assistance, or anything, or was  
14 strictly through the church?

15 A. Strictly through the church.

16 Q. Now, page 25, Question 113, the question asked,  
"Would you  
17 tend to believe the testimony of a state or federal law  
18 enforcement officer?"

19 And then there is blanks to check, and you

20 "More than most witnesses." Is that your feeling?

21 A. Yes.

22 Q. And what does that come from?

23 A. Just tendency to believe the federal or state or

24 law enforcement would -- would try not to have a

25 interest in it. They would try to do -- try to get the

Juror No. 712 - Voir Dire

1 person so something of this nature wouldn't happen

2 Q. All right. And if a federal law enforcement

3 on the witness stand, you would tend to believe his



testimony

4 more than someone else who was testifying. Is that  
correct?

5 A. Generally; and if it's an expert in the field, you  
know,

6 you would tend to believe it. But standard witnesses  
7 sometimes -- they do have their views on things --  
aren't as

8 clear as they might remember.

9 Q. A standard witness?

10 A. A standard witness.

11 Q. But a federal officer, of course, is -- you'll give  
more

12 credibility to them?

13 A. They're trained to notice things more.

14 Q. What kind of training do they get to be that  
credible?

15 A. Well, I guess I really don't know what training. I  
just

16 assume that they would be taught to look at details and  
notice

17 things more so than everyday people would.

18 Q. And you would believe them more than everyday  
people?

19 A. Yes.

20 Q. Also, on page 27, Question 121, the question asked,  
"Do you

21 have any feelings or opinions about a case in which a  
witness

22 has pleaded guilty and agreed to testify as a witness  
for the

23 prosecution in the hope that he will receive a reduced  
24 sentence? If yes, what are they?"

25 And you answered, "Yes. It helps to present a  
more

1714

Juror No. 712 - Voir Dire

1 reliable argument for the prosecution, and it will save  
2 taxpayer time and money."

3 A. Uh-huh.

4 Q. That is your recollection?

5 A. Correct.

6 Q. Does it -- have you considered whether or not  
someone who

7 does that type of arrangement and testifies may or may  
not be

8 telling the truth?

9 A. That's possible, yes.

10 Q. Do you believe, though, going into it that they are  
telling

11 the truth?

12 A. Generally, I would think they would, because if  
they think

13 they could get off, they would try and fight it.

14 Q. They would try to what?

15 A. Try and fight the case, you know, or at least go to  
court

16 to -- you know, to try -- or to -- you know, to retain  
their

17 innocence.

18 Q. To plead not guilty and make the government prove  
their

19 guilt?

20 A. Correct.

21 Q. Okay. So it's those that are guilty that are  
entering into

22 an agreement to testify for the government?

23 A. Yes; that they believe there is a strong case  
against them,

24 yes.

25 Q. And so you would put more credibility in their  
testimony

1715

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1 than someone else?

2 A. Maybe not more credibility, but I believe that it  
would

3 just help add to the amount of evidence.

4 Q. All right. And you don't consider that their  
testimony may

5 be false as well as true; is that correct?

6 A. It could be either, yes.

7 Q. Now, you mentioned on page 16, Question No. 70,  
when the

8 questionnaire asked about the books that you read --

and

novels 9 apparently, you most recently read one of the Grisham

10 about the tobacco industry. Was that the Runaway Jury?

11 A. Yes. I couldn't remember the name of it.

12 Q. And you had also read Time to Kill?

13 A. Yes.

up any 14 Q. Okay. Through reading those books, have you picked

justice 15 impression of lawyers that are involved in the criminal

defense 16 system, either through the prosecution side or the

17 side?

be 18 A. I've picked up things, but sometimes they tend to

19 exaggerated in novels.

20 Q. For example, what have you picked up?

dirty and 21 A. That -- you know, that I guess all lawyers are

that, 22 underhanded, I guess; but not saying that they are, but

system and 23 you know, they do try their best to serve the court

24 do what's right, present what they believe is right.

is that 25 Q. And is that belief about dirty and underhanded --

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one side 1 across the board, or do you get that impression as to  
2 of the docket or the other?

but, 3 A. Sometimes it's one side of the docket or the other;

books. But I 4 you know, it's just the way they tend to make the

find the 5 believe both sides are honestly trying to work hard to

other 6 key piece of evidence that would prove one way or the

7 whether the defendant was innocent or guilty.

misconduct. 8 Q. Now, the Runaway Jury had to do with some jury

9 A. Correct.

that? 10 Q. What kind of impressions did you come away with

11 A. Some of it was unbelievable, but some of it could  
12 definitely happen, I think.

in the 13 Q. Do you think that would affect your participation  
14 jury in anyway?

15 A. Probably not.

publicity. 16 Q. Okay. Let's go to page 33, the questions about

heard or 17 Question 144. The questionnaire asked, "If you've

indicate 18 read anything about the Oklahoma City bombing, please

19 where you heard or read about it. Check all that

apply."

20                   And you've heard or read about it on TV news,  
radio

21 news, newspaper, magazines, Internet, and heard other  
people

22 discussing the case.

23 A. Correct.

24 Q. And then further, it asks, "How would you describe  
the

25 amount of media coverage you've seen about the Oklahoma  
City

1717

Juror No. 712 - Voir Dire

1 bombing?"

2                   And you checked, "Very much." You went out of  
your

3 way to read about it and watch news accounts of it.

4 A. Correct.

5 Q. And I take it part of that, if not the main part,  
was

6 because of the industry you're in and your personal  
interest in

7 the explosive industry; is that correct?

8 A. Correct.

9 Q. And that's what led you to follow the World Trade  
Center

10 bombing case; and then you checked off also that you  
followed

11 the O. J. Simpson case and the Menendez brothers case?

12 A. Yes.

13 Q. Which were certainly not related to explosives  
industry

14 but -- and you checked that you watch Court TV.

15 A. Occasionally, yes.

16 Q. I take it that you watch the lawyers that comment  
on the

17 trials that they know nothing about on the evening news  
or

18 after the day's events, and you have lawyers across the  
nation

19 commenting on what's going on in a courtroom a thousand  
miles

20 away?

21 A. Correct.

22 Q. How do you view those lawyers?

23 A. I view them as an outsider trying to make somewhat  
of an

24 unbiased opinion on what is going on in the case.

25 Q. All right. And you listen to them, take what they  
say to

1718

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1 heed?

2 A. I take it into account but not necessarily follow  
it

3 like -- you know, follow it exactly.

case  
4 Q. All right. What magazines have you read about this  
5 in?  
6 A. Newsweek; and there was one other one, but I don't  
remember  
7 right offhand which one it was.  
8 Q. Was it one of the news magazines, U.S. News World  
Report?  
9 A. It was one of those, yes.  
10 Q. Do you subscribe to either of those?  
11 A. No.  
12 Q. Just pick them up, read them wherever you happen to  
see  
13 them in an office or --  
14 A. Yes, and sometimes it was passed around. You know,  
being  
15 in the industry, it's definitely a topic of discussion,  
so  
16 interest articles are generally passed around.  
17 Q. So in the industry, if there is an article about  
the case  
18 that might focus or mention the explosive aspect of it,  
what,  
19 that's Xeroxed and passed around to you in the office,  
or to  
20 the industry as a whole?  
21 A. Just generally within the office.  
22 Q. Okay. And I take it -- does that go for the same  
thing for  
23 newspaper articles, too?



24 A. Yes.

of your 25 Q. So you really have read a great deal and went out

1719

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1 way to read about it, then; is that correct?

2 A. Correct.

158. And 3 Q. Well, let's look at, then, page 36, Question No.

you've 4 the questionnaire asked you to please summarize what

and of 5 seen, read or heard about the Oklahoma City bombing;

6 course it's a very small blank there to put --

7 A. Yes.

you put 8 Q. -- all of your knowledge in, but read to us what

9 there.

with a 10 A. "A bombing happened in Oklahoma City, Oklahoma,

person 11 2500-pound ANFO bomb and a Ryder truck rented by a

was 12 resembling McVeigh and one other person. McVeigh's car

Ryder 13 reported several blocks away, where they key for the

Nichols were 14 truck was found. And later that day, McVeigh and

15 pulled over and arrested."

16 Q. Okay. And of course, I assume you knew a lot more  
than

17 that but didn't have space to put it there?

18 A. Cramps in my hand from writing.

19 Q. It would have taken a whole day?

20 A. Yes, it would.

21 Q. And then the next page on 37, "Please summarize  
what you

22 have seen, read or heard about Terry Nichols."

23 And what's your answer there?

24 A. "That he was arrested with McVeigh the day of the  
bombing

25 and that he was probably the other person with McVeigh  
renting

1720

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1 the Ryder truck."

2 Q. Okay. And then the next question was 60, "Have you  
formed

3 any opinion about the defendant, Terry Nichols?"

4 And you checked yes.

5 "If yes, what opinions have you formed and on  
what are

6 they based?"

7 And what did you put there?

8 A. "I feel if he was with McVeigh in the car when he

was

9 arrested, then he probably had something to do with the  
10 bombing."

11 Q. Okay. And 161, "Have you ever had a different  
opinion

12 about Mr. Nichols?"

13 And you checked yes.

14 "And if yes, why did you change your opinion?"

15 And this one, I didn't understand fully.  
Would you

16 read your answer, and then I'd like to question you  
about it.

17 A. "Early in the coverage of the bombing and before  
the news

18 reports -- witnessed on TV and read the newspaper."

19 Q. Okay. Now, what did you see, read or hear early in  
the

20 case from which you changed your opinion?

21 A. Generally, in the early going of the coverage, you  
know,

22 tried to keep an open mind on who was involved and  
then, you

23 know, as they found the suspects and more information  
was

24 brought to light, my opinion slowly started to form  
from that.

25 Q. Okay. So early on, you were -- you had an open  
mind, I

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1 take it from your answer?

2 A. Correct.

was

3 Q. Okay. Now, early on, there was report that Nichols

read

4 seen driving the Ryder truck down to Oklahoma. Had you

5 that one?

6 A. Yes.

if at

7 Q. Okay. Then the last question on that page: "How,

changed as a

8 all, have your views or opinions of Terry Nichols

decisions made

9 result of the trial of Timothy McVeigh and the

10 by the jury in his trial?"

11 And your answer is?

the

12 A. "Yes. I feel they were confirmed or emphasized by

13 conviction."

trial --

14 Q. Okay. And you kept up pretty closely with the

15 A. Yes.

that

16 Q. -- of Mr. McVeigh through the news reporting; is

17 correct?

18 A. Correct.

19 Q. On the Internet that you use, did you pick up the

20 transcripts at all?

21 A. No.

pick up 22 Q. What type of summaries or news broadcasts would you  
23 on the Internet concerning the ongoing trial?

such as USA 24 A. Generally on web pages of certain publications,

25 Today or others.

1722

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1 Q. And then the news magazines that you've --

2 A. Yes.

correct? 3 Q. -- and the newspaper and the TV and radio; is that

4 A. Yes.

convinced 5 Q. Would it be fair to say that you're fairly

6 Mr. Nichols was involved in the matter?

7 A. It would be fair to say, yes.

the death 8 Q. All right. Now, let's talk about your answers on  
9 penalty, which are on page 1 -- excuse me -- 28.

10 A. Okay.

prison 11 Q. The last two, C and D, "What kind of cases is it  
12 appropriate, if ever, to impose a punishment of life in

13 without the possibility of ever being released?"

in 14 And you stated, "These are the cases for life  
crimes, 15 prison: Repeated sexual assault, molestation, burglary  
16 and then murder."

is it 17 And then the next one, "In what kind of cases  
18 appropriate, if ever, to impose a punishment of death?"

against 19 And you put, "Serial killers, terroristic acts  
20 innocent people."

21 A. Correct.

when you 22 Q. Now, I take it based on your answers to the Court  
death 23 said your prior religion that you had views about the  
adopting 24 penalty and they really haven't changed that much by  
25 your wife's religion; is that correct?

1723

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1 A. Correct.

period of 2 Q. So it's something you've thought about over a  
correct? 3 years, your belief on the death penalty. Is that

4 A. Yes.

on the 5 Q. Okay. And am I correct in saying that your belief

then you 6 death penalty is if you feel that you're saving lives,  
proposition? 7 could vote for the death penalty as a general

8 A. Correct.

future 9 Q. And do you feel that deterrence, if you deter

is 10 terroristic acts by your assessing a penalty that that  
11 saving lives in the future?

12 A. Yes.

sat on a 13 Q. So I take it, then, is what you're saying if you

premeditated, 14 jury where the jury found the defendant guilty of

15 deliberate, intentional murder and it fell within your  
definitely 16 definition of a terroristic act that you could

17 consider the death penalty in that case?

18 A. Yes.

deterrent value 19 Q. And again, that's because you feel that the

a 20 of the death penalty would in the future save lives in

21 terroristic act?

22 A. Correct.

about 23 Q. Okay. Now, the prosecutor asked you some questions

be more 24 making the bomb, eliciting questions that there had to

of that? 25 than one person making the bomb. Is that your memory

1724

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1 A. Yes.

one 2 Q. Would it have been possible or is it possible for

moved? I 3 person to make the bomb if barrels don't have to be

had to 4 believe she conditioned it on the fact that somebody

5 move the barrels.

you 6 A. I may have placed that condition; but that's just,

but it 7 know -- I'm just assuming, but it could be possible,

8 would be more difficult to do, yes.

saw, or 9 Q. What was your understanding based on what you read,

it was, 10 heard about this particular case on what kind of bomb

11 first?

12 A. As far as the explosive type?

13 Q. Yes, sir.

14 A. Ammonium nitrate and fuel oil.

bomb 15 Q. All right. And in what type of container was the

16 placed based on what you read, saw, heard?



17 A. I understand in barrels or within the confines of  
the truck  
18 itself.

19 Q. All right. If empty barrels were in a truck, could  
one  
20 person build an ammonium nitrate ANFO bomb by himself?

21 A. Yes.

22 Q. And just briefly describe how that could be done  
based on  
23 your knowledge of ANFO.

24 A. You could haul in prills and mix in the correct  
amount of  
25 diesel fuel and do it that way. It takes -- you do  
need to do

1725

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1 some mixing with it, of course, to get intimate contact  
of the  
2 fuel oil and then the ammonium nitrate; but especially  
as the  
3 barrel got fuller, it would be harder to mix.

4 Q. All right. You have an empty barrel that's inside  
a truck  
5 and one person is doing what? You have sacks of  
fertilizer?

6 A. Yes.

7 Q. Ammonium nitrate? You pour in the ammonium nitrate  
and  
8 then you pour in the fuel oil.

9 A. Uh-huh.

10 Q. And that makes an explosive mixture?

11 A. Correct.

12 Q. Okay. Now, you're telling us that one person could  
do  
13 that?

14 A. With some difficulty, yes.

15 Q. Well, the bags come in 50-pound sizes; right?

16 A. Right.

17 Q. One person can lift a 50-pound bag?

18 A. Yes, they can.

19 Q. If the --

20 THE COURT: Mr. Woods, I fail to see how this  
line of  
21 questioning advances the purpose --

22 MR. WOODS: I agree, your Honor; but Ms.  
Wilkinson

23 went into great detail about it had to be two people  
and that

24 he surmised that Mr. Nichols was the second one.

25 THE COURT: I'm going to exclude further  
questioning

1726

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1 along that line.

2 MR. WOODS: Thank you, your Honor.

3 Thank you for your questions (sic).

4 THE COURT: We appreciate your coming in and  
answering

5 all of these questions. We're not going to be able to  
tell you

6 now whether you will serve or not serve. It will take  
some

7 time. We'll have to ask you to be in a time of  
uncertainty.

8 I'm sure you appreciate why, because other people will  
be going

9 through the same process; so I'll ask of you to please  
continue

10 to follow the cautions that you have been of not  
discussing the

11 case or this process with other people and being  
careful about

12 what you read, see and hear.

13 We'll get back to you. You're excused now.

14 JUROR: All right. Thank you.

15 84.

16 THE COURT: Good morning. If you'll please  
raise your

17 right hand and take the oath from the clerk.

18 (Juror No. 84 affirmed.)

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

20 microphone.

21 VOIR DIRE EXAMINATION

22 BY THE COURT:

23 Q. And you -- when that oath refers to "the case," you  
24 understand that you've been summoned as a possible  
juror in the  
25 case of United States against Terry Lynn Nichols.

1727

Juror No. 84 - Voir Dire

1 A. Uh-huh.

2 Q. And you received a summons and sent back a short  
3 questionnaire of your answers.

4 A. Yes.

5 Q. And then you were notified to appear on September  
17 and  
County;  
6 did at the fairgrounds' auditorium building, Jefferson  
people  
7 and at that time you were there with a number of other  
8 also summoned for jury service. And I was there and  
some other  
9 people who are here were there.

10 And I introduced them along with myself at  
that time,

11 and I want to reintroduce people now so that you're  
aware of  
12 who is here with us this morning.

13 You may recall meeting Mr. Lawrence Mackey,  
who is  
14 here at the first table, and Ms. Beth Wilkinson as  
lawyers for

and 15 the Government. They're joined today by Mr. Pat Ryan

16 Mr. James Orenstein as additional lawyers.

17 You also recall meeting Mr. Michael Tigar and  
Nichols, 18 Mr. Ronald Woods, attorneys for Terry Nichols; and Mr.  
19 who was there and also of course is here.

other 20 And you will recall that I gave you and the

21 people who were present on that day some information,  
22 background information about this case and what the  
trial would

23 involve, beginning with advising everyone that the  
trial will

24 be on charges that the Government says arise out of the  
City, 25 explosion of a federal office building in Oklahoma

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was filed 1 Oklahoma, on April 19 of 1995, and that an indictment

man 2 in Oklahoma City in the Federal Court there, charging a

and 3 named Timothy James McVeigh and also Mr. Terry Nichols

being 4 mentioning other persons not named in the indictment as

kill and 5 involved in a conspiracy to bomb that building and to

6 injure the people in it, also charging that the  
defendants  
7 carried that bombing out and that they participated in  
the  
8 murder of eight law enforcement agents who were in the  
9 building.

10 You recall all that?

11 A. Uh-huh.

12 Q. And that I advised that not guilty pleas were  
entered by

13 the named defendants and that the case then was moved  
from

14 Oklahoma City to Denver here in the Federal Court  
because of a

15 concern about getting a fair trial in Oklahoma City and  
that

16 also, the Court ordered separate trials for both of the  
named

17 defendants, Mr. McVeigh and Mr. Nichols, because of  
differences

18 in what the evidence may be with respect to them and  
requiring

19 therefore that there be separate trials and separate  
juries

20 deciding the cases and that Timothy James McVeigh has  
come to

21 trial and that a jury did, based on the evidence that  
was

22 presented to that jury, find him guilty and sentenced  
him to

23 death. Do you recall those comments?

24 A. Yes.

25 Q. And then I said that the jury that is to be  
selected for

1729

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of the 1 this trial of Mr. Nichols may not consider the outcome  
there 2 trial of Mr. McVeigh because that's the very reason why  
3 are separate trials ordered. They have to be separate  
4 consideration. And you understand that?

5 A. Uh-huh.

6 Q. Then we asked you to fill out a long questionnaire,  
some  
your 7 166 questions; and you did that for us. And you have  
if you'll 8 completed questionnaire in front of you now, I think,  
9 just confirm that that's yours.

10 A. Yes.

11 Q. Okay. And what we're going to do now this morning  
is ask  
more in 12 you some questions about your answers and then a little  
13 the line of questioning.

14 I'll ask questions and then lawyers on each  
side have  
15 an opportunity to question you additionally.

16 We do understand that there are privacy  
interests  
17 involved here and that some of the questions that were  
asked of  
18 you were quite personal in nature. We're trying to  
protect  
19 privacy here and that's why your name is not used and  
that's  
20 why these answers that you gave us have not been made  
public  
21 but have been provided to those of us who are  
participating in  
22 this process today. But, you know, we also take  
measures to  
23 prevent you being photographed coming in and out of the  
24 courthouse, things of that nature, to protect your  
privacy as  
25 much as we can; but you recognize that we are now in  
open court

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1 and, of course, what is said here is public.  
2 You're with me on all these points?  
3 A. Yes.  
4 Q. Now -- and you know that your name came up as a  
result of a  
5 computer draw, both with respect to the original  
summons and  
6 then as to the order in which people are being called  
in here.



7                    Now, our chance draw had you scheduled to be  
here

8                    yesterday, but you didn't arrive where you were  
supposed to and

9                    when you were supposed to. Why is that?

10                  A. My truck -- I had car troubles. It wouldn't start.  
I

11                  didn't have John, I think -- something -- I forget his  
name,

12                  but I didn't have his number, so I couldn't get in  
touch with

13                  him.

14                  Q. The clerk's number for you to call here?

15                  A. Yeah. My mother -- he had talked to my mother, I  
guess,

16                  and I don't know where she put the paper, so --

17                  Q. Okay. So it was something where you just couldn't  
make it

18                  on time. Is that what you're saying?

19                  A. Yes.

20                  Q. Okay. I understand from your answers here that you  
were

21                  born in Germany.

22                  A. Yes, I was.

23                  Q. And came to the United States when you were how  
old?

24                  A. I was around, I think, two or three, around there.

25                  Q. And I'm a little confused about your parents and  
who you

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1 are living with now. Are you living with --

2 A. With my stepfather and my real mother.

3 Q. Okay -- and that's why the names are different --

4 A. Yes.

5 Q. -- from your name. Now, was your father in the  
military

6 when you were --

7 A. My real father was, yes.

8 Q. So that's why you were born in Germany?

9 A. Yes.

10 Q. But you show that you were a citizen of another  
country and

11 became a United States citizen in 1992.

12 A. Yes. I guess when I registered to vote, that made  
me a

13 United States citizen. Isn't that correct?

14 Q. I see. Well, if you -- if I had to give an opinion  
--

15 A. I wasn't quite sure.

16 Q. If you were born of an American citizen, two  
American

17 citizens, you were an American citizen when you were  
born, even

18 though you were born in a foreign country.

19 A. Well, my mom, she said I had dual citizenship or  
something

20 for a while. I don't know.

21 Q. Well, I wouldn't quarrel with your mother, but --

22 A. No.

23 Q. I think you were an American citizen when you were  
born.

24 So you don't remember anything about Germany?

25 A. No.

1732

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1 Q. And how old were you when your -- I take it your  
parents

2 divorced, then.

3 A. Yes. I was about the same age. I was real young.  
I'm not

4 quite sure, I mean --

5 Q. Don't remember your -- well, have you seen your  
biological

6 father?

7 A. I see him every once in a while. Not very often  
but once

8 in a while.

9 Q. You keep in some contact with him, do you?

10 A. Yeah.

11 Q. And the -- your mother's husband now: Were you  
formally

12 adopted?

13 A. No.

14 Q. By him?

15 A. No.

16 Q. Okay. But anyway, the living arrangement is fine  
with you?

17 A. Yes.

18 Q. All right. And you -- you have a brother who is  
their son.

19 A. Yes.

20 Q. Okay. Now, as I understand it, you're working as a  
21 painter --

22 A. Yes, I am.

23 Q. -- painting houses, and you've got a -- working for  
some

24 contractor now. You painted with somebody else before  
this

25 job?

1733

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1 A. Uh-huh.

2 Q. So you've been doing house-painting for, what, a  
couple

3 years?

4 A. Yeah.

5 Q. And are you thinking about going to school?

6 A. I'd like to, yes.

7 Q. If you get enough money together? Is that it?  
8 And do you have in mind a course of study that  
you are  
9 interested in?  
10 A. I'd like to be maybe an aerospace engineer or  
something  
11 along that line.  
12 Q. And is that -- is that what your mother's husband  
does?  
13 A. Yeah.  
14 Q. So you -- you know, knowing what he does, you'd  
like to be  
15 doing --  
16 A. It's very interesting.  
17 Q. Okay. Now, among your other interests, I guess, is  
18 motocross.  
19 A. Yes.  
20 Q. And do you ride in those --  
21 A. Yeah, I like riding dirt bikes a lot. Yeah.  
22 Q. And that's where these bikes come across very close  
to each  
23 other. Is that right?  
24 A. Yes.  
25 Q. Do you do that for prize money, or --

1 A. Just for fun.

2 Q. Just for fun?

3 A. Recreation.

4 Q. And do you participate in regular motocross events?

5 A. Not really. Once in a great while, I'll race in  
them; but

6 usually I just practice on a track.

7 Q. But you have a bike?

8 A. Yes, I do.

9 Q. And as I understand it, your mother works as a  
security

10 guard?

11 A. Yes.

12 Q. At a high school?

13 A. Yes.

14 Q. And where is that high school?

15 A. Highlands Ranch.

16 Q. Okay. And that's where you live?

17 A. Uh-huh.

18 Q. Did you go to high school there?

19 A. Yes, I did.

20 Q. The same school?

21 A. Yeah.

22 Q. Was she working there then?

23 A. She worked there, but she was working as a cook.

24 Q. Okay. You told us here that you have a talk show

17. 25 don't mean you have one, but you listen to one, page

1735

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1 A. Oh.

2 Q. Question 77. And I don't recognize that name. Is  
that

3 Lewis?

4 A. Lewis and Floorwax.

5 Q. Yeah. What kind of a talk show is that?

6 A. They're a couple of comedians that play in the  
morning.

7 Q. That is on a local radio station?

8 A. Yeah, 103.5.

9 Q. Okay. All right. Now, on page 23, on Question  
103, you've

10 given us a yes answer and explained it. And then on  
page 24 at

11 108, I take it that's the same thing, same event. Is  
that

12 right? The next page, page 24.

13 A. 24?

14 Q. Yeah. At 108.

15 A. Oh.

16 Q. I'm relating 103 on page 23 and 108 on 24 and  
asking you if

17 that's all one --

18 A. Yeah, that's -- yeah, that's the same thing.  
19 Q. And have you completed all of the requirements that  
the  
20 court imposed on you?  
21 A. Yes, I have.  
22 Q. And is that matter all concluded now?  
23 A. Yes, it is.  
24 Q. Did you have a lawyer?  
25 A. What's that?

1736

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1 Q. Did you have a lawyer representing you?  
2 A. No. No.  
3 Q. And was all this as a result of some agreement that  
you  
4 reached with the people who are the authorities there?  
5 A. Yes.  
6 Q. Did your -- did your mother and your --  
7 A. My stepfather went with me.  
8 Q. Stepfather went with you and gave you some advice  
with  
9 respect to it?  
10 A. Not really. He just kind of went with me and --  
11 Q. Because you were only 18.  
12 A. Yeah.



13 Q. Now, have you had any other involvement with the  
law, so to

14 speak?

15 A. Yes.

16 Q. When was that?

17 A. This summer, I had a party at my house and these  
kids

18 were -- that were underage were out in front, so the  
police

19 gave me a ticket for unlawful acts.

20 Q. Dealing with alcohol?

21 A. Yes.

22 Q. And what happened to that?

23 A. I -- I still have to finish the community service  
for that.

24 Q. And is that another thing out of Douglas County?

25 A. Yes.

1737

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1 Q. And did you go in and make some agreement in that  
matter,

2 too?

3 A. Uh-huh. Deferred judgment is what it was called.  
If I do

4 what the -- the tasks they set for me, it would be  
dropped.

5 Q. Do you know the difference between a felony and a

6 misdemeanor?

7 A. A little bit. I mean --

8 Q. Well, generally a felony is where the possibility  
is a year

9 or more.

10 A. Okay.

11 Q. And a misdemeanor is less than that -- less than a  
year.

12 A. Okay.

13 Q. Rough definition.

14 A. Uh-huh.

15 Q. So the thing you're on deferred judgment for: Is  
that --

16 A. It's a misdemeanor.

17 Q. Misdemeanor.

18 A. Yes.

19 Q. That's your understanding.

20 A. Yes.

21 Q. Now, how much more do you have to do in whatever  
22 requirements there are? Did you say community service  
23 requirement?

24 A. Yeah. I have 75 hours of community service I still  
have to

25 do.

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1 Q. What kind of community service are you doing?

2 A. I have not started yet. I need to get on the ball  
and  
3 start doing it.

4 Q. That's a good plan to have. What kind -- did you  
do some  
5 community service on the other matter?

6 A. Yes, I did.

7 Q. What did you do there?

8 A. At South Suburban ice-skating rink, just kind of  
help  
9 painted stuff and --

10 Q. All right. Well, we're not trying to put you on  
the spot  
11 with these questions, but I hope you understand the  
need to ask  
12 them.

13 A. Yeah.

14 Q. Now, you know a little about what is involved when  
people  
15 are charged with offenses of any kind because, you  
know, you've  
16 had a little direct experience. Let me just review  
with you  
17 some of the fundamental principles of our system of  
justice to  
18 be sure we have a sort of baseline understanding to  
work with  
19 here.

20 A. Okay.

21 Q. I mentioned when -- on the 17th of September and I  
22 mentioned it again today that there is not guilty pleas  
here  
23 and that Mr. Nichols is with us this morning in court  
presumed  
24 to be not guilty of these charges, presumed to be  
innocent of  
25 them, because under our Constitution, all persons, no  
matter

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Juror No. 84 - Voir Dire

1 who they are, in all courts, no matter where they are,  
and in  
2 all charges, no matter what they are, are presumed to  
be  
3 innocent. And that presumption carries throughout a  
trial if  
4 they plead not guilty and go to trial and entitles that  
person  
5 to an acquittal, a verdict of not guilty, unless the  
charges  
6 are proved.

7 Now, it isn't necessary for a person who is  
charged to  
8 prove anything. Certainly, no one charged with any  
kind of  
9 offense has to prove that he or she is not guilty; and  
in fact,  
10 at a trial, the burden, as we call it, is on the

prosecution,

11 whoever that is, to prove what's charged with evidence.  
And no

12 defendant is required to take the witness stand and  
testify or

13 in any way to explain anything or to call any  
witnesses; so the

14 burden of proof is entirely on the prosecution.

15 And when we say "the burden," it also means  
that where

16 there is a jury trial, the defendant cannot be found  
guilty on

17 any charge unless the jurors, considering just the  
evidence

18 that they hear and see at trial and following the law  
as given

19 in instructions that are given by the court at the end  
of the

20 trial -- unless all those jurors are convinced, they're

21 unanimous in their view that what they heard and saw as

22 evidence showed guilt beyond a reasonable doubt. Then  
that's

23 the only way and the only circumstance in which they  
could find

24 the defendant guilty. Understand that?

25 A. Uh-huh.

1740

Juror No. 84 - Voir Dire

1 Q. And anything short of that, they must return a

verdict of

2 not guilty. You understand that?

3 A. Yes.

4 Q. And like I said, there is no requirement that a  
defendant

5 prove anything; and in fact, in cases when or where  
there is no

6 testimony from a defendant, the jurors are told they  
can't

7 consider that at all. They can't -- not only can't  
they draw

8 any kind of inference from it or make any -- jump to  
any

9 conclusions about it but they can't even discuss it,  
and that's

10 what we tell them: You may not discuss that fact. You  
11 understand that?

12 A. Yes.

13 Q. Do you agree with these things?

14 A. Yes.

15 Q. And are you willing to follow those principles of  
the law

16 if you served on the jury in this case?

17 A. Yes.

18 Q. Now, we asked you some questions in this  
questionnaire.

19 Among other things, we asked you some questions about

20 punishment and what you thought about punishment, where  
the

21 punishment is life in prison without ever being

released, or

22 death; and we asked you to give us your views of that,  
of those

23 types of punishment and when they might be appropriate.  
Do you

24 remember that part of the questionnaire?

25 A. Yes.

1741

Juror No. 84 – Voir Dire

1 Q. And is that something that you gave any thought to  
before

2 you, out there in Jefferson County, sat down and went  
through

3 this questionnaire?

4 A. Not really. I hadn't really thought about it so  
much. I

5 don't know. It's kind of a big responsibility.

6 Q. Yeah. And you know there are different views out  
there.

7 People take different views. Some -- on the two  
extremes, some

8 people say there can be no death penalty, should be no  
death

9 penalty in the law; and some say there ought to be more  
of it

10 and that certain categories of offenses, there ought to  
be

11 penalties automatically. And then there is a lot in  
between.

12 A. Uh-huh.

13 Q. Now, I'm going to talk with you in a little bit  
about how

14 that question could conceivably come up; but before I  
do that,

15 I want to have you turn to what you wrote here. And  
it's on

16 page 28 and 29; but first, on page 27, turn to that  
first. And

17 you see there at 124, there is an explanation about why  
we're

18 asking these questions and that, of course, Terry  
Nichols is

19 presumed to be not guilty and that by asking you these  
20 questions, we're not changing that at all or suggesting  
21 anything. It is just that because of the way the law  
is, there

22 is the possibility of sentences involving or a sentence  
23 involving life in prison or death. And we can't ask  
you about

24 it later, if you are on the jury; so we need to talk  
about it

25 now, even though it, of course, may not be something  
that ever

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Juror No. 84 - Voir Dire

1 happens, because there may not be a guilty verdict.

2 So turn to 28, then, and just review by  
reading to



3 yourself what you wrote.

4 Okay. You have that in mind?

5 A. Yeah.

6 Q. Now, if I may, I want to refer to your mother and  
7 stepfather as your parents. Okay? Because you look at  
them as

8 your parents now, don't you?

9 A. Yes.

10 Q. When you got the jury summons and knew what the  
case was,

11 did you talk with them or either of them about you  
might have

12 to serve on this jury?

13 A. I showed my father the thing because he has always  
been

14 kind of interested in that.

15 Q. Did he make any statement to you or suggest  
anything to you

16 when you showed him the summons?

17 A. No. He just said that was kind of neat and you  
should save

18 the piece of paper.

19 Q. All right. And then after you came out of the  
fairgrounds

20 there and had answered all these questions and, you  
know, I

21 told you not to talk about those questions with anybody  
and I

22 also told you to be careful about watching news on  
television

23 or listening to radio and all those things -- but we  
know that  
24 that's not easily done and sometimes you, not because  
of your  
25 own initiative, do encounter something or people say  
things to

1743

Juror No. 84 - Voir Dire

1 you.  
2 When you got back home, did, you know, your  
parents  
3 ask you anything about it?  
4 A. No, not really.  
5 Q. Well, they were a little curious about it, weren't  
they?  
6 A. They asked if there was a lot of people there and  
if  
7 Mr. Nichols was there -- my father asked me because he  
said he  
8 heard on the radio that he was supposed to be there,  
something  
9 like that.  
10 Q. Did you talk at all about these questions?  
11 A. No.  
12 Q. Did you talk at all with them about the death  
penalty?  
13 A. No.  
14 Q. And have you talked with anybody about the death  
penalty

15 since answering these questions?

16 A. I haven't.

17 Q. Or read anything about it?

18 A. No.

19 Q. Are you aware there is some discussion about the  
death

20 penalty in Colorado, in the state courts --

21 A. Yes.

22 Q. -- right now, because there is a man who has been  
sentenced

23 and the sentence is expected to be carried out soon?  
You're

24 aware of that?

25 A. Yes.

1744

Juror No. 84 - Voir Dire

1 Q. Now, thinking about it now, is there anything here  
that you

2 would change in your answers since it's been more than  
two

3 weeks since you answered these questions and you may  
have had

4 some additional thoughts? Have you?

5 A. No, I don't think I'd change my answers, no.

6 Q. So it's fair for us to take the answers you wrote  
out on

7 the 17th of September as being your answers today?

8 A. Yes.

9 Q. All right. I want, then, to simply ask you: You  
have said

10 in here -- the way I understand what you've said -- and  
I'm not

11 trying to speak for you. You can speak for yourself,

12 obviously. But a lot of this is "it depends on the  
case." Is

13 that right?

14 A. Yes.

15 Q. Are you thinking in terms of certain kinds of  
crimes?

16 A. Yes.

17 Q. And that's what you've put in here; and as I  
understand it,

18 one of the crimes, of course, under D is murder.

19 A. Yeah.

20 Q. Now, let's -- let's be clear: Where -- under the  
statutes

21 that we're dealing with, the death penalty is involved  
only

22 when there is murder. Now, you know, separate kinds of  
murder

23 can be involved, but killings through criminal conduct:  
That's

24 what we're talking about.

25 A. Yeah.

Juror No. 84 – Voir Dire

1 Q. So do you here, as a preliminary question,  
distinguish

2 between different kinds of killings as to when death  
might be a

3 penalty that you think would be appropriate vs. other  
kinds of

4 killings? I mean, you understand what I'm trying to  
ask?

5 A. Yeah. I think more like, I don't know -- it's hard  
to say.

6 Like gang members or something going and shooting other  
people,

7 innocent people, stuff like that. I think, you know,  
they

8 should --

9 Q. Are there kinds of killings where you would think  
that a

10 punishment other than death is appropriate?

11 A. Life imprisonment would be, I guess.

12 Q. Yeah, but I mean I'm asking you for your opinion  
about

13 certain kinds of killings that would -- you would make  
a

14 distinction between death and life in prison, depending  
on the

15 type of killing.

16 A. Not really, no.

17 Q. So what is it? Are you saying anytime you kill  
somebody,

18 you ought to be killed?

19 A. I think so, yes.  
20 Q. Let me talk with you a little bit about the law  
now,  
21 because this is in terms that you've expressed of what  
you  
22 think the -- maybe the law ought to be. And here's the  
way it  
23 works. I'm just talking to you about the procedure and  
what is  
24 involved in a punishment decision.  
25 First, let me make it clear that when the  
penalties

1746

Juror No. 84 - Voir Dire

1 that we're talking about now are not involved, it's  
because the  
2 statute doesn't provide for them. Other kinds of  
cases, there  
3 is a trial, just like we've talked about, and a jury  
verdict.  
4 And of course, if the jury finds the evidence doesn't  
show  
5 guilt beyond a reasonable doubt, that verdict is going  
to be  
6 not guilty and that's the end of it; but if the jury  
finds the  
7 evidence does convince them beyond a reasonable doubt,  
there  
8 can be a guilty verdict.

9                   And in those cases, what happens next is up to  
the  
10                   court. The jury doesn't get involved in how much time  
the  
11                   person should be in prison or whether they should be  
imprisoned  
12                   at all. Those things are a very individualized  
judgment or  
13                   sentence, and a judge makes that ruling but before  
doing so  
14                   gets a lot more information than was presented at the  
trial,  
15                   more information about the offense itself and then a  
lot more  
16                   about the offender, the person found guilty.  
17                   And that information about the person who is  
in front  
18                   of the court goes into the whole life history: that  
person's  
19                   background, his family relationships, his work history,  
pretty  
20                   much everything that's been done or done to him. And  
that's,  
21                   you know, a very individual thing. All of us have  
different  
22                   experiences in life. And then the court, the judge,  
hears from  
23                   both sides, the prosecution and the defense, and makes  
a  
24                   decision that this particular sentence is appropriate  
for this  
25                   person who committed this crime.

## Juror No. 84 - Voir Dire

1           Now, when the issue is life or death, we don't  
leave  
2           that up to the judge. That's a decision that's made by  
the  
3           jury in Federal Court. And there are differences among  
the  
4           states and between states and the federal system.

5           Here, of course, we're in Federal Court.  
These are  
6           federal charges.

7           Now, if the jury -- and when the jury tries  
the  
8           case -- that is, hears the evidence -- this question of  
9           punishment doesn't come into play at all. It's not to  
be  
10          considered. And then the jury is asked, Well, you  
know, does  
11          this evidence satisfy you beyond a reasonable doubt  
that the  
12          Government has met its burden and the defendant is  
guilty?

13          And again, of course, if the decision is not  
guilty,  
14          that's the end of it. But if the decision is guilty in  
a case  
15          with a charge like that, the jury then has to go on and  
16          determine the punishment.

17          Now, they have three choices, the jurors: One



is life

18 in prison with no possibility of ever getting out, ever  
being

19 released. There is no parole in this system, in other  
words.

20 Another choice is death. Another choice is, well,  
something

21 less than death or life in prison; and under those

22 circumstances, it goes, really, back to the court. But  
the

23 life-or-death choice is made by the jury.

24 And before the jury can decide that, they  
can't under

25 the law do it just because of the guilty verdict. They  
have to

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Juror No. 84 - Voir Dire

1 hear more. And it's sort of like what I've talked  
about, an

2 individualized sentencing decision by a judge; that is  
to say,

3 there is more information provided to the jurors. And  
it's

4 done by what is really a second trial or a penalty  
hearing.

5 And it is at that time that the prosecution, the  
lawyers for

6 the Government, put on or produce information for the  
jury to

7 consider in support of the view that death is the

punishment

8 for this person who has been found guilty of the  
particular

9 crime charged. And we refer to that kind of  
information as

10 "aggravating factors" or "aggravating circumstances."

11 The defense produces information to the  
contrary, and

12 we call that type of information "mitigating factors."  
And

13 it's the kind of thing that suggests that this person,  
this

14 individual human being, does not deserve to be put to  
death for

15 this crime. And that includes -- may include these  
kinds of

16 things that I've talked about, the sort of life story  
of the

17 person. And it can include other things, including  
what the

18 particular reason was that the person may have or did  
commit

19 the offense and what the circumstances were and his or  
her role

20 in the offense, major or minor. There are a lot of  
things that

21 can come up.

22 Now, you know, in this case, we don't know  
what the

23 evidence is going to be. We don't know whether there  
will be a

24 guilty verdict. Obviously, we're here assuming there  
won't be;

the 25 but because we have to, you know, select the jury on

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Juror No. 84 - Voir Dire

1 possibility the jury has to also do punishment  
sentencing,

2 we've got to talk about it. And that's why I'm going  
over this

3 with you.

4 But what the jury then -- after all of that is  
done,

5 all the information has been provided at the second  
trial, then

6 the Court, I, as the Judge, instruct the jury some more  
about

7 based on that information what can be considered as the

8 aggravating factors, what can be considered as the  
mitigating

9 factors, and then through a series of questions suggest  
how the

10 jury can analyze what they've heard. But that  
analysis, you

11 know -- there is no rigid structure to it. It's not  
like a

12 formula or an equation. It is a choice that jurors  
have to

13 make, and it's making a moral judgment about another  
human

14 being and whether he should live or die. And in the  
end, of

15 course, each juror must decide this individually.

16 Have you followed along the things I've said?

17 A. Yes.

18 Q. And do you understand what I've said?

19 A. Yes.

20 Q. And the question that you must answer for us is  
whether you

21 can do that.

22 A. Yes, I think I can.

23 Q. And, you know, I pose it in this way or ask it in  
this way

24 because you set out here some views, and they're not  
quite the

25 same as the way I've explained the law here.

1750

Juror No. 84 - Voir Dire

1 A. Yeah. Well, I'm kind of ignorant when it comes to  
the law.

2 Q. We don't expect you to know the law coming in here,  
but we

3 wanted to know what you thought before you heard about  
the way

4 in which the question could come up. But the law is  
you have

5 to be open to the full range of possible punishments  
and

6 consider everything that you've heard. That's why I'm  
asking

7 whether you can do that.

pretty

8 A. Yes. I think I can. I mean, I just think that's a

9 big responsibility for someone --

10 Q. Very big --

make a

11 A. -- to do that, but I would -- I would have to know

12 everything about the case and all that before I could

13 sane, you know, life or death penalty.

individual --

14 Q. And you'd have to know everything about the

15 A. The facts, yeah.

16 Q. -- who is being judged?

17 A. The facts.

you have

18 THE COURT: Okay. Well, the lawyers have some

19 questions for you, too; so hang on and answer them as

20 me, please.

21 All right. Mr. Orenstein?

22 MR. ORENSTEIN: Thank you, Judge.

23 VOIR DIRE EXAMINATION

24 BY MR. ORENSTEIN:

25 Q. Good morning, sir.

1 A. Good morning.

2 Q. As the Judge introduced me, my name is Jamie  
Orenstein; and

3 I'm one of the prosecutors whose job it is in this case  
to  
4 present the evidence against Mr. Nichols.

5 Now, as a juror in this case, you would have a  
job to  
6 do; and that would be to listen to the evidence with an  
open

7 mind and then come to a fair decision based on all of  
the facts

8 and based on the law that the Judge would give to you.  
Do you

9 think you can do that job?

10 A. Yes.

11 Q. Now, Judge Matsch asked you about your motocross.  
I want

12 to ask you about another activity. Sounds completely  
opposite.

13 You do fly-fishing. Is that right?

14 A. Yes.

15 Q. Sounds a lot calmer than the motocross.

16 A. Yes.

17 Q. Who do you do that with?

18 A. My mom.

19 Q. Does your dad get involved in that?

20 A. Sometimes.

21 Q. I want to ask you about a few of the things in your

the  
things  
in  
22 questionnaire. Judge Matsch went over with you most of  
23 things that I want to talk to you about, but one of the  
24 that -- that you wrote in your questionnaire was that  
25 judging eyewitness testimony -- and this is on page 25,

1752

Juror No. 84 - Voir Dire

1 Question 114 -- do you see that?  
2 A. Yeah.  
3 Q. If I'm reading it correctly, you say that you would  
want to  
4 find all of the facts. Is that right?  
5 A. Yes.  
6 Q. That is your general view about how to approach  
your job as  
7 a juror, find all of the facts?  
8 A. Yes.  
9 Q. So would you apply that to the overall question of  
guilt or  
10 innocence?  
11 A. Yes.  
12 Q. How about with the question of punishment?  
Obviously, we  
13 don't even address the question if there is no finding  
of  
14 guilt; but if there is, you would have to sit in

judgment of

15 whether a defendant should live or die.

16 A. Uh-huh.

17 Q. In that situation, would you also feel it's  
important to

18 find all of the facts?

19 A. Yeah -- yes.

20 Q. Now, on the same page, Question 116, I want to ask  
you

21 about your second answer there. The first one you say  
that

22 you'll still listen to the arguments of others who  
don't agree

23 with you if you think you're right. On the second one  
you

24 said -- "If yes, are you sometimes persuaded to change  
your

25 opinion?"

1753

Juror No. 84 - Voir Dire

1 And you said no. I'm wondering if you could  
elaborate

2 on that a little bit.

3 A. Actually, that's not right -- once I think about  
it, that's

4 not right.

5 Q. So --

6 A. Because I could be wrong. I mean --



7 Q. Sure.

8 A. I'm not always right, so . . .

9 Q. So you understand that part of the job of a juror

is to

10 make a decision with the group and to candidly exchange

views,

11 and if you think they're right, change your mind, and

if you

12 can persuade them that you're right, change their

views. Can

13 you do that?

14 A. Yes.

15 Q. Now, his Honor asked you if you had discussed with

your

16 parents the death penalty or the summons after you

received the

17 summons, and you said you hadn't. Is that correct?

18 A. No, I had not.

19 Q. Other than what your dad said upon receiving the

summons?

20 A. What's that?

21 Q. Other than what your dad said just when you got the

22 summons?

23 A. Yes.

24 Q. What about before you had received the summons?

Had you

25 ever discussed criminal law in general, the system,

with them,

## Juror No. 84 - Voir Dire

1 or the death penalty?

2 A. No.

3 Q. Do you have any idea what your parents' views about  
the

4 death penalty are?

5 A. We haven't really talked about it. I don't know.

6 Q. Now, I notice that you had pretty much the same  
answer to

7 both the first two questions about the death penalty,  
and

8 that's on page 28, Question 124. On the first question  
about

9 whether the penalty of life in prison without the  
possibility

10 of release should ever be imposed, you said, "It  
depends on the

11 crime; but yes, it should be enforced in some cases."  
Is that

12 still your view?

13 A. Yeah.

14 Q. And just jumping down for a moment to Question C on  
that

15 same page, you were asked what kind of cases it might  
be

16 appropriate to impose a life sentence; and you said  
"murder and

17 sexual assaults." Are you still open to the  
possibility that

18 in some murder cases and some sexual assault cases,  
depending

19 on the facts, that you could impose a life sentence?

20 A. Yes.

21 Q. And is the same thing true with the flip side on  
the death

22 penalty? Again, it depends on the facts and  
circumstances?

23 A. If it's deserving. I mean, if all the facts are  
correct.

24 Q. And when you say "If all the facts are correct,"  
what do

25 you have in mind? What would you want to know?

1755

Juror No. 84 - Voir Dire

I 1 A. Just the truth, what really happened and the facts.

2 mean --

3 Q. As his Honor explained it to you, part of the  
process that

4 would be involved, if the Government were to prove that  
the

5 defendant were guilty beyond a reasonable doubt and you  
were

6 faced with this decision, there would be a second  
hearing.

7 A. Uh-huh.

8 Q. And that's where the Government would come forward  
with

9 evidence which we felt would support the decision to  
sentence  
10 the defendant to death and then the defense would have  
to have  
11 the opportunity to present evidence to persuade you  
that the  
12 life sentence was the proper punishment.

13 Now, you mentioned a couple of times that you  
consider  
14 this a very big responsibility.

15 A. Yes.

16 Q. Would it be important to you in shouldering that  
17 responsibility to listen carefully to the instructions  
by his  
18 Honor and follow them?

19 A. Yes, I could.

20 Q. So part of that would be just not making a  
decision,  
21 keeping your mind open until you had heard everything?

22 A. Very much so.

23 Q. So you agree strongly with that?

24 A. Yeah.

25 Q. Let me ask you to take a look at page 30 and  
Question 129.

1756

Juror No. 84 - Voir Dire

1 You marked there that you agree strongly generally that  
it's

space  
left  
you  
think it's  
them, so I  
to the  
punishment,  
the law  
not be,  
a fair  
Court?  
If you  
I just

2 import to follow the Court's instructions. There is a  
3 there to give an explanation if you wanted to, and you  
4 that blank in the questionnaire. But I'm wondering if  
5 could just expand on that a little bit. Why do you  
6 important to follow the Court's instructions?  
7 A. Well, they set rules. I mean, you have to go by  
8 think it wouldn't be fair to anybody if you didn't.  
9 Q. Wouldn't be fair to the defendant, wouldn't be fair  
10 Government; correct?  
11 A. Yeah.  
12 Q. So bringing that back to this discussion about  
13 whatever general views you may have, not knowing about  
14 about when death should be imposed and when it should  
15 would you be able to set all of that aside and to give  
16 trial to everybody, follow the instructions from the  
17 A. Yes.  
18 Q. I want to ask about another subject for a moment.  
19 would turn to page 24, and if you look at Question 110,

incident 20 want to make sure that this is -- is this a different  
21 that you're thinking of when you answered that question  
than 22 the incident on Question 108?  
23 A. Yes. Other of my friends have gotten in trouble  
with the 24 law before.  
25 Q. Are these close friends, friends you're just  
acquainted

1757

Juror No. 84 - Voir Dire

1 with?  
2 A. Just acquaintances.  
3 Q. And so there has been more than one incident with  
various 4 friends?  
5 A. Yeah. I personally have never been --  
6 Q. I'm sorry?  
7 A. I have never been arrested with them, but --  
8 Q. No, I'm not suggesting that.  
9 A. Okay.  
10 Q. I'm asking if these were separate from the incident  
that 11 the Judge discussed with you.  
12 A. Yeah.  
13 Q. Looking back on those incidents, or your own

incident --

14 the incident that you discussed with his Honor in your  
own

15 experience, do you have any feelings related to those  
incidents

16 that you think might affect your service here as a  
juror?

17 A. No.

18 MR. ORENSTEIN: Sir, I thank you very much for  
19 answering my questions and appreciate you taking part  
in this

20 process.

21 THE COURT: Mr. Tigar?

22 VOIR DIRE EXAMINATION

23 BY MR. TIGAR:

24 Q. Hello.

25 A. How are you doing?

1758

Juror No. 84 - Voir Dire

1 Q. Fine. How are you?

2 A. Pretty good.

3 Q. My name is Michael Tigar. I'm one of the lawyers  
asked by

4 the court to help Terry Nichols.

5 You said you're -- now, I want to be right  
about this.

6 Your father -- do you call your father -- your

stepfather your

7 father? What's -- what would you prefer?

8 A. I don't know. I usually call him by his first  
name, but --

9 Q. Okay. Well, I can't do that, so if I call him your  
dad, is

10 that all right?

11 A. That's fine.

12 Q. Okay. Your dad asked you what you thought -- he  
wanted to

13 know if Mr. Nichols was out at Jeffco?

14 A. Right.

15 Q. Right. And he was. What did you think of that?

16 A. I thought that was kind of interesting. I didn't  
-- I

17 don't know too much, you know, about the trial or  
anything, but

18 I thought it was kind of neat to actually see him. I  
thought

19 that was kind of interesting, but -- I don't know.

20 Q. Well, there are no right or wrong answers here.  
We're just

21 trying to explore attitudes and thoughts, because the  
object is

22 that there will be 12 people selected to be on this  
jury and we

23 want to look at all the facts because, you know, folks  
come in,

24 we talk to them, maybe they should be on somebody  
else's jury.

25 A. Uh-huh.



1759

Juror No. 84 - Voir Dire

1 Q. Now, when you got out there to Jeffco, did you have  
any  
2 opinion about whether Mr. Nichols was guilty or not  
guilty  
3 based on what you've heard and read?

4 A. No. No. I haven't really read all that much. I  
know that  
5 there was a bombing in Oklahoma City and Timothy  
McVeigh was  
6 found guilty and sentenced to death; but other than  
that, I  
7 don't really know that much.

8 Q. Did you -- did you talk about the sentence of  
Timothy  
9 McVeigh that the jury -- their recommendation with your  
family  
10 or friends?

11 A. No. I just heard it in the morning -- on the radio  
one  
12 morning.

13 Q. Okay. And what -- what did you think about that?  
Did you  
14 think that was correct, that sentence, based on  
everything that  
15 you heard and read?

16 A. I didn't really read all that much. I don't know.  
I'd

17 have to see all the facts and --

18 Q. You weren't there.

19 A. Yeah.

That was

20 Q. You mentioned that in school you liked history.

21 your favorite subject.

22 A. Yes.

23 Q. Why?

don't know,

24 A. Just always been interested in history like, I

the

25 the pioneers and how everybody came over, you know, to

1760

Juror No. 84 - Voir Dire

neat.

1 United States here. I think it's always been kind of

of our

2 Q. The history that got you the most was the history

3 country, American history?

4 A. Yeah.

in

5 Q. Now, I'm a little confused about -- you were born

6 Germany?

7 A. Uh-huh.

8 Q. In Wurzburg?

9 A. Yes.

10 Q. And was your mother an American citizen?

11 A. Yes.

12 Q. And your father was also?

13 A. Yes.

14 Q. Okay. But that was in a military station over  
there?

15 A. Yes.

16 Q. So nobody speaks German in your house, or you don't  
have

17 any cultural affinity with Germany or --

18 A. No.

19 Q. Thank you for clearing that up.

20 What I wanted to ask most about, what  
interested me

21 was the Judge talked to you about what happens in this  
case if

22 the jury finds Mr. Nichols guilty of any of the  
charges. Okay?

23 Now, we are -- nobody is assuming that's going to  
happen,

24 because we start with a clean slate; he's presumed  
innocent.

25 That's okay with you?

1761

Juror No. 84 - Voir Dire

1 A. Yeah.

2 Q. Okay. And you would understand that the  
prosecution has

okay 3 the burden of proof beyond a reasonable doubt. That's  
4 with you?  
5 A. Yes.

have 6 Q. And what about this idea that the defendant doesn't  
7 any burden even to put on any evidence or to testify?  
Would 8 you feel -- would you have a problem if, after the  
Government 9 got done presenting its case, the defense said we rest  
and 10 we're going to argue that the evidence they presented  
is not 11 enough?  
12 A. No, I don't think so. I kind of -- I don't know.

13 Q. Am I not being clear? Just tell me --  
14 A. Yeah. I kind of understand you, but I'm not --

15 Q. Well, here's -- let me describe it a little  
further. The 16 Government: They go first.  
17 A. Okay.

18 Q. They get first ups. And when they put on a  
witness, we 19 have the right to cross-examine that witness --  
20 A. Okay.

21 Q. -- and to try to point out things that the jury  
should 22 think about in deciding how much weight to give that  
witness'

23 testimony.

24 A. Uh-huh.

25 Q. And when the Government finishes presenting their  
evidence,

1762

Juror No. 84 - Voir Dire

1 they say, "We rest." At that point, under our system,  
the

2 defense doesn't have any obligation to put on any  
evidence and

3 the defendant doesn't have any obligation to testify.  
We could

4 stop right then and argue, hey, there is a reasonable  
doubt

5 here.

6 A. Uh-huh.

7 Q. Would you feel that if we didn't put on any  
evidence and

8 chose to do that that we might be hiding something?

9 A. No.

10 Q. So you'd be able to say you'd evaluate the evidence  
that

11 was presented and if there was a reasonable doubt in  
your mind,

12 looking at all of it, you could say not guilty?

13 A. I think I'd like to know a little bit more  
information.

14 Q. Okay. Well, tell me about that. What more?

15 A. Well, actually, yeah, I think it would be better  
for both  
16 people to present their sides. That would only be  
fair. I  
17 mean I --

18 Q. Well, can you think of any reason why a person who  
was  
19 innocent would not testify and take the stand in their  
own  
20 defense?

21 A. I think they should. It might be better for their  
own  
22 behalf.

23 Q. Would it bother you if the defendant didn't?

24 A. I don't think so, no.

25 Q. You just think it would be better?

1763

Juror No. 84 - Voir Dire

1 A. Yeah, I do.

2 Q. Okay. And if the judge told you -- and if it  
happened you

3 were a juror in a case -- we're talking about a  
hypothetical

4 case, because nobody here knows what the evidence is  
going to

5 be. I mean, they may have some idea; but they don't  
really

6 know. If in a case where you were a juror the

defendant didn't

7 take the stand and the judge were to say, "Don't think  
about

8 that, don't talk about it, don't consider it," would  
you be

9 able to follow that instruction?

10 A. Yes.

11 Q. Okay. Well, let's go back to this second part of  
the --

12 If, indeed, the jury did find Mr. Nichols guilty of one  
or more

13 of these offenses, then there is this second trial.  
Right?

14 And you had said that at that second hearing on what  
the

15 punishment is, you could listen to all the facts.  
Correct?

16 A. Uh-huh.

17 Q. Now, what -- what kinds of facts would you be  
looking for

18 to determine how to make this life-or-death decision?

19 A. Try to find out the truth, what really happened and  
what

20 went on.

21 Q. Okay. What do you mean? The truth about the crime  
itself,

22 the events?

23 A. Yeah. The events. Everything.

24 Q. Well, if -- I'm trying to figure out, trying to  
talk to you

25 about how you would approach. If I were to ask a good

friend

1764

Juror No. 84 – Voir Dire

1 of yours, Tell me what your opinions are about the  
death

2 penalty, what would your friends say? Would they know?

3 A. I don't think they'd really have an answer. Never  
really

4 talked to them about it, so . . .

5 Q. Okay.

6 A. Yeah. I don't really know that much about it.  
Just heard

7 it on TV news, you know.

8 Q. Let's go a little further. You know that there was  
a

9 bombing, explosion at the Murrah Building. Correct?

10 A. Yes.

11 Q. And how many people did you hear were killed?

12 A. Like 100-something. I don't know the exact number.

13 Q. And did you read or hear about how Timothy McVeigh  
came to

14 be in law enforcement custody?

15 A. No.

16 Q. Okay. And did you hear about whether any children  
were

17 killed?

18 A. Yes.



19 Q. You heard they were?  
20 A. Yes, there were children involved.  
21 Q. Did you hear or read about why it was that children  
would  
22 be in a federal building?  
23 A. Uh-uh. No.  
24 Q. Does that -- does the fact that children died --  
does that  
25 have some -- did that hit you pretty hard?

1765

Juror No. 84 - Voir Dire

1 A. It's kind of -- yeah. That kind of bothers me,  
innocent  
2 children dying. I mean, there is no need for that, I  
guess.  
3 Q. Nobody thinks there was.  
4 A. Yeah.  
5 Q. No disagreement about that. My question to you is:  
What  
6 mitigating circumstances would be important to you if  
you were  
7 deciding the appropriate punishment for someone that  
was  
8 convicted of intentional murder of children?  
9 MR. MACKEY: Judge, may I object to further  
questions  
10 about mitigation?

11 THE COURT: Yes. I'm going to sustain the  
objection.

12 MR. TIGAR: To that question?

13 THE COURT: Yes.

14 BY MR. TIGAR:

15 Q. Now, you heard the Judge say that if the jury finds  
16 Mr. Nichols guilty of any of the charges, there is the  
second

17 phase and that's about the sentence. And he talked  
about

18 "mitigating circumstances." Well, what did that term  
mean to

19 you?

20 A. The circumstances -- I would have to know  
everything that

21 went on and if -- you know, who all had a part in it, I  
guess.

22 Q. And when you say "everything that went on," you're  
23 referring to how the crime came to be committed?

24 A. Yes.

25 Q. And is that the most important thing for you is to

1766

Juror No. 84 - Voir Dire

1 understand in making the decision like that --

2 A. I would have to know the truth.

3 Q. Right.

4 A. I'm sure it all won't be the truth. Some might not

be,

5 some might be.

6 Q. Well, can you think of a case where a person who  
committed

7 an intentional murder should receive a life -- talking  
about

8 deliberate murder -- should receive a sentence of life  
in

9 prison?

10 A. No.

11 MR. TIGAR: Thank you very much.

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. You've been asked questions here about what you can  
think

15 of, and so forth. I'm not trying to lead you into any  
answers,

16 but it's a little uncertain as to your view -- of what  
your

17 ability to decide is in the punishment issue, if there  
were to

18 be one, punishment decision. And counsel have asked  
you about,

19 you know, circumstances that you can think of. You  
understand

20 there will be instructions about what can and should be

21 considered based on the information. Now, the thing  
that I

22 think is so unclear to me is whether you're open to  
considering

23 everything that you would hear at a penalty phase

hearing

24 before making a decision.

25 A. Yeah. I think -- I'd have to hear everything first  
before

1767

Juror No. 84 - Voir Dire

1 I --

2 Q. Yeah, but you've talked about the crime; and what  
you seem

3 to be saying, you want to be knowing everything you  
could know

4 about the crime.

5 A. Yeah.

6 Q. Now, what about the person who is being judged?

7 A. Well, I'd have to know everything about the whole  
case, all

8 the evidence and --

9 Q. Well, I think what we've been trying to ask you is  
whether

10 the person being judged and his life story, as it were,  
and

11 that human being is of any consideration to you, or you  
would

12 give any consideration to that.

13 A. Well, yeah, he's a human being. I have compassion  
for him,

14 too.

15 Q. Can you consider that if two persons were involved

in the

16 same crime, their sentences should be different?

17 A. Yes, I do. Maybe if one had more part than the  
other, I

18 think he should probably get a lesser sentence.

19 Q. And what about the backgrounds of those people?  
Would that

20 be a factor that you would pay attention to if -- if  
that were

21 presented?

22 A. I -- yes.

23 Q. Well, I don't want you to just answer me, you know,  
because

24 I asked you. What we're struggling with and the reason  
it is

25 such a problem is we don't know what is going to be  
presented.

1768

Juror No. 84 - Voir Dire

1 A. Yeah.

2 Q. So we kind of have to work in the dark here.

3 A. I honestly -- I don't know. I mean, I would have  
to hear

4 everything, and then I could base everything on that  
from what

5 I've heard. I can't honestly say that he is guilty or

6 innocent. I don't know.

7 Q. Well, we're not talking about guilty or innocent

now. Let

8 me just slow down.

9 A. Okay.

10 Q. You've been hit with all kinds of questions and  
you're kind

11 of, you know -- you're obviously uncomfortable with  
this. And

12 we don't expect anybody would be comfortable talking  
about

13 this. But the question of punishment doesn't really --  
it

14 isn't the same question as guilt. Do you understand  
that?

15 A. Yes.

16 Q. Because the question of guilt, in reaching that  
question,

17 does the evidence prove the charges made beyond a  
reasonable

18 doubt -- the jury answering that question does not  
consider

19 punishment at all. Do you understand that?

20 A. Yes.

21 Q. So the punishment question only comes up if there  
is a

22 clear finding of guilt.

23 A. Yeah.

24 Q. Because the jury is convinced the evidence shows  
that this

25 person is guilty under the law and the facts, under the

## Juror No. 84 - Voir Dire

1 evidence. So it's established that the person is  
guilty of  
2 murder. Understand?  
3 A. Yeah.  
4 Q. Now the question is what should be done about it,  
whether  
5 this person should live or die. And that's a much  
different  
6 question than whether the person did it, committed a  
murder.  
7 Do you understand that?  
8 A. Yeah.  
9 Q. Now, it is with respect to that question that we  
get this  
10 additional information that I've talked about, which  
can  
11 include things that are individual to this person as a  
human  
12 being.  
13 A. Uh-huh.  
14 Q. And if two persons were involved in the same crime,  
there  
15 may be differences with respect to these aspects of  
them. Do  
16 you see that there can be such differences?  
17 A. You mean in involvement?  
18 Q. No. Well, that could be, too, but apart from  
involvement.

19 Who they are . . .  
20 A. Their personality and so forth.  
21 Q. Yeah. Those things. Does that have any meaning to  
you as  
22 to who they are, and can you conceive that one person  
may be --  
23 for that person death might be justified but for  
another not  
24 because of differences in who they are and what they  
are?  
25 A. I don't think so, no.

1770

Juror No. 84 - Voir Dire

1 Q. You think they both ought to be treated the same?  
2 A. Yes.  
3 Q. Because of the crime.  
4 A. Yeah.  
5 THE COURT: Okay. Well, that's what we wanted  
to find  
6 out from you, and it took a long time to find it out.  
7 JUROR: Sorry.  
8 THE COURT: But I think you've made your  
position  
9 clear.  
10 So now we're going to excuse you. You've  
answered the  
11 questions for us, and we very much appreciate your



doing so.

12 And we're not going to be able to tell you whether  
you're going

13 to be back in here and serve on this jury or not for a  
while;

14 so bear with us, will you?

15 JUROR: Thanks for bearing with me.

16 THE COURT: Well, continue to do what you say  
you've

17 been doing: Avoid discussion about it with everybody  
and

18 anybody and also watch what you read, see, and hear on

19 television, radio, newspapers, whatever, to stay away  
from

20 anything that could influence you, knowing that you'd  
have to

21 be open-minded if you came in here to serve on this  
jury. Will

22 you do that?

23 JUROR: Yes.

24 THE COURT: Okay. You're excused.

25 JUROR: Thanks.

1771

1 (Juror out at 12:18 p.m.)

2 THE COURT: Well, let's see. We've got -- I  
guess

3 1:35 is how I would calculate it. Agreed?

4 All right. Recess, 1:35.

5 (Recess at 12:18 p.m.)

6 \* \* \* \* \*

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Voir Dire Examination by The Court

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REPORTERS' CERTIFICATE

transcript from

2

We certify that the foregoing is a correct

Dated

3

the record of proceedings in the above-entitled matter.

4

at Denver, Colorado, this 7th day of October, 1997.

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Paul Zuckerman

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Kara Spitler

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