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1774

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

13 PROCEEDINGS

14 (Reconvened at 1:35 p.m.)

15 THE COURT: Be seated, please.

737: To 16 As I understand it, you're in agreement for  
17 excuse her because of the problems revealed in the  
18 questionnaire.

19 MR. TIGAR: Yes, your Honor.

20 MR. MACKEY: Yes, your Honor.

21 THE COURT: Then we have 550.

hand and 22 Good afternoon. If you'll raise your right  
23 take the oath from the clerk, please.

24 (Juror No. 550 affirmed.)

25 THE COURTROOM DEPUTY: Thank you.

1775

1 THE COURT: Please be seated there in the  
chair by the  
2 microphone. You can swivel that around so you can  
change your  
3 position relative to the microphone.

4 VOIR DIRE EXAMINATION

5 BY THE COURT:

United 6 Q. You understand that the case now on trial refers to

7 States against Terry Lynn Nichols?

8 A. I do.

9 Q. And that you received a while back a jury summons  
advising

10 you that your name came up through a chance computer  
selection

11 process as a possible juror in this case, and then you  
filled

12 out a short questionnaire, sent it back to us. Then  
you got a

13 notice to appear on the 17th of September in Jefferson  
County

14 at the auditorium building there in the fairgrounds  
with other

15 persons, and you came out there.

16 A. Yes.

17 Q. And at that time I was there and introduced myself  
and also

18 introduced other people who are now here in the  
courtroom

19 again. So let me reintroduce them so you know who's  
here.

20 At this first table in front of you are Mr.  
Lawrence

21 Mackey and Miss Beth Wilkinson, attorneys for the  
Government.

22 They're joined now by Mr. Patrick Ryan, Mr. James  
Orenstein as

23 additional counsel for the Government.

24 You recall meeting Mr. Michael Tigar and Mr.  
Ronald

with us 25 Woods, attorneys for Terry Nichols; and Mr. Nichols was

1776

Juror No. 550 – Voir Dire

1 as well.

the others 2 And then I explained some things to you and

filed 3 about the background of the case, how charges were

in 4 relating to the explosion of a federal office building

19th of 5 Oklahoma City, Oklahoma, that occurred on April the

6 1995 --

7 A. Yes.

were 8 Q. -- with death and injury resulting and that charges

Timothy James 9 then filed by the Government against a man named

they 10 McVeigh and also Mr. Nichols in an indictment that said

to bomb 11 and other persons not named in the indictment conspired

bombing 12 that building and also charges that they carried out a

eight law 13 and that they were also charged with the murder of

14 enforcement agents who were in the building.

guilty, 15 To these charges the defendants pleaded not

16 thereby creating issues for a trial; the case got moved  
from  
17 Oklahoma City to here in Denver because of concern  
about  
18 getting a jury to provide a fair trial in Oklahoma City  
19 considering the impact on that community; and then  
there was an  
20 order that separated the trials so that Mr. McVeigh  
would be  
21 tried alone and the evidence considered by a jury with  
respect  
22 to him, and Mr. Nichols tried alone, separate jury,  
because of  
23 differences between them and what the evidence may be  
and that  
24 Mr. McVeigh has been tried and a jury here in this  
court heard  
25 evidence with respect to him and found him guilty and  
also came

1777

Juror No. 550 – Voir Dire

1 back with a recommendation for a death sentence. You  
know

2 those things.

3 A. Yes.

4 Q. And now we're here to pick a jury and try the  
evidence as

5 it relates to Mr. Nichols. And of course fundamentally  
here

6 what happened at Mr. McVeigh's trial has to be set  
aside; that  
7 is not something that a jury consider -- can consider  
in the  
8 trial of Mr. Nichols. That's exactly why we ordered  
separate  
9 trials, so that there would be separate consideration.  
And we  
10 don't know what the evidence will be that may be  
introduced in  
11 this trial. You appreciate that.

12 A. Yes. Yes, I do.

13 Q. Okay. And then I told you and the others some  
fundamental  
14 principles of the criminal justice system and the  
Constitution  
15 of the United States, saying that nobody who is charged  
with a  
16 crime in the United States in any court, no matter who  
that  
17 person is or what that crime may be charged -- that is  
charged,  
18 has any duty of proving themselves not guilty; that the  
burden is  
19 always on the Government bringing the charge to prove  
it; and  
20 what that burden is, is to bring in the evidence that  
they rely  
21 on and then have a jury judge it to determine whether  
that  
22 evidence proves guilt.

23 No defendant has to call any witnesses or  
produce any

not 24 evidence or testify in any way; and if a defendant does  
told 25 testify at a trial or produce any evidence, the jury's

1778

Juror No. 550 - Voir Dire

'cause the 1 they can't consider that, can't even talk about it  
show guilt 2 issue is: Does the evidence that has been produced  
3 beyond a reasonable doubt. You follow on that?  
4 A. Yes.  
5 Q. And I take it you've heard of these things before?  
6 A. Uh-huh.  
7 Q. And the presumption of innocence means plainly that  
to be 8 Mr. Nichols sits here with us this afternoon presumed  
the 9 innocent of these charges, and that carries throughout  
not 10 trial and entitles him to an acquittal, a verdict of  
case, 11 guilty, unless 12 people sitting in judgment on the  
decides 12 considering only the evidence and following the law,  
doubt. 13 the evidence shows him guilty beyond a reasonable  
reasonable 14 So if at the end of it all the jury has a

15 doubt as to whether the evidence proves guilt, they  
must find

16 him not guilty. Do you understand that?

17 A. I understand.

18 Q. Are you willing to accept that?

19 A. Yes.

20 Q. And agree with it and agree to follow it if you  
were to

21 serve on this jury?

22 A. Yes.

23 Q. Now, we asked you to fill out a lot of questions --  
I mean

24 answer a lot of questions on a questionnaire, and you  
have your

25 completed questionnaire now in front of you.

1779

Juror No. 550 - Voir Dire

1 A. Uh-huh.

2 Q. And we took your answers, as I told you we would,  
and made

3 copies for the people here immediately in front of you,  
not

4 made your answers public in any way, and we seek to  
protect

5 your privacy by not referring to you by name, to bring  
you in

6 and out of the courthouse so that people can't take  
pictures of

7 you, recognize who you are, and so forth. But now  
you're in a

8 courtroom, of course, and these questions and your  
answers are

9 now public; that is, what we do here. You understand  
that?

10 A. Yes.

11 Q. Okay. You, as I -- I'm going to ask you some  
questions

12 that sort of expand on some of the things that you've  
told us.

13 A. Okay.

14 Q. And add a few more and explain some of the  
procedures to

15 see if you understand them. Then the lawyers will have  
a

16 chance to ask you some more questions. So bear with  
us, if you

17 will.

18 You live now in Denver.

19 A. Yes.

20 Q. Yes? Born in El Paso, Texas?

21 A. Yes.

22 Q. Came to Denver, let's see, when you were fairly  
young?

23 A. Yeah, about 11, 12 years old.

24 Q. Yeah. Finished your schooling here in Denver  
through the

25 high school.

Juror No. 550 - Voir Dire

1 A. Uh-huh.

2 Q. Excuse me, go ahead.

3 A. No, I was still going to school.

4 Q. That's what I was about to say. You're a student  
now.

5 A. Yes.

6 Q. And you also work --

7 A. Yes, I do.

8 Q. -- part-time at a photo lab?

9 A. Uh-huh.

10 Q. Now, you're attending University of Colorado at  
Denver?

11 A. Yeah. Yes, I am.

12 Q. Are you in courses now?

13 A. Yes, I am.

14 Q. When do you go to school?

15 A. Tuesdays and Thursday.

16 Q. What time of day?

17 A. 8 to 3:30.

18 Q. During the day?

19 A. During the day.

20 Q. Now, that, you know, if you're on this jury, you  
won't be

21 going to those classes.

22 A. I understand that.

23 Q. And you didn't say in your answers to the  
questionnaires

24 that you wanted to be excused because of that.

25 A. I thought I did the first time, but since it didn't  
make

1781

Juror No. 550 – Voir Dire

1 a -- I suppose it didn't make a difference --

2 Q. Well, it didn't say that. I looked back at your  
first

3 questionnaire. I don't want to argue with you, but you  
didn't

4 ask for an excuse as a student, and I thought maybe you  
were

5 going to night classes.

6 A. No, no.

7 Q. So at the UCD, do your classes go by semester, do  
they?

8 A. Yes.

9 Q. Semester's over in December sometime?

10 A. December.

11 Q. How many courses are you taking?

12 A. Right now I'm a part-time student. I take three  
courses.

13 Q. But you'd be missing those courses if you were  
here.

14 A. Yes.

15 Q. And you paid your tuition?

16 A. Yeah, I have.

17 Q. Well, that's why we asked you to come in, so we  
could get

18 this straightened out. And when do you work? What's  
your

19 part-time job hours?

20 A. I work Monday, Wednesday, Friday, and Saturday from  
about 7

21 to 4 on Monday, during the week, and on Saturday till  
about 12.

22 Q. These are daylight hours?

23 A. Yeah.

24 Q. 7 a.m.

25 A. Yes.

1782

Juror No. 550 – Voir Dire

1 Q. And you rely on that work to pay your school  
expenses?

2 A. Yeah, and everything else, all my expenses.

3 Q. Okay.

4 THE COURT: Well, I'm going to ask counsel to  
approach

5 the bench on this, if you'll hold on a minute.

6 (At the bench:)

7 (Bench Conference 16B1 is not herein transcribed by

court

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

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1786

Juror No. 550 – Voir Dire

1 (In open court:)

2 THE COURT: Well, I just talked with the  
lawyers, and

3 we're going to excuse you.

4 JUROR: All right.

5 THE COURT: We -- you know, jury service is something

6 of a hardship to everybody, but we don't expect somebody in

7 your situation to -- who's already paid for your schooling to

8 drop out to serve. We certainly appreciate that you came in

9 and were ready to do your duty, but we're not going to ask you

10 to make that sacrifice.

11 JUROR: Thank you.

12 THE COURT: So you're excused now, and you don't have

13 to worry about this summons anymore. You can focus on your

14 classes. But I do ask you this: Please don't talk about this,

15 these questions and the questionnaire and all that, with other

16 people because we are trying to keep these questions private

17 for people.

18 JUROR: I understand.

19 THE COURT: So I'll ask you to cooperate with us for

20 that.

21 JUROR: I will.

luck to 22 THE COURT: Okay. You're excused, and good  
23 you.  
24 JUROR: This door?  
25 THE COURT: Yeah.

1787

Juror No. 550 - Voir Dire

1 367.  
2 Good afternoon.  
3 JUROR: Hi.  
4 THE COURT: Will you please raise your right  
hand and  
5 take the oath from the clerk.

6 (Juror No. 367 affirmed.)

7 THE COURTROOM DEPUTY: Thank you.

8 THE COURT: Please be seated there by the  
microphone  
9 in that chair. And you can turn it around. It moves  
around  
10 there, so make yourself comfortable.

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. Now, you understand that the reason that you took  
the oath  
14 and the reason that you're here is that your name came  
up on a  
15 chance computer run as a possible juror in the trial of

the

16 United States against Terry Lynn Nichols.

17 A. Correct.

-- what

18 Q. And you got a summons awhile back and sent back a

answers

19 we call a jury qualification questionnaire giving your

20 to some questions.

21 A. Sure.

you're

22 Q. And one of the things that you told us is that

forth, and

23 worried about house payments and your income and so

24 we'll be talking about that. We didn't ignore that.

25 A. Good.

1788

Juror No. 367 - Voir Dire

we're

1 Q. It's not a matter that we, you know, just said that

2 indifferent to it. We'll talk about it.

3 A. Okay.

instructed to

4 Q. But then in spite of that request, you were

17th of

5 come on out to the Jefferson County Fairgrounds on the

6 September, and you did that.

7 A. You bet.

8 Q. And you were there with other people, and I was  
there and I  
9 introduced myself, and I introduced other people; and  
they're  
10 here again today. And I'll reintroduce them so you're  
aware of  
11 who's here in front of us.

12 You'll recall that Mr. Lawrence Mackey and Ms.  
Beth  
13 Wilkinson, who are the first two at this table  
immediately in  
14 front of you, were there as lawyers for the Government.  
We are  
15 now -- they are now joined by Mr. Patrick Ryan, next to  
16 Ms. Wilkinson, and Mr. James Orenstein, next to Mr.  
Ryan.

17 Also we have for the defense Mr. Michael Tigar  
and  
18 Mr. Ronald Woods; and Mr. Terry Nichols. All of them  
were  
19 there as well. There are a few other people in the  
room. They  
20 are assisting.

21 And then we asked you to fill out a  
questionnaire  
22 asking you a lot of questions, some of them quite  
personal.

23 And we apologize for that invasion of your privacy, but  
I  
24 think --

25 A. No problem.

## Juror No. 367 – Voir Dire

1 Q. -- you understand the need for it.

2 A. Absolutely.

3 Q. And then I told you that we would protect your  
privacy by

4 not revealing your answers publicly. The people who  
are here

5 have read them, but they have not been made public and  
will not

6 be. Your name's not public, and we brought you in and  
out of

7 the courthouse in a way that people can't take pictures  
of you

8 or whatever. But understand that what we say here in  
open

9 court is public. This is a public courtroom.

10 And I just want to review with you some of the  
things

11 that I told you and the others when we were together  
last which

12 was giving you some history of the case, how there was  
an

13 explosion that destroyed a building in Oklahoma City,  
Oklahoma,

14 on April 19 of 1995, resulting in deaths and injuries  
and that

15 charges were then filed in Oklahoma City by the  
Government

16 charging in what is called an indictment, which simply  
is a

17 statement of charges, as it were, that Timothy James  
McVeigh  
18 and Terry Lynn Nichols and other people not named in  
the  
19 indictment were in a conspiracy or some kind of  
agreement to  
20 bomb that building and carried it out and that the  
defendants  
21 also, through that bombing, murdered eight law  
enforcement  
22 agents who were working in the building.

23               Pleas of not guilty were entered, thereby  
disputing  
24 these allegations and creating the issues for trial;  
that the  
25 case was then moved from Oklahoma City to Denver,  
Colorado,

1790

Juror No. 367 – Voir Dire

1 because of a perception that there would be problems of  
people  
2 right there in that community being asked to judge  
fairly the  
3 cases; and then separate trials were ordered for Mr.  
McVeigh  
4 and Mr. Nichols because of the requirement that they be  
given  
5 individual and separate consideration and the evidence  
as  
6 against them has to be considered separately by a

different

7 jury for each one. You understand all that background?

8 A. Absolutely.

9 Q. And I explained to you that which you probably  
already

10 knew, and that is that there has been a trial of the  
evidence

11 relating to Timothy McVeigh resulting in a jury verdict  
of

12 guilty and a recommendation for death as a sentence.  
You knew

13 those things.

14 A. Yes.

15 Q. And of course I also reminded you of it.

16 And that, as I told you and all of the others,  
you

17 can't think about that now because Mr. Nichols is  
entitled to

18 separate trial, and that means what happened to the  
other

19 defendant can't be considered in his case, in Mr.  
Nichols'

20 case. So we set all that aside and in a very real way  
start

21 over, including, of course, selecting a jury for this  
case.

22 You understand all that.

23 A. Absolutely.

24 Q. Okay. And I explained some of the things about  
jury

25 service and what's required; and as I recall, you've

never been

1791

Juror No. 367 - Voir Dire

1 on a jury?

2 A. Haven't.

3 Q. And you haven't had any sort of experience  
following court

4 procedure, have you?

5 A. Not really. No, other than traffic court.

6 Q. Okay. Well, let me just explain a couple of  
fundamental

7 principles, because they apply in every case no matter  
who the

8 defendant is, what the charges are, or even what court  
it's in,

9 as long as it's in the United States and under the  
Constitution

10 of the United States, 'cause these principles are  
rooted in our

11 Constitution. They're the very fabric of our country.

12 And they -- the principles are that no person  
who is

13 accused has to prove himself to be not guilty. In  
fact, there

14 is the presumption of innocence, that every person  
accused is

15 presumed to be innocent of the charges made. And that

16 presumption carries throughout the trial and entitles  
that

17 person to an acquittal, a verdict of not guilty, unless  
the  
18 jury is persuaded that the evidence shows him to be  
guilty.

19 And it's up to the Government, the lawyers for the  
Government,

20 these folks, to come in with that evidence, the  
witnesses, the

21 exhibits, the things that are relied on to support  
those  
22 charges.

23 The defendant doesn't have to be a witness.  
The

24 defendant doesn't have to call anybody as a witness.  
The

25 defendant doesn't have to prove anything or explain  
anything

1792

Juror No. 367 - Voir Dire

1 and can simply challenge the Government's case by  
2 cross-examining the witnesses and arguing that the  
evidence  
3 doesn't support the charge, that kind of thing.

4 And the jury has to be convinced that the  
evidence  
5 shows guilt beyond a reasonable doubt, is what we call  
it, so  
6 that after hearing it all, if there's any reasonable  
doubt in

7 the minds of the jury, they must return a verdict of  
not guilty  
8 and give the defendant the benefit of that reasonable  
doubt.

9 Now, I've gone over these fundamentals. There  
are a

10 lot of other things involved in instructions on the  
law, but we

11 don't know what those all will be, because we don't  
have any

12 evidence here. And we don't know what the evidence is  
going to

13 be, and we have to talk with you about the case without  
knowing

14 what's going to be shown in this trial; and whatever  
you may

15 have heard or read about Mr. McVeigh's trial may have  
nothing

16 to do with what the evidence is going to be here. Do  
you

17 understand these things?

18 A. Oh, yes.

19 Q. And are you ready to approach this case with that  
point of

20 view?

21 A. Absolutely.

22 Q. And to recognize, as you look at Mr. Nichols, that  
he's

23 presumed to be not guilty?

24 A. Yeah.

25 Q. And would find him not guilty if you weren't  
persuaded that

1793

Juror No. 367 - Voir Dire

that 1 the evidence showed guilt beyond a reasonable doubt; is

2 right?

3 A. Yes.

in your 4 Q. Now, let's talk about some of the things that are

5 questionnaire. You have it there in front of you.

6 A. Uh-huh.

your 7 Q. And please feel free to refer to it. I may call

about your 8 attention to a couple of specifics, but let's talk

9 general situation first. You live now in Englewood?

10 A. Uh-huh.

11 Q. You're divorced now?

12 A. Yes.

13 Q. And you have children.

14 A. No children.

15 Q. No children. Yes, I'm -- that's right.

16 You're living with another person now?

17 A. Correct.

expenses? 18 Q. And does that person help with the household

19 A. Unfortunately, not really.

personal 20 Q. Is your -- you know, we don't want to get too  
21 here, but do you have a relationship with this person?  
22 A. Yes, I do.  
23 Q. A man?  
24 A. No.  
sharing 25 Q. All right. But the relationship is more than just

1794

Juror No. 367 - Voir Dire

1 room?  
2 A. Correct.  
we're 3 Q. Okay. Now, you know, we got to ask you things, and  
4 open-minded about your answers and there aren't any  
true or -- 5 you know, it's not a test.  
6 A. Right.  
7 Q. So there are no answers other than to correctly  
give us 8 what you -- what you believe and something about  
yourself.  
9 You're concerned about meeting your expenses  
if you 10 were on the jury.  
11 A. Well, mostly make my house payment. I think I've  
worked

12 most of that out with my boss and got a few more  
details from  
13 them. They do pay for part of the time. I should have  
a  
14 little vacation time coming; so if it comes down to it,  
I'll  
15 make it.

16 Q. Well, we appreciate your doing that, and one of the  
things  
17 that, you know, I told you and the others when you left  
out  
18 there at the fairgrounds is be careful about news and  
whatever  
19 you read, see, and hear, to avoid things that might  
influence  
20 you and also don't talk about your questionnaire or  
other  
21 things related to the case with anyone; but we would  
understand  
22 that you'd be talking about what this means with  
respect to  
23 where you work and your income and things of that  
nature.

24 Now, as I understand it, you work for a  
company that  
25 provides temporary workers to businesses?

1795

Juror No. 367 – Voir Dire

1 A. Correct. Uh-huh.

2 Q. And you've been with that firm for four years or

more?

3 A. Four years, uh-huh. I'm a branch manager with  
them.

4 Q. Yeah. And are these the people who come there to  
get work

5 and go out and do temporary work? Are we talking about  
general

6 labor?

7 A. Mostly, yes. We're trying to change that, but  
mostly

8 general labor at this point.

9 Q. These are the people with whom you've been working  
so far?

10 A. Mostly, uh-huh.

11 Q. So you need somebody with strong backs and able to  
--

12 A. You betcha, move furniture, move rock, dirt,  
whatever, get

13 cleaned up.

14 Q. Whatever the businesses who come to you for help  
want.

15 A. Exactly. Within reason.

16 Q. Yeah, I understand. And so you visited with  
someone, then,

17 that you report to about this situation.

18 A. Sure. I had to face the -- had to face the facts  
it could

19 happen. But like I say, I'm sure I could work it out.

20 Q. Now, what kind of a conversation did you have with  
that

21 person?

22 A. I just asked him -- quite honestly, I went to my  
boss and  
23 asked him what happened if I were called, would I be  
paid. And  
24 we've just been bought out by a nationwide corporation,  
and so  
25 he had to call Florida to find out, and she said of  
course

1796

Juror No. 367 - Voir Dire

1 there's a ten-day -- they pay for ten days of the  
trial; and  
2 after that, I would be pretty much on my own, to use  
vacation  
3 time or whatever else, but that was about the extent of  
the  
4 conversation. Other than, you know, to -- I would let  
him  
5 know, today, hopefully, whether I would be called or  
some kind  
6 of an idea as to what we'd be looking at. I'm kind of  
a vital  
7 person as far as that goes.

8 Q. Because you've been running this branch office?

9 A. Right.

10 Q. Do you have a region that -- does that go  
geographically --

11 A. Uh-huh. Yes.

12 Q. -- by the basis in a certain region?

it, 13 A. Correct. I cover the Lakewood area -- Denver -- of  
14 Colorado.  
in? 15 Q. Do you generally have the same businesses calling  
16 A. Pretty much, yeah.  
17 Q. A lot of it's construction, is it?  
of town 18 A. I would say half and half. Depending on what part  
19 you're in, you know, I get half construction, half  
industrial 20 orders, as we call them, warehouse production work,  
assembly 21 work, things like that, hotel, motel.  
22 Q. And this matter of moving things comes up because  
you get 23 businesses who have a move and they -- they don't want  
to go to 24 a moving company --  
25 A. Sure.

1797

Juror No. 367 - Voir Dire

1 Q. -- they want to do it with their own workers?  
2 A. Well, believe it or not, the moving companies use  
us, also.  
3 Q. I believe it. Now, is there -- did you talk about  
this  
4 particular case --

5 A. Not anything more than to say that -- people don't  
6 understand when you say you've been called to jury  
duty. I  
7 mean the first instinct is for people to say, well,  
Here's how  
8 you get out of it. And quite honestly, I didn't want  
to hear  
9 any of that, so I would say this is not an average jury  
and  
10 this is something different and all that doesn't apply  
to me.

11 Q. Well, you know, it doesn't -- I'm not suggesting  
that you  
12 shouldn't say to them, This is the trial of Terry  
Nichols.

13 A. Right.

14 Q. That isn't --

15 A. Well, you about have to to get them to shut up, to  
be  
16 honest with you.

17 Q. You were able to do that?

18 A. Trust me, I've heard everything. You know, here's  
what you  
19 say, here's what you don't say. And I did tell my boss  
20 yesterday I was going to be honest and whatever came of  
it,  
21 whatever was meant to be, would happen, you know.

22 Q. Okay. Okay.

23 A. Irregardless of -- they have to hold my job open, I  
know

24 that much.

25 Q. That's the law, you understand that?

1798

Juror No. 367 – Voir Dire

1 A. That's right.

2 Q. And how much they're going to pay you is maybe a  
matter you

3 can negotiate?

4 A. I'm thinking maybe so.

5 Q. You know, we don't want to be too much in  
identifying here,

6 but on page 9 is where I'm looking to where you tell us  
about

7 your work; and the name that you use there, is that the  
company

8 that just bought you out?

9 A. That's the new name, yes. I'm trying to train  
myself.

10 Q. That's the new name?

11 A. But we were formerly Stand-By Personnel.

12 Q. And that's a nationwide company?

13 A. Tandem is nationwide. Corporate name is Outsource  
14 International.

15 Q. I didn't ask you.

16 A. But it's a nationwide change going on. See, we  
don't know

17 who we are.

18 Q. Good.

19 A. It's easy.

20 Q. In connection with that, while we're on that  
subject of

21 work, you say over on page 23 -- if you want to jump  
over

22 there -- that you see a lot of different kinds of  
people.

23 A. Oh, yeah.

24 Q. And some of them are people that police are  
interested in?

25 A. Oh, yeah.

1799

Juror No. 367 - Voir Dire

1 Q. And they come out and get information from you.

2 A. Uh-huh. And even sometimes take them away with  
them.

3 Q. All right. And do you also -- I think that you  
said

4 somewhere in here that you have to call people like the  
police

5 from time to time. Do you --

6 A. Quite often.

7 Q. Do you get situations where somebody shows up and  
gets in a

8 fight or something like that?

9 A. Uh-huh. Yes, or -- well, mostly fights or drug  
situations,

10 drinking, you know, alcohol.

11 Q. Show up drunk?

12 A. Yeah, somebody comes in there too drunk to go home  
and  
13 won't go home, so you call the police, oftentimes.

14 Q. And drugs, too, you say?

15 A. Uh-huh, absolutely.

16 Q. Particular kinds of drugs?

17 A. Oh, they'll use anything. These people, the street  
people  
18 especially, they use all types of drugs.

19 Q. All right. And this is -- is this the kind of  
place where

20 you open the doors in the morning and people show up,  
say, and

21 you got --

22 A. For work, yeah.

23 Q. -- and they show up from all kinds of backgrounds?

24 A. All kinds of backgrounds.

25 Q. Now, you sort of keep a running list, though, of  
people

1800

Juror No. 367 - Voir Dire

1 that you call on over and over?

2 A. Yes, somewhat. I mean, you know, the same people  
don't

but you 3 show up every day. That would be the ideal scenario,  
see on a 4 do get a mind and you do have certain people that you  
5 regular basis, put out on a regular basis.

on the 6 Q. About how many people a day do you put out to work,  
7 average?

office. 8 A. I would say on the average, about 120 out of my

9 Q. Do you have some people help you do this?

10 A. Uh-huh, yes, indeed.

11 Q. Okay. How many helpers do you have?

people. 12 A. At this time, I have core personnel, four other

13 Q. And . . . okay.

14 At one time you lived up in Rock Springs?

15 A. Oh, yes.

16 Q. You were married when you lived up there?

while I 17 A. Yeah, I was being -- I was going through my divorce  
18 was in Rock Springs. He was still here.

19 Q. What were you doing in Rock Springs?

Actually, I 20 A. Everybody always asks me that. I don't know.

worked 21 had a friend here that had owned a restaurant. I had

my 22 for him here in Denver. He actually introduced me to

23 husband. I guess he felt a certain need to take me

back under

24 his wing when I was getting divorced. He went to Rock  
Springs

25 and bought the Casbah Restaurant up there. I worked  
for him

1801

Juror No. 367 - Voir Dire

1 for a year while I was going through the divorce.  
Actually,

2 two years.

3 Q. Then you were in the restaurant business, yourself?

4 A. Yes.

5 Q. At one time. And that was after you were in Rock  
Springs?

6 A. That was after Rock Springs, yes.

7 Q. Were you up in Rock Springs when they had a lot of  
8 construction workers there?

9 A. I came in pretty much at the end of the boom.  
Actually

10 most of it was over with by then. The city was down to  
about

11 10 to 17,000, I would say. It was actually a small  
town, that

12 part of it I liked, you know -- I was on the end of  
hearing the

13 people that had been there through all of that telling  
me about

14 all the crime and stuff that went on.

up there 15 Q. They had a lot of people working on a big project  
16 earlier than you got there.  
17 A. Must have been, yeah.  
then, 18 Q. Okay. Well, tell us a little about the restaurant,  
19 that -- painful subject, maybe. You lost it, it  
failed; right?  
20 A. Yes. It did fail.  
21 Q. Was that down here?  
22 A. Yeah, it was in Littleton, as a matter of fact.  
23 Q. Did you take over an existing restaurant?  
24 A. Yeah, took over an existing building, basically,  
put my own  
25 idea in.

1802

Juror No. 367 - Voir Dire

1 Q. Changed the name?  
2 A. Yeah. Thought going in I was getting a restaurant  
that had  
3 just been four previous restaurants. Found out after I  
had got  
4 in and got going, it had been 12 previous restaurants,  
so I  
5 felt the sinking feeling, literally.  
6 Q. Not the best location?  
7 A. Not at all. Big mistake. It was fun, though.  
Learned a

8 lot.

9 Q. And lost some money?

10 A. Lost some money. Lost some pride, but, again, I  
learned a

11 lot. It would be hard to go back to that business now,  
which

12 is why I guess I'm in the business I'm in. But I  
enjoyed it

13 and I miss it a lot.

14 Q. But you had some bills that, what, lawsuits got  
filed to

15 collect them?

16 A. Yeah, I do have one still hanging over me that I'm  
going to

17 have to work on. The landlord seemed to think I owed  
them

18 \$98,000 or something. I just found out about it  
recently.

19 Everything I paid off completely, IRS, everything else.  
I

20 don't know exactly what their -- my father was my  
partner. He

21 has since passed away. I didn't even know that I had  
this

22 problem until I went to see about getting a second  
mortgage on

23 my home and was told I couldn't, so --

24 Q. And was that because there's a judgment outstanding  
for

25 that --

## Juror No. 367 - Voir Dire

1 A. Yeah, apparently. A \$98,000 judgment. They had  
rented the

2 restaurant -- when I moved out, they rented the  
restaurant the

3 very next month. It was kind of a strange situation.  
Like I

4 say, we'll have to do some further investigating to  
find out.

5 Q. Did you go to a lawyer --

6 A. I have not, no.

7 Q. Did you -- you remember being sued?

8 A. No. That was the kicker was, no, I don't remember.

9 Q. You don't know where this -- how this judgment got  
on the

10 books?

11 A. I'm telling you, I went to apply for this loan and  
this guy

12 told me -- I even spent \$300 to have my house  
appraised, and

13 the guy came back and said, "You have this 98,000" --  
and

14 honestly, I thought he was kidding, you know, it was  
such a

15 magnanimous amount. I thought he was joking with me.  
He's not

16 joking.

17 But they haven't done anything with it, so  
I've just

18 kind of let it go for now. It doesn't show up -- I  
went to buy  
19 a car. It didn't show up at all, didn't have a problem  
with  
20 that. My bills -- all the rest of my credit is  
perfect, and it  
21 doesn't show up unless I go to do something with the  
house, so  
22 apparently there's a lien on my house.  
23 Q. Well, you have -- let me go back to the work force  
thing  
24 and the contacts you have with the police because of  
that. Do  
25 the same police come -- the same people come out?

1804

Juror No. 367 - Voir Dire

1 A. Sometimes. It just depends. I haven't been at the  
in  
2 Lakewood office just a little over a month now. I was  
it  
3 Westminster for the past year or year and a half. And  
you  
4 varied. It was whoever was available, you know, when  
5 called for them. And of course there are certain  
detectives  
6 that would come in and ask for our help, you know, on  
occasion.  
7 Q. If they're looking for somebody?  
8 A. Sure, you betcha.

at or 9 Q. When they do that, they give you pictures to look  
10 "Have you seen this person?"  
11 A. Depends on the circumstances. Yes. Sometimes  
they'll just 12 give you a name and a Social Security number.  
Sometimes -- I 13 had an officer in the other day, gave me a picture of a  
young 14 man, so it depends on what they have and who they are  
looking 15 for. Whether or not they have a photo, I'm sure.  
-- have 16 Q. They show you a picture and say, "Do you recognize  
17 you seen this fellow before?"  
18 A. Sure, you bet.  
in jury 19 Q. Now, I want to talk a little about what is involved  
asked you 20 service more than what we have here and also why we  
page 30 21 some others questions that we did. First of all, on  
turn to 22 you gave us an answer about instructions. You want to  
23 that page?  
24 A. Uh-huh.  
you wrote 25 Q. 129. Excuse me, page 30, Question 129. See what

Juror No. 367 – Voir Dire

1 there?

2 A. Uh-huh.

3 Q. Now, you know, the instructions that this refers to  
is not

4 just things about being careful about what you read,  
see, and

5 hear and all of that, but also go to instructions that  
will be

6 given before the trial, during the trial, and after the

7 trial --

8 A. Sure.

9 Q. -- about what jurors' duties are and what the law  
is and so

10 forth. And the instructions will include what I've  
already

11 talked about, and that is the presumption of innocence  
and the

12 burden of proof. And then it's up to the jury at the  
end of

13 the trial to decide whether the evidence proves that  
crime, and

14 the elements of the crime are set out in the  
instructions,

15 telling you exactly what has to be proved for like a  
conspiracy

16 charge and a murder charge. And then you have to  
decide -- you

17 with the other jurors, have to decide whether that has  
been

18 done.

19                                   And there is in this case an additional  
matter, and  
20                                   that is the question of punishment because the crimes  
charged  
21                                   in this case carry the possibility of a death sentence  
or a  
22                                   sentence to life in prison without any possibility of  
being  
23                                   released. And it's because of that that we ask you  
these  
24                                   questions on pages 27, 28, and 29. 27 there I would  
remind you  
25                                   is -- at 124 -- is sort of an explanation. You  
remember

1806

Juror No. 367 - Voir Dire

1                                   reading that part of it?  
2                                   A. Sure.  
3                                   Q. And then over on 28 are the actual questions and  
the  
4                                   answers that you wrote.  
5                                   Just take a moment and read them --  
6                                   A. Sure.  
7                                   Q. -- so you have them in mind. Then there's another  
one on  
8                                   over on page 29, another question.  
9                                   A. They're kind of redundant, aren't they?  
10                                  Q. Yes, they are. Now, here's the reason that the

questions

11 were put the way they were put. Because these are  
instructions

12 without -- excuse me -- these are questions asked of  
your views

13 and opinions without regard to what the law is, without  
14 instructing you on the law because we want to know  
something

15 about your thinking and your opinions before we ever  
tell you

16 anything about what's required under the law.

17 A. Sure.

18 Q. And that's why the explanation here says, you know,  
"If you

19 had the power to decide what the law ought to be with  
respect

20 to the death penalty, what would you decide?"

21 I take it that you are aware generally that  
this issue

22 of whether there ought to be a death penalty is  
something that

23 there's a lot of disagreement about. And there are  
people with

24 strong opinions on both extremes, never a death  
penalty, always

25 a death penalty if somebody is killed, and then a lot  
in

1807

Juror No. 367 - Voir Dire

1 between.

2                   And so we need to find out a little about what  
your  
3 thinking is before explaining anything about the law to  
you.

4 Now, is the question of the death penalty and whether  
it's  
5 appropriate for the law to impose a death penalty  
something  
6 that you've thought very much about in your life's  
experience?

7 A. No. Possibly not. I haven't spent a great deal of  
time  
8 thinking about it.

9 Q. And when you encountered these questions, did this  
come as  
10 a surprise to you, that we had these questions?

11 A. Oh, no, I expected there to be the question, I  
guess.

12 Q. Yeah.

13 A. Knew it would come up.

14 Q. 'Cause you knew the crimes charged involved --

15 A. Exactly.

16 Q. -- the possibility, and also that such a sentence  
was  
17 recommended by the jury in Mr. McVeigh's case.

18 A. Exactly.

19 Q. Now, have you thought about this view -- your views  
of the  
20 death penalty since you answered these questions?

mean I 21 A. I think I still feel pretty much in the middle. I  
-- I 22 like to think of myself as an objective person, that it  
guilty 23 guess once the burden of proof is there, if the guy is  
or not. 24 and you get to that point, you know whether it's right  
I can 25 You know, at this point I can see reasons for doing it;

1808

Juror No. 367 - Voir Dire

1 also see reasons for not. You know.  
2 Q. All right. And you've stated them here.  
3 A. Right.  
answers 4 Q. So if we asked you the same questions today, your  
5 would be --  
6 A. -- pretty much the same, uh-huh.  
7 Q. -- pretty much the same?  
law and 8 Now, let me explain to you a little about the  
you just 9 the procedure because it isn't the way I think I heard  
much know 10 say; that, you know, if it's guilty, then you pretty  
it 11 what the penalty should be, because that isn't the way  
12 works.

13                    Let me just tell you something about the  
process. In  
14 any criminal case, the jury is asked, "Does the  
evidence prove  
15 guilt beyond a reasonable doubt," just like we've been  
visiting  
16 about. And of course if the answer to that question is  
no, not  
17 proven, then not guilty is the verdict. That ends it.  
The  
18 jury has decided.

19                    If, on the other hand, the jury says, yes,  
proven  
20 beyond a reasonable doubt, the verdict then is guilty.  
Then of  
21 course there's another question: What to do about it,  
what  
22 should the punishment be.

23                    Now, in cases that don't involve a life-or-  
death  
24 decision, the courts make that decision. We're talking  
about  
25 federal case, now. This differs among the states, but  
we're

1809

Juror No. 367 - Voir Dire

1 talking Federal Court. That's where we are, and  
federal law.

2                    In a situation not involving life or death,  
the judge

3 makes the sentence that it isn't -- the sentence isn't  
made

4 just on the -- or decided on the basis of what happens  
at the

5 trial. More needs to be considered. Now, that more  
comes up

6 when more information is collected, not only about the  
7 circumstances of the particular crime, but also a lot  
of things

8 about the defendant. So it's the offense and the  
offender that

9 get considered. And the things about the defendant are  
things

10 that are unique to that person like, you know,  
background, born

11 and raised, family relationships, marriage  
relationships, or

12 non, work history, any criminal history, all of the  
things that

13 sort of each one of us has in our life. And that can  
be and

14 should be considered in deciding this person and this  
crime and

15 what should be done and what is appropriate for this  
particular

16 person for the crime. Not everybody guilty of the same  
kind of

17 offense gets the same sentence. Do you understand  
that?

18 A. Uh-huh.

19 Q. And there's a hearing. A judge holds a hearing and  
listens

20 to both sides and considers this information and then  
decides.

21 Now, when the decision is life or death -- and  
by life

22 we're talking about life in prison without ever getting  
out, no

23 possibility of release. Or death, you know obviously  
what that

24 is. Or there can be a sentence less than that, but the

25 life-or-death decision can only, under federal law, be  
made by

1810

Juror No. 367 - Voir Dire

1 a jury. We don't let judges decide that.

2 And the jury, like the judge in a sentencing  
situation

3 in other kinds of cases, has to give individual  
consideration

4 to the defendant as well as the crime. So there has to  
be

5 another trial or hearing. And it is just like a trial.  
First

6 there is the evidence being tried. And of course, you  
know, if

7 it's not guilty, that's the end of it. If it's guilty,  
the

8 jury has to hear more because now the jury is the  
sentencer.

9 And that more has to include information about  
the

10 defendant; the same kind of information that I was  
talking  
11 about where a judge sentences, the things that are  
unique to  
12 that person. So what we have at that second trial or  
penalty  
13 phase hearing are the Government lawyers bringing in  
things  
14 that are considered as aggravating circumstances, that  
-- or  
15 factors that suggest that death is the punishment  
that's  
16 deserved.

17           The defense produces what we call mitigating  
18 information, mitigating factors or circumstances. And  
19 "mitigating" simply means these are things that have to  
be  
20 considered and that suggest that for this particular  
person,  
21 death is not a justified sentence, regardless of the  
crime.

22 Understand?

23 A. Uh-huh.

24 Q. And the jury has to listen to the court's  
instructions

25 about that because detailed instructions are given as  
to what

is as 1 that information that is now before the court and jury  
you can't 2 far as what's mitigating and what's aggravating. And  
first of 3 describe that ahead of time because we have no idea,  
don't 4 all, whether there will ever be a sentencing stage, and  
be, and 5 secondly, what information will be provided just as I  
the 6 know sitting here now what the evidence at trial would  
jury 7 neither do you. And, you know, just as is true with  
Nichols were 8 question of guilt as to Mr. McVeigh, the sentence the  
9 decided on there can't be considered here if Mr.  
10 to be found guilty.

that 11 So -- and this is true, again, in any case  
follow 12 involves the death penalty in Federal Court. Do you  
13 what I'm saying here?

14 A. Uh-huh, I absolutely do.

15 Q. Any question about the things that I've gone over?

16 A. No.

if two 17 Q. So it comes down to individual consideration. Even  
to be 18 people are found guilty of the same crimes, there has  
like 19 separate consideration given to them; and that's just

20 separate trials here. That's why we have separate  
trials. Do  
21 you follow me on that?  
22 A. Yes.  
23 Q. The question is can you do that and be open-minded  
and  
24 listen to everything that's presented on both sides?  
25 A. I believe so.

1812

Juror No. 367 – Voir Dire

1 Q. And you see, there's no formula here. Instructions  
are  
2 given, questions are suggested as to how the jury  
should ask  
3 questions to sort of analyze these aggravating and  
mitigating  
4 circumstances or factors, but it isn't a matter of  
addition and  
5 subtraction nor any kind of equation or formula. What  
it comes  
6 down to is making a judgment about another human being,  
and  
7 that really is a moral judgment as to whether that  
particular  
8 person should live or die. Do you understand that?  
9 A. Yes, I do.  
10 Q. It's a very serious question to ask people to  
answer. You

hear and 11 be able to answer that based on everything that you

12 see and that's presented to you?

13 A. I believe so.

14 THE COURT: Well, Mr. Ryan, do you have some  
15 questions?

16 MR. RYAN: Yes, your Honor. Thank you.

17 THE COURT: Please proceed.

18 VOIR DIRE EXAMINATION

19 BY MR. RYAN:

20 Q. Good afternoon.

21 A. Hi.

22 Q. How you doing?

23 A. Oh, not bad.

Attorney in 24 Q. My name is Pat Ryan. I'm the United States

25 Oklahoma City.

1813

Juror No. 367 - Voir Dire

1 A. Nice to meet you.

The 2 Q. And I have some questions I'd like to put to you.

the NFL 3 first one is a hard one now. And it is: What team in

4 is undefeated at this time?

5 A. It's us. That would be us. That's why I'm wearing

this

6 shirt.

7 Q. The second question is: What were you doing last  
night?

8 A. You know what I was doing last night.

9 Q. All right. Okay. I read in your -- some of the  
10 information you supplied to the Court that you have a  
real

11 interest in trains.

12 A. You betcha.

13 Q. What is the source of that interest?

14 A. I don't know where it came, what started it; I just  
am

15 fascinated, mostly with the old steam engines. I like  
to track

16 a narrow-gauge railroad. My restaurant, as a matter of  
fact,

17 was based on trains. I had 359 feet of G-scale train  
that went

18 through the restaurant and tunnels. I'm a train nut.  
It gets

19 in your blood.

20 Q. Did the train move in your restaurant?

21 A. You bet. Actually I had three moving trains. I  
had an

22 N-scale and a O-scale and a G-scale. And also trolley  
that ran

23 in the bar. Historically is actually what I like most  
about

24 them. I like to follow the history. Colorado was  
mainly built

25 on the railroad initially.

1814

Juror No. 367 – Voir Dire

1 Q. Any members of your family work in the railroad  
business?

2 A. I had a great-uncle years ago, but that's about it.  
I

3 don't know what happened. It was just one day I fell  
in love

4 with trains. Once it's there, it doesn't go away.

5 Q. Let me turn to some of the information that you  
supplied to

6 his Honor. One of the things that you talked about was  
that

7 you had frequent contact with the police. Are you  
talking

8 about Denver police?

9 A. Well, again, when I was in Westminster, it was  
mostly

10 Westminster police. Honestly, I dealt with the federal

11 marshals before. They have come in looking for people,  
and

12 we've always cooperated. Quite honestly, we scratch  
their

13 back, they scratch ours. There's times that they help  
us, you

14 know, just rid of a nuisance, as it were, and many  
times they

15 come to us when there's no place else to turn looking

for

16 somebody; and a lot of times these guys will turn up in  
the 17 halls.

18 Q. For how many years has your contact with police  
been going 19 on?

20 A. Oh, heck, I've been in this business for actually  
seven 21 years total, so at least that long. Really, I was,  
like I say, 22 in the bar and restaurant before then, so I had some  
contact 23 with the police before then.

24 Q. Have you developed an overall view about law  
enforcement 25 officers that you come in contact with?

1815

Juror No. 367 – Voir Dire

1 A. Yeah, I don't have -- they're my friends. You  
know, like I

2 say, they scratch my back, I scratch theirs. I don't  
usually

3 have any problems with them. You know, no intimidation  
or

4 anything. They're a big help to me many times, and I  
like to

5 think I'm a help to them at times as well.

6 Q. Now, I understood you have a sister who works in

day care

7 in Logan, Utah.

8 A. Yes.

9 Q. Have you talked to her about this case?

10 A. I haven't talked to anyone -- actually, none of my  
family

11 even knows I've been called.

12 Q. Even going back as far as April 19 of '95, when  
Oklahoma

13 City Murrah Building was bombed, about two and a half  
years

14 ago, have you talked to your sister in Logan, Utah,  
since then,

15 about the events of Oklahoma City?

16 A. Actually, not at all. I know that sounds terrible,  
but I'm

17 not real close with my family. My mom's here. I  
really

18 haven't even talked -- like I say, my mom didn't even  
know I've

19 been called.

20 Q. So I gather the fact that she works at a day care  
in Utah

21 wouldn't affect how you feel about this case?

22 A. No. I just now made that connection. No. No.

23 Q. Do you know that there was a day-care facility  
involved?

24 A. I did know that, yes.

25 Q. Do you have any knowledge about what happened to  
the

## Juror No. 367 - Voir Dire

1 children in the day care?

2 A. Well, I mean, I'm one of these people, I got tired  
of  
3 hearing about it, so there was a certain point I  
stopped  
4 listening. But I do know that there were many people  
killed  
5 and a lot of them were small children in the day care,  
yes.

6 Q. You indicated at one point in one of your answers  
in the  
7 questionnaire that there was an incident involving your  
8 ex-husband in which -- you know what I'm talking about?

9 A. No, it's no big thing. It was his fault. He was  
in a bar  
10 and he was asked to leave the bar. It was an off-duty  
Denver  
11 cop threw him out, but unfortunately the cop -- and  
some  
12 friends of his -- I was not there, but the cop threw  
him out --  
13 was a little too enthusiastic about it; and honestly my  
husband  
14 ended up getting a hundred dollars from the City of  
Denver and  
15 his friend did get a thousand dollars, because he was  
maced, I  
16 guess. It's been years ago now. But quite honestly it

was a

17 joke, I thought. I think the courts, because they had  
to, took

18 it in and listened to it. But I knew my husband when  
he was

19 drunk; he probably had it coming.

20 Q. From your answer, I'm gathering that there's really  
nothing

21 about that event that would bother you in any way in  
this case?

22 A. No, no, no animosity.

23 Q. In your answer to Question 100, you indicated that  
the

24 system was -- criminal justice system was working  
adequately

25 but that on occasions it doesn't seem to work. And I  
was

1817

Juror No. 367 - Voir Dire

1 wondering if you had anything in mind that you were  
thinking

2 about?

3 A. Not really in particular. I guess more than  
anything you

4 think about back to a movie you may have seen where --  
you

5 know, honestly I think I saw something around that time  
on

6 somebody that was sentenced to death, again, in the --  
you

7 know, it was something on HBO about the death row thing  
and the

8 guy had claimed all the way to the time that he was  
killed that

9 he was innocent. I mean I'm sure we make mistakes.  
And let's

10 face it, our system is not perfect; but on the whole, I  
think

11 it works pretty well.

12 Q. Do you have the sense that it's a frequent event  
where

13 people who are innocent are convicted of a death  
penalty case

14 and sentenced to death?

15 A. No. No. I mean not -- you know, again, it's --  
once in a

16 while you see something or where you really, truly  
wonder, or

17 on "20/20," those types of news programs, where they  
try to

18 convince, of course, the general public that a certain  
person

19 is innocent of a certain crime they've been accused of.  
And we

20 do make mistakes. I think our system does make  
mistakes, but

21 we can't be perfect.

22 Q. You think the converse is also true?

23 A. Absolutely. I guarantee you. I see that.

24 Q. Do you recall where you were on April 19 of '95, at  
the

25 time of the bombing in Oklahoma City Murrah Building?

1818

Juror No. 367 - Voir Dire

1 A. Yeah. I was at lunch actually at the Ranch House  
Cafe  
2 catty-corner from the Stand-By on Syracuse and Colfax,  
eating  
3 lunch. And I kept saying to the people around me --  
there was  
4 a TV up in the corner. I kept saying, "Something's  
going on,"  
5 because I could see -- we couldn't hear the volume, but  
you  
6 could see the news on the TV up there. And I said  
something,  
7 and somebody finally said, "Oh, yeah, I heard there was  
a  
8 bombing." And at that point, I started paying  
attention to the  
9 TV, but I didn't even know what it was.

10 Q. Did you have a personal reaction to the news of  
that event?

11 A. I think you feel heartsick. I mean, you know,  
first of  
12 all, this great country of ours, that doesn't happen  
here. I  
13 think that was my first reaction, is that doesn't  
happen here.  
14 And of course your next reaction is sorrow and, you  
know, a lot

15 of empathy for the people there, you know, what  
horrible things

16 they must be going through, you know. But I  
don't . . . .

17 Q. Has any member of your family ever been killed in  
any kind

18 of traumatic event?

19 A. No.

20 Q. Let me use my few remaining questions to talk to  
you a

21 little bit more about the death penalty.

22 A. Okay.

23 Q. You understand -- one of the answers you gave in --  
to

24 Question 124, which was asking you about the kind of  
case in

25 which you might impose the death penalty, you remarked

1819

Juror No. 367 - Voir Dire

1 something to the effect that each case should be judged

2 individually. And did you hear his Honor telling you  
in

3 essence the very same thing here a few minutes ago?

4 A. Sure, absolutely.

5 Q. There's two phases. Do you understand --

6 A. Right.

7 Q. -- that concept? That we have a guilt phase; the  
United

guilty 8 States is going to try to prove that Mr. Nichols is  
9 beyond a reasonable doubt.  
10 A. Right.  
a role 11 Q. And the jury -- if you're on the jury, you'll play  
12 in this, of deciding whether he is or not?  
13 A. Sure.  
have a 14 Q. But if he's found guilty, do you understand that we  
15 whole 'nother trial?  
16 A. I'm getting the gist of that, yeah.  
17 Q. In which new witnesses will take the stand, more  
18 exhibits --  
make 19 A. See, I wasn't really aware of that, but that does  
20 sense. It makes a lot more sense than how I was  
thinking it 21 was going to go.  
at that 22 Q. And lots of kinds of information will be received  
23 time, some more about the crime perhaps and some about  
24 Mr. Nichols, who he is, his individual, as an  
individual human 25 being, his life, perhaps some discussion about his role  
in the

Juror No. 367 – Voir Dire

1 offense, if he were to be found guilty. And so all of  
that mix  
2 of information will be again then presented to the jury  
for a  
3 second determination.

4 Now, the question I have for you is: Are you  
going to  
5 be able to resist the temptation of reaching a  
conclusion about  
6 what the sentence should be until you've heard all the  
7 evidence?

8 A. Oh, absolutely. I think I can honestly, truthfully  
say I'm  
9 an objective person. If -- if you ask my workers one  
thing  
10 about me, they will always tell you I listen to both  
sides of  
11 the story and make an objective decision from there.  
That's  
12 one. I will listen to everything first before I make a  
13 judgment.

14 Q. So as you sit here today, do you have any notion  
today as  
15 to how -- what sentence that you're going to reach --

16 A. I don't know whether he's guilty or not.

17 Q. But if you -- today, if you were to know in advance  
that  
18 you were going to find him guilty -- I realize you  
can't do  
19 that because you haven't heard the evidence.

20 THE COURT: I'm not going to --

21 MR. RYAN: Let me rephrase it. I've fouled up  
there,

22 your Honor.

23 BY MR. RYAN:

24 Q. In the event that Mr. Nichols was to be found  
guilty, do

25 you sit here with a preconceived notion as to what his  
sentence

1821

Juror No. 367 - Voir Dire

1 should be?

2 A. No, and especially not after what Judge Matsch just  
told

3 me. I think that would be wrong.

4 MR. RYAN: Thank you, very much.

5 JUROR: Thank you.

6 THE COURT: Mr. Woods.

7 MR. WOODS: Thank you, your Honor.

8 VOIR DIRE EXAMINATION

9 BY MR. WOODS:

10 Q. Good afternoon.

11 A. Hi.

12 Q. As the Judge introduced, my name is Ron Woods. I'm  
one of

13 the lawyers that was asked by the court to represent

Terry

14 Nichols in this case.

15 And we met a couple of weeks ago out at  
Jeffco, and

16 Terry Nichols was there.

17 A. Uh-huh.

18 Q. What did you think when you saw Terry Nichols?

19 A. Looks like anybody else. Looks like a regular  
person.

20 Q. Did you have some other picture in mind before you  
saw him?

21 A. No, not really. Honestly, I guess I'm bad or  
guilty of not

22 following news; but once it's not a headline anymore,  
it's not

23 of interest to me. You know, I have not followed Mr.  
Nichols'

24 life or story or actually the trial at all.

25 Q. Of course, the trial -- would it be accurate to say  
that

1822

Juror No. 367 - Voir Dire

1 the trial of Mr. McVeigh was certainly headline news?

2 A. Didn't follow it very much. I mean I listened to  
the

3 verdict, yes. And I did listen for the verdict on the  
death

4 penalty as well, but I mean honestly, I don't -- I  
don't watch

5 that stuff that much. It doesn't interest me.

6 Q. Where were you when you heard the death penalty  
verdict?

7 A. At work.

8 Q. And was that by television or radio?

9 A. No, actually one of the guys came into the hall,  
told me,

10 "Hey, did you hear? They sentenced Terry (sic) McVeigh  
to

11 death." That's where I get most of my news, somebody  
comes in

12 and gives me an info, a blurb.

13 Q. Do you mean Tim McVeigh?

14 A. Tim McVeigh.

15 Q. Do you have a radio or television in your office?

16 A. Both, uh-huh.

17 Q. And did you watch it after that, once you heard the  
verdict

18 was in?

19 A. No, I'm usually far too busy.

20 Q. How many people work in your office? Not the ones  
who come

21 in for day labor, but how many are your permanent  
staff?

22 A. We have, what, five permanent staff in my office.

23 Generally there's only two or three of us there at a  
time, two

24 shifts.

25 Q. Okay. What kind of reaction was it concerning the

death

1823

Juror No. 367 – Voir Dire

1 penalty verdict? What did you hear people say to that?

2 A. Again, I was so busy. I think there were a few  
people

3 said, "Oh, really?" A couple more said, yes, you know,  
the

4 (indicating) types. But honestly I didn't have much  
reaction.

5 Again, I was busy.

6 Q. Anybody say that that was an improper verdict or  
7 inappropriate verdict?

8 A. Not that I recall.

9 Q. When you say that you were busy, can you give me a  
little

10 idea of what you do? I assume in the early morning  
hours,

11 you're sending people out on the jobs.

12 A. And in the evening hours, we're paying them as they  
come

13 back.

14 Q. Okay.

15 A. Many times we're also taking orders from customers  
as well

16 as dealing with problems that have come up with the  
workers

17 throughout the day. And I don't remember that

particular day.

18 I know I was at Westminster at that time, and that  
office is a

19 little busier than the office I'm in now. It was the  
busy time

20 of the year for us, so basically I heard that, and I  
think it

21 was hours later I heard it again, and it actually sunk  
in.

22 Q. When -- do you get calls during the day concerning  
the

23 people that you've placed in the jobs that morning?

24 A. Oh, yeah.

25 Q. And then you stated you have some problems with  
drugs and

1824

Juror No. 367 - Voir Dire

1 alcohol with the people.

2 Have you experienced any of the people that  
have come

3 through your place of business that have been on

4 methamphetamine, or crystal as it's called?

5 A. Yeah. Oh, yeah. I'm sure -- I don't know  
directly. You

6 know, sometimes it's quite obvious. Other times you're  
shocked

7 to find out a certain person is using; or especially if  
they

8 are hurt or something, they have to be drug tested for

9 workmen's comp. of course. But many times you're  
shocked to  
10 find out people are using that you hadn't thought were.  
Yeah,  
11 they use everything. They'll use anything they can get  
their  
12 hands on usually.

13 Q. What have you noticed in your experience has been  
the  
14 effect of crystal on someone's personality, either  
memory or  
15 their work performance or whatever?

16 MR. MACKEY: Objection, Judge.

17 THE COURT: Overruled.

18 JUROR: Crystal, you're talking about speed?

19 BY MR. WOODS:

20 Q. Yes.

21 A. Well, it makes them talk a lot. You can generally  
tell  
22 right off. You know, but -- and of course, they'll be  
good  
23 performing at work. Matter of fact, I had a guy I had  
to  
24 terminate a couple weeks ago for that very thing, not  
that  
25 particular thing, but we found out later that was part  
of the

Juror No. 367 – Voir Dire

1 problem. He talked too much. Granted they work like,  
you  
2 know, crazy; but oftentimes the job is not done  
correctly, so  
3 then we get calls from the customer later complaining  
about the  
4 work that's been done. But oftentimes they tend to  
steal,  
5 also.

6 Q. Okay. So you've had some firsthand experience --

7 A. Yeah.

8 Q. -- sounds like.

9 Now, as to the publicity questions on --  
starting on

10 page 36 of your questionnaire -- or actually let's  
start back

11 on page 33 where the initial question is concerning  
publicity,

12 144. "If you've heard or read anything about the  
Oklahoma City

13 bombing case, please indicate where you heard or read  
about

14 it."

15 And apparently your sources are the TV news  
and

16 hearing other people discussing the case; is that  
correct?

17 A. Uh-huh. Pretty much.

18 Q. And then you check off that actually you haven't  
heard too

news? 19 much about the case, just basic coverage on the nightly

20 A. Right. If I'm lucky enough to catch it.

thorough 21 Q. And then on the following page, 148, you were

say, the 22 enough to go through that list and pick out, as you

23 obvious ones, and that I assume means Mr. McVeigh and

24 Mr. Nichols?

25 A. Right.

1826

Juror No. 367 - Voir Dire

also? 1 Q. And then you say you've heard of the Fortiers,

2 A. Uh-huh.

3 Q. What did you hear about the Fortiers?

what drew 4 A. See, I lived in Phoenix for a while, and that's

to be 5 my attention to them is they were based out of Phoenix,

case, 6 honest, other than they were married and part of the

Terry 7 supplying something, I believe to either Tim McVeigh or

8 Nichols.

have any 9 Q. Supplying something to McVeigh or Nichols: Do you

10 further information concerning that?

11 A. I really don't recall. I'd be lying if I said I  
did.

12 Q. Okay. And when you said that the Fortiers were  
from  
13 Phoenix, did you mean Phoenix specifically or Arizona?

14 A. No, Arizona. I think I remember it being Kingman.  
The  
15 train goes through there.

16 Q. Exactly. In fact, there was a train wreck recently  
there,  
17 as I recall.

18 A. Yeah.

19 Q. Have you been to Kingman? Are you familiar with  
that  
20 community?

21 A. Yes, I lived in Arizona for a while. As I said,  
that was  
22 the thing that dinged me on them.

23 Q. You stated in your questionnaire that you go back  
to

24 Arizona, you've been back like three times to live  
there. Of

25 course you went back there for Mesa Community College  
and

1827

Juror No. 367 – Voir Dire

1 Arizona State.

2 A. Correct.

in 3 Q. What are the other reasons that you go back to live

4 Arizona?

I can 5 A. I just kind of like it there, although I'm not sure

been 6 handle the heat anymore. I guess that's why I haven't

the heat 7 back -- as a matter of fact, I don't care too much for

there. I 8 here in the summer anymore. I used to love it down

different 9 don't know, I was always drawn to the -- it's totally

love 10 than Colorado. Love the Colorado mountains, but I also

certain 11 the Arizona mountains. It's desert. There's just a

historical. 12 beauty there, different -- again, goes back to the

13 And, you know, lot of Indian relics.

want to 14 Q. So are you flexible enough just to choose where you

15 live?

there like 16 A. Oh, yeah, I wish. I suppose if I were, I'd live

summer. 17 the snowbirds live there in the winter and here in the

18 No, haven't reached that income level yet.

Arizona 19 Q. You stated when you were in Arizona, you studied in

art? 20 State and Mesa Community. You studied religion and

Church of  
campus  
Mesa

21 A. I studied religion at ASU. That was through the  
22 Jesus Christ of Latter Day Saints, division of ASU  
23 there. And I studied a couple of courses in art at  
24 Community. I was living in Mesa at the time.

stated

25 Q. And then in the questionnaire as to religion, you

1828

Juror No. 367 - Voir Dire

1 no.  
2 A. Not anymore.  
3 Q. I take it that based on your independent study and  
your  
4 analysis and by examining all the facets, you made up  
your mind  
5 one way or the other what you want to follow in that;  
is that  
6 correct?

7 A. That's correct.  
8 Q. And I take it, then, if you were on a jury, you  
would do  
9 likewise, carefully analyze all the facts --

10 A. It took a long time for me to make that choice,  
yes. And  
11 like I say, a little bit of family heartache there as  
well, but  
12 I made the decision I thought was right for myself.

13 Q. Now, on a jury you may or may not have a lot of  
time. If  
14 you were chosen on a jury, you would be making those  
decisions  
15 in conjunction with 11 other people. But I take it  
that you  
16 are going to be doing it independent based on your own  
17 reasoning and your understanding of facts; is that  
correct?

18 A. I think I've learned over time. You know, it used  
to be  
19 you could sway me pretty easily; but I'm pretty good at  
20 examining facts, listening to the entire story before I  
make a  
21 decision.

22 Q. If you were in the minority on the decision and  
there were  
23 a majority of people who felt the other way, would you  
change  
24 your opinion so that you could join the majority?

25 A. Not unless they could convince me they were right  
and I was

1829

Juror No. 367 – Voir Dire

1 wrong.

2 Q. Through careful analysis of the facts?

3 A. Right, exactly.

4 Q. As to -- further up on the publicity issue, on page

36,

about 5 158, "Please summarize what you've seen, read or heard  
fairly 6 the case, the Oklahoma City bombing," and you give a  
7 general, brief description.

what 8 And then the next page is, "Please summarize  
9 you've seen, read or heard about Terry Nichols."

is not 10 And your statement there is: "I know that he  
know what 11 as deeply involved as Tim McVeigh, but I don't really  
12 role he is to have played in the bombing."

information 13 Now, earlier you had stated that it was your  
14 understanding that the Fortiers had provided some  
15 or material --

16 A. Right.

a 17 Q. -- to Mr. McVeigh and Mr. Nichols. Can you give us  
involving 18 little idea of what you've read, seen or heard  
19 Mr. Nichols' involvement?

20 A. Honestly, very little. I mean I -- I'm being very  
21 truthful. I just don't watch the news. Up until I  
even got 22 called, it didn't concern me. I guess it does; this is  
my 23 country. It was a horrible, heinous crime. But for

one thing,

always 24 the newspapers and the radio and the television do not  
listen to 25 present all the facts, so I don't really choose to

1830

Juror No. 367 - Voir Dire

as far 1 just their side of the story, I guess. You know, I --  
I have 2 as that goes, I know very little about Terry Nichols.  
first showed 3 seen him some on TV, you know, initially when they  
Oklahoma 4 he and Tim being led in the courthouse, I guess, in  
role he 5 City. But some -- I just -- I really don't know what  
jury, I'll 6 is to have played. I guess if I am selected to the  
7 find that out, but I have no idea.

you've 8 Q. All right. Do you have any recollection from what  
at the 9 read, seen, or heard about -- or where Mr. Nichols was  
10 time of the bombing?

there. He 11 A. I do know and I believe I've heard he was not  
he was 12 was not in Oklahoma at the time of the bombing. Where  
that -- 13 to have been, I don't know. But I do know I have heard

the 14 yes, that he was not in Oklahoma City at the time of  
15 bombing.

do you 16 Q. All right. From what you've read, seen, or heard,  
17 have a memory as to how he came into contact with law  
18 enforcement officers?

19 A. That I don't know. No, I have no idea.

knowledge 20 Q. So I take it, then, that based on your limited  
21 about the case, you certainly haven't formed an opinion  
as 22 to --

23 A. Not at all.

24 Q. -- Mr. Nichols' guilt in this case?

25 A. No, not at all.

1831

Juror No. 367 - Voir Dire

-- and 1 Q. And then likewise, if there is a punishment hearing  
2 again, we aren't conceding that there's going to be a  
3 punishment hearing. We're contesting this case from  
the first 4 witness on. But as the Judge explained to you, in the  
event 5 there is a conviction and we move into a punishment  
hearing, we

stop the 6 have to talk to you about that now because we can't

7 trial then and talk about it.

8 A. Right.

the event 9 Q. So the only reason we're talking to you now is in

certainly not 10 that there is a punishment hearing -- and we're

11 agreeing that there is going to be one.

you 12 But I take it from your answers to the Court,

appropriate 13 certainly haven't formed any pre-opinion as to the

14 punishment for Mr. Nichols, if he were found guilty --

15 A. Right.

16 Q. -- in this case?

tell him 17 And can you look Mr. Nichols in the eye and

18 that you would give him a fair trial?

19 A. I believe I would, yes.

20 MR. WOODS: Thank you very much.

21 JUROR: You're welcome.

we go. 22 THE COURT: Now, we're not making decisions as

to what 23 You referred to getting back to your boss about it as

24 to expect.

25 JUROR: Yeah, they since informed me.

1                   THE COURT: Yeah. Well, we can't tell you now  
and you  
2                   won't be able to tell that person whether you're going  
to be on  
3                   this jury. We have to leave it -- you know, I wish we  
could  
4                   say, but we have to leave it with you as an  
uncertainty, and  
5                   that may be a while before we get back and let you  
know. What  
6                   you're going to have to do is go forth from here  
assuming that  
7                   you will be on this jury and you will have to make  
these  
8                   decisions.

9                   So be very careful now, don't talk about the  
case with  
10                  anybody, be careful about people talking to you and the  
things  
11                  that you read, see, and hear in any communication or  
12                  publication so that you can stay away from anything  
that would  
13                  influence you and be able to judge according to the  
evidence  
14                  and the law as given to you in the trial.

15                  JUROR: Okay.

16                  THE COURT: Can you do that?

17                  JUROR: I can do that.

18 THE COURT: All right. You're excused for  
now.

19 JUROR: Thank you.

20 THE COURT: We'll get back to you.

21 435.

22 Will you please raise your right hand and take  
the

23 oath from the clerk.

24 (Juror No. 435 affirmed.)

25 THE COURTROOM DEPUTY: Thank you.

1833

Juror No. 435 - Voir Dire

1 THE COURT: Please be seated there by the  
microphone.

2 And make yourself comfortable there. You can swivel  
that chair

3 around in any way that you want.

4 VOIR DIRE EXAMINATION

5 BY THE COURT:

6 Q. And you know, I take it, coming in here that the  
trial

7 being referred to is the trial of the United States  
against

8 Terry Lynn Nichols.

9 A. Yes.

10 Q. And you recall getting a summons advising that your  
name

gave us 11 came out of a computer program that by a chance system  
one of 12 the names of people for possible service, and you're  
13 them.

14 A. I do.

15 Q. You sent back a questionnaire that asked you a few  
16 questions, and then you got told to come out to the  
Jefferson 17 County Fairground, and you did on September the 17th,  
at which 18 time I and other people who are here now were there  
with you  
19 and the other members of the panel and introduced  
ourselves and  
20 talked about the case.

21 A. Right.

22 Q. And I want to again introduce to you the people who  
are  
23 here and involved in this process, beginning with  
lawyers for  
24 the Government. You recall meeting Mr. Lawrence Mackey  
right  
25 here at the first table, Miss Beth Wilkinson next to  
him.

1834

Juror No. 435 – Voir Dire

Orenstein, 1 They're joined now by Mr. Patrick Ryan and Mr. James

with us 2 who are additional Government lawyers who weren't there  
3 when we gathered before.

4 You also met at that time Mr. Michael Tigar,  
5 Mr. Ronald Woods, attorneys for Terry Nichols, and Mr.  
Nichols.

6 And then there are a few other people here who  
are  
7 helping out them. But you then remember my telling you  
about  
8 the background of the case.

9 A. Yes.

10 Q. Do you? And I gave rather a lengthy explanation  
about how

11 this case arises as a result of the explosion that  
destroyed a

12 federal building in -- office building in Oklahoma City  
on

13 April the 19th of 1995, with death and injuries  
recurring --

14 occurring; that charges were then filed by the  
Government in

15 Oklahoma City in the Federal Court there charging a man  
named

16 Timothy James McVeigh and also Terry Lynn Nichols --  
and in the

17 indictment, it says other persons not named -- with a

18 conspiracy to bomb that building and also with crimes  
carrying

19 out the conspiracy, including the murder of eight law

20 enforcement agents in the building. You remember that.

21 A. Right. Yes, I do.  
22 Q. And the reason I'm relating these things that I've  
already  
23 told you is to sort of give us a foundation on which to  
build  
24 this additional questioning. So that's why I'm going  
over it.  
25 It isn't because I don't think you remember. I don't  
want you

1835

Juror No. 435 - Voir Dire

1 to get the idea that we're insulting your intelligence  
or  
2 anything like that.  
3 But I explained to you that the case got moved  
over  
4 here to Colorado from Oklahoma because of a concern  
about  
5 getting a fair trial there and a fair jury -- there in  
6 Oklahoma, I mean.  
7 A. Right.  
8 Q. And also that an order was entered separating the  
trials  
9 for the two named defendants, Mr. McVeigh and Mr.  
Nichols and  
10 that we have here in Colorado had a trial of the case  
as it  
11 related to Mr. McVeigh, who was by a jury found guilty  
and

12 given a death sentence. You're aware of those things?

13 A. Yes, I am.

14 Q. And then we are now ready to consider the case,  
whatever it

15 is, the evidence, whatever it is, as relates to Mr.  
Nichols;

16 and that is a very separate thing, because the outcome  
of the

17 McVeigh trial has no effect here. That's the very  
reason that

18 we have ordered separate trials, because each man has  
to be

19 considered individually. You understand that.

20 A. Yes, I do.

21 Q. And I gave you and the other people from the jury  
panel

22 some sort of basic instructions about constitutional  
law at

23 that time, explaining that under our system of justice,  
under

24 our Constitution, any person who's charged with a crime  
in any

25 court in our country, regardless of what the crime is  
or who

1836

Juror No. 435 - Voir Dire

1 the person is, starts with the presumption of  
innocence. And

2 that is the presumption that he or she is not guilty,  
and that

3 carries throughout the trial, entitles that person to a  
verdict  
4 of not guilty unless jurors are convinced that the  
evidence  
5 shows guilt beyond a reasonable doubt. You've heard of  
this  
6 before.

7 A. Yes, I have.

8 Q. And, you know, it also starts with the principle  
that no  
9 person who is charged has any obligation at the trial  
to prove  
10 himself to be not guilty, no person charged has to  
prove  
11 anything or produce any evidence, and certainly no  
person  
12 charged has to be a witness, testify in the case or  
explain  
13 anything about the case. The government brings the  
charges;  
14 the government has to prove them. The lawyers for the  
15 government have that burden. They have to bring in the  
16 evidence, the witnesses, exhibits, and the like.

17 And the presumption of innocence means that if  
at the  
18 end of the trial, considering all of the evidence and  
the laws  
19 given and instructions by the court as to, you know,  
exactly  
20 what has to be proved under the charges to make the  
crime

has a 21 charge, if after consideration of all of that the jury  
guilt, they 22 reasonable doubt about whether that evidence shows  
doubt, 23 have to give to the defendant the benefit of that  
Do 24 finding him not guilty. That's the duty of the jury.  
25 you --

1837

Juror No. 435 - Voir Dire

1 A. I understand that, yeah.  
2 Q. And accept that?  
3 A. Sure.  
4 Q. You agree with it?  
5 A. Yes.  
6 Q. Would be bound by it if you served in this case?  
7 A. Yes.  
8 Q. Now, you answered a long questionnaire. And you  
have it 9 there in front of you now. And we're going to refer to  
a few 10 of the questions and your answers, but we're not going  
to go 11 over the whole thing. I'm going to ask you a few  
questions, 12 maybe asking you to expand on or explain a few answers,  
and

then 13 then review a couple of other things with you. And  
-- which 14 counsel have the opportunity to ask you questions, too  
chance to 15 is only fair that the lawyers on both sides get a  
get 16 some information from you.

17 You're not on trial, I hope you understand.

18 A. I do.

There are 19 Q. And there are no right or wrong answers here.

know that 20 only your answers, your honest answers. And we also

seek to 21 we asked you some very personal things here, and we

why these 22 protect your privacy in all that we do here. That's

public. 23 answers have not been made public. Your name is not

public 24 You're brought in and out of the courthouse in a non-

know, in 25 way, so people can't take a picture of you. And, you

1838

Juror No. 435 - Voir Dire

guarded 1 the course of this questioning, we'll also try to be

in a 2 and not identify you. But you do understand that we're

3 public courtroom now and what I say and what you say

and

4 everybody else says is public.

5 A. I do.

your

6 Q. All right. I want to visit with you a little about

Denver.

7 background. As I understand it, you were born here in

8 A. Yes, I am. Or was.

your

9 Q. Was. And you have lived in the Denver area most of

10 life and live now in Adams County?

11 A. I do.

12 Q. And you -- you've never been on a jury?

13 A. No, I haven't.

jury

14 Q. So this is -- and you haven't really followed any

15 trials anywhere, have you?

--

16 A. No. I'm -- you know, the O. J. thing was so much

somewhere,

17 everybody, I think, you know, unless you were hidden

anything,

18 that; but as far as like anything real in detail or

19 no, I haven't.

follow

20 Q. How about the trial of Timothy McVeigh: Did you

21 that in the news?

TV once

22 A. No, not really. I mean, I saw some things on the

23 in a while when I was, you know, watching, but it

wasn't . . .

me, I 24 I don't know, it wasn't anything that really interested

25 guess, you know.

1839

Juror No. 435 - Voir Dire

there may 1 Q. Now -- and you know that whatever was presented

2 not have -- the same thing --

3 A. Right.

case. 4 Q. -- may not be presented here. It's a separate

5 A. Right.

you watch 6 Q. And with respect to the trial of Mr. Simpson, did

7 that as it happened? That was a televised trial.

that 8 A. No. I mean, you know, maybe what was on the news

9 night, an update or here and there.

10 Q. Film clips in the day's events?

people 11 A. Yeah, you know. But as far as I know, I guess some

were 12 have, what is it, CNN or whatever, cable news; and some

13 watching it daily.

14 Q. Uh-huh.

time for 15 A. I've got other things to do. I just don't have

16 that kind of stuff.

17 Q. Including your work.

18 A. Right.

19 Q. And you've been working for this same company for  
quite a

20 while, 18 years?

21 A. 18 years now, yeah.

22 Q. And you're a member of the union?

23 A. Yes, sir.

24 Q. Are you -- are you now or have you been an officer  
in the

25 local?

1840

Juror No. 435 - Voir Dire

1 A. No, I haven't.

2 Q. Or had anything to do with union affairs?

3 A. No, huh-uh.

4 Q. Of course, there was a recent strike.

5 A. Right.

6 Q. A work stoppage, or whatever they want to say.

7 A. Right.

8 Q. And generally call it a strike. Were you on any  
committees

9 or active there --

10 A. No.

11 Q. -- except being out of work?

12 A. Just, you know, I went and picketed my, you know --

13 Q. Did your share on the line?

14 A. Yeah, you know, my hours. Basically the minimum of  
what I

15 needed to do to get my, you know, strike money or  
whatever.

16 But that was the extent.

17 Q. Now, you understand that to serve on this jury will

18 interrupt your work.

19 A. I do.

20 Q. And that we can't tell you how long that  
interruption would

21 be because we can't tell you how long the trial may  
take, but

22 it may take several months.

23 A. And I'm, you know -- whatever choice you decide,  
you know,

24 I'm willing to abide by whatever it takes.

25 Q. All right. You're not worried -- I don't know  
whether that

1841

Juror No. 435 - Voir Dire

1 causes --

2 A. No, it doesn't. No.

3 Q. Now, when we were together out there at the  
fairgrounds and

for the 4 you completed the questionnaire and when I excused you  
5 day, I talked to you a little more in small groups and  
6 explained the importance of not talking about this  
7 questionnaire with others and to accept the  
responsibility that

8 you may serve on the jury, so you have to be careful  
about news  
9 programs and letting people talk to you and all that.

10 A. Right. I remember.

11 Q. And you've been able to do that, have you?

12 A. Yeah.

13 Q. Did you, however, talk with whoever it is you  
report to  
14 where you work --

15 A. My supervisor that they had -- Mr. Manspeaker had  
called  
16 and left a message for me to call to find out what time  
and day  
17 that I needed to come down here and appear. I talked  
to him;

18 and when I got the initial questionnaire in the mail, I  
had  
19 told him that, you know, I got the second one saying  
that I  
20 needed to appear on the 17th and that I was going to  
need that  
21 day off of work.

22 Q. Right.

23 A. And he said, Well, I'd like a copy of that.

24 And I said, Okay, fine. And I just basically  
copied  
25 the minimum which had your name on it and said that,  
you know,

1842

Juror No. 435 - Voir Dire

1 I needed to be there at -- on that date.

2 And then he said, Well, I need to know a  
little more  
3 detail as to what it's about.

4 And I said, well, then this needs to be  
between you  
5 and I; that it is about this case, and that's all. I  
said, I  
6 don't want a copy of this in my record for somebody  
else to  
7 come across.

8 He said, This is all I want, this is all --  
I'll  
9 accept that; and he agreed to that.

10 Q. Did he express any reaction to the possibility that  
you  
11 were to serve in this trial?

12 A. No, he --

13 Q. Or suggest to you --

14 A. He said, I wonder how long something like this  
might take.

15 And I said, Well, I have no idea. You know,

that

16 was --

17 Q. Did he suggest anything about, well, you don't want  
to do

18 that; here's how you can get out of that, or something  
like

19 that?

20 A. No, he didn't say anything like that.

21 Q. Or something like, Well, if you get on that jury,  
this is

22 how you ought to decide that case?

23 A. No.

24 Q. Has anybody said anything like that to you?

25 A. No.

1843

Juror No. 435 - Voir Dire

1 Q. You talked with your wife about it.

2 A. She knows that I'm here and -- yes.

3 Q. And you've got two small boys?

4 A. Right.

5 Q. And she's taking care of them, stays home?

6 A. Yeah, she stays home and takes care of them.

7 Q. And, you know, did your wife have any reaction to  
it?

8 A. No. Like I had explained to her, I said -- you  
know, what

9 you had told us: that we needed to think, you know,  
that we can  
10 be possible jurors and we needed to keep what we did in  
our --  
11 in our questionnaire here, you know, confidential and  
anything  
12 that you had gone over was confidential and to not, you  
know,  
13 watch any of the media on TV or to read any of the  
articles in  
14 the newspaper; and I just left it at that.

15 And, you know, she said that's fine; so we  
really  
16 haven't discussed anything as far as anything past  
that.

17 Q. Did you make any kind of agreement with her that  
maybe she  
18 could read and clip out things or something --

19 A. No, no, I didn't. Not at all, really. Nothing was  
said to  
20 that point.

21 Q. Okay. I want to ask you a few questions about some  
of the  
22 answers that you gave us, so please refer with me to  
some of  
23 these pages here on your questionnaire.

24 On page 5, Question 20, if you'll turn to  
that. And  
25 this refers to a time when you sought some assistance.  
How

## Juror No. 435 - Voir Dire

1 long ago was this?

2 A. A little over two years.

3 Q. And this was work-related?

4 A. Yeah. Like I say, I've been at UPS -- I've been  
there for

5 18 years, and I've been an employee that's always been  
one to

6 try to do the best job that I can. Sometimes I think  
people

7 expect more out of you than you can -- than you can  
physically

8 do. I guess I let the job get to me a little bit, some  
of the

9 requests that were put upon me to get more work done in  
a

10 shorter amount of time.

11 Q. Well, some of these are the kinds of issues that  
were

12 discussed between the union and the management in the  
recent --

13 A. Yeah. And I -- that's -- so for me to stand out  
there

14 during this strike was something I felt I needed to do  
for my

15 own personal gains in that sense. You know, after  
going

16 through and talking to people about this and then also  
talking

17 to people where I work about the situation that I had  
gone

18 through, there's a lot of people at the company I work  
for that  
19 have gone through the same thing. It is a -- actually,  
a  
20 stressful job.

21 Q. I can understand that.

22 A. More than people -- most people realize.

23 Q. Especially with respect to time schedules given to  
you?

24 A. Yeah. We -- I try to make my company the best  
company that

25 I can make it while I'm there working. And, you know,  
like I

1845

Juror No. 435 - Voir Dire

1 say, after 18 years, I had just -- the people that I  
worked  
2 around, because you don't work for the same people all  
the  
3 time, there's a lot of management moves. Sometimes you  
work  
4 for people that you get along with real well, and you  
can --  
5 they understand your situation and they accept what you  
bring  
6 to them. Other times, you work for people that they  
just want  
7 it ran their way and their way only, and they don't  
want to

8 hear about why this happened or why that happened.

9 And during that period of time I was working  
for some

10 people like that, that just -- it was their way and  
their way

11 only. And I got to the point where physically,  
mentally, you

12 know, I just got upset. I'd had enough. I wasn't  
willing to

13 quit my job, but I felt that maybe I needed to see  
somebody or

14 seek some help that I could find some ways to maybe  
alleviate

15 some of the stress that I was -- a lot maybe was put on  
by

16 myself. And I did and I think that benefited me.

17 Q. Got resolved? Those problems got resolved?

18 A. Right.

19 Q. Okay. Now, I want to ask you about an answer on  
page 22,

20 to Question 100. This is where we really ask you a  
very broad

21 question about your opinion regarding the criminal  
justice

22 system. Do you remember that?

23 A. Okay.

24 Q. And you wrote an answer here, and you started out  
and then

25 you suddenly kind of crossed some things out and  
changed a

1 little.

2 A. Yeah.

3 Q. But what I understand you to be saying is that on  
the one

4 hand, some people get away with things that they  
shouldn't; on

5 the other hand, some people get convicted of things and  
they

6 shouldn't because of the small --

7 A. Well, yeah --

8 Q. You explain your answer.

9 A. Because -- it was -- and a lot of these questions  
were that

10 way. I guess it just depends on the situation that  
you're in

11 and how you would answer it.

12 But overall, I think the justice system works  
to

13 benefit, you know, the people. But there are times  
where --

14 How do I put this? You see people with money or with  
clout,

15 somebody that knows somebody within, seem to get -- get  
things

16 their way or get off on certain things. I see it  
within the

17 company I work for. And then other times there may be  
a

18 situation arise which is meaningless, and yet someone  
will try  
19 to drag it to the very extent and, you know, try to,  
say, fire  
20 a person or whatever that situation may be.  
21 Q. Make a big deal out of a minor thing?  
22 A. Right. Right. Or, you know, cause more trouble  
for  
23 someone when there's a small -- a small situation may  
be able  
24 to be taken care of.  
25 Q. Now, are you thinking of both the civil side of  
things and

1847

Juror No. 435 - Voir Dire

1 the criminal side? Like employment disputes, and so  
forth, as  
2 well as crimes?  
3 A. Well, in today's society, I see so -- I mean it  
seems like,  
4 you know, the courts are crowded, the jails are  
crowded, some  
5 of these kids do things -- and a lot of times anymore,  
it seems  
6 like they're kids, you know. I mean, I consider  
myself, even  
7 at my age -- I mean I'm an adult, but there are times  
when it's  
8 not -- I can think back and it's not that far, you  
know, when I

9 was a kid and doing different things, and that, you  
know, that

10 it seems like a lot of this stuff that goes on . . .  
some of

11 them -- some of them need to -- I don't know how you  
would

12 reprimand them. I mean, you would have to -- the way  
some of

13 them are sentenced or, you know, put in homes or this  
or that,

14 sometimes I don't know if that's the best way to go.

15 Q. Okay. Now, you had a matter involving yourself on  
page 24

16 here. Turn to that. Question 108. And I'm not --  
this, I

17 understand to be something that happened back in 1989.

18 A. Right.

19 Q. And you were quite a bit younger.

20 A. Right.

21 Q. And what do you think about what happened there?  
Was

22 that --

23 A. Well, with that situation, what had happened was  
probably

24 the best thing for me at the time.

25 Q. You were wrong --

took 1 A. Oh, yeah. I admit to that what I did was wrong. I

2 full responsibility for that.

3 Q. Did you talk to a lawyer?

4 A. Yes, I had a lawyer. I wasn't pleased with him,  
but that's

5 my -- you know, that was my opinion.

6 Q. Well, I want to be careful about asking the  
questions, and

7 you be careful about the answers.

8 A. Okay.

9 Q. You and your lawyer, I guess, talked to somebody on  
the

10 other side and entered into something of an agreement  
here. Is

11 that how it went, or did you just go in the court and  
--

12 A. Well, gosh.

13 Q. Well, take a moment to remember.

14 A. I think we may have -- he may have talked with  
someone on

15 the other side and --

16 Q. Did they reduce --

17 A. It was left up to the judge to determine the  
outcome of

18 what happened.

19 Q. Okay.

20 A. Okay. And at that time and at my age -- I mean,  
granted, I

21 wasn't -- I wasn't pleased --

22 Q. Okay. Well, because, yes, at least for 18 days,  
you

23 weren't very pleased.

24 A. Yeah. But the more time that I had to spend  
thinking about

25 the situation, you know -- that's why I say, you know,  
I took

1849

Juror No. 435 - Voir Dire

1 responsibility for that. It was nobody else that got  
me into

2 this -- into that problem.

3 Q. Okay.

4 A. And the outcome was probably the best thing that  
could have

5 happened at that time.

6 Q. Do you see a positive effect on your life?

7 A. Yeah. I do.

8 Q. And you did some community service work?

9 A. Yes, I did.

10 Q. And you also went to some classes --

11 A. Yes.

12 Q. -- where they talked to you about your behavior and  
others,

13 too, in the same circumstances.

14 A. Right.

15 Q. So this is something that's behind you now?

16 A. It is.

17 Q. And would it be fair to say you sort of built on it  
in your  
18 own, strengthening your own life?

19 A. Yeah, I would -- that's a good assumption.

20 Q. Okay. You also expressed over here on page 30 your  
belief  
21 in the importance of instructions. It's up there at  
129, on  
22 page 30.

23 A. I do.

24 Q. Okay. And you understand the importance of that in  
25 providing a fair trial.

1850

Juror No. 435 - Voir Dire

1 A. Yes.

2 Q. To any person.

3 A. Yes.

4 Q. Okay. Now, the -- what this refers to, this  
question, when  
5 it talks about instructions, are not only preliminary  
6 instructions like you've already been given about  
staying away  
7 from publicity and conversation and all that -- that  
can be

8 interpreted as instructions; and then also what I  
instructed

9 you about fundamental principles of the law and  
presumption of

10 innocence and burden of proof and all that.

11 But then, you know, other instructions are  
given

12 before the trial starts, during the trial at times,

13 instructions about what the jury can consider as  
evidence,

14 because there are rules that govern us in all of these  
things,

15 and then instructions at the end of the trial about  
what has to

16 be proved, and so forth. You understand that's what  
this

17 question is asking about.

18 A. Right. I did.

19 Q. And that a person serving on a jury is obliged to  
follow

20 those instructions. Even if, you know, you may have  
some

21 question about or disagreement with the law, you have  
to follow

22 it.

23 A. Right.

24 Q. As I do.

25 A. Right.

Juror No. 435 – Voir Dire

1 Q. You understand. So one of the things that we have  
to talk  
2 about in this case because of the nature of the crimes  
charged  
3 and the type of punishment that is possible under the  
statutes  
4 is the question of penalty. And that is why on page 27  
we  
5 explained some, the background of that and on 28 -- you  
can  
6 turn to it here -- 28 we asked you some questions on  
the  
7 subject of punishment and particularly the punishment  
of life  
8 in prison without ever being released and any chance of  
being  
9 released and the punishment of death. And we're going  
to talk  
10 a little about that in a minute; but before I talk to  
you about  
11 process and procedures and the law, we wanted to get  
some idea  
12 from you what your thoughts are and opinions are about  
this  
13 ahead of time. And that's why we asked you these very  
14 open-ended questions --

15 A. Uh-huh.

16 Q. -- recognizing as the explanation in the  
questionnaire  
17 says, we're only talking about this as a possibility,  
because

found 18 Mr. Nichols is presumed to be not guilty; and if he is  
event of a 19 not guilty, this issue doesn't come up. But in the  
in 20 guilty verdict, then the jury does have an involvement  
And if 21 punishment. So that's why these questions are in here.  
the 22 you -- I want you to be sure that you have in your mind  
read to 23 answers that you wrote on page 28. So I invite you to  
24 yourself.  
about, 25 Now, this is a difficult subject to talk

1852

Juror No. 435 - Voir Dire

question, 1 because first of all, it's such a very serious  
have to 2 whether a person should live or die; and secondly, we  
information. 3 talk about it in the absence of evidence or  
We 4 have to talk about it in the dark, as it were. But it  
is 5 necessary for us to know something about your views  
before we 6 proceed.  
has the 7 Had you before encountering these questions --

8 subject of the death penalty and whether it's an  
appropriate  
9 thing to have in the law been something that you've  
thought  
10 much about, before this?  
11 A. Before this? I think growing up in the past,  
there's been  
12 times where I may have discussed about -- with my  
father or  
13 someone -- things that have happened to other people,  
different  
14 things. I think some of my views may be some of his  
growing  
15 up, some of the things that he's -- you know, that you  
learn  
16 and you take with your -- you know, from your family as  
you  
17 grow into an adult.  
18 But, yeah, it's not -- I mean, I have thought  
of it,  
19 but, it's not something that's --  
20 Q. Well, sometimes discussion or thinking about it is  
21 generated by a book or a movie --  
22 A. Yeah, or something in the news.  
23 Q. Or, yeah, in the news, about other cases. As you  
sit here  
24 now, can you think of times and events that caused you  
to  
25 discuss this with your father?

## Juror No. 435 - Voir Dire

1 A. Well, I just think of the thing that's going on  
here. I  
2 think -- what is it? Next week sometime?  
3 Q. Man named Gary Davis being sentenced to death in  
Colorado.  
4 A. Yeah.  
5 Q. It's in the Colorado court system.  
6 A. To be honest, when all this happened, when all this  
first  
7 happened with him, you know, here's a person that's --  
I mean,  
8 he's admitted to what he's done. He's -- you know, it  
was a  
9 brutal situation that happened. Personally, I think,  
you know,  
10 if that's -- the juries have decided or the courts have  
decided  
11 and the governor has no -- you know, is not going to  
change the  
12 outcome, then, you know, you go with the law and you --  
and you  
13 sentence him to what he was sentenced to. And I don't  
-- you  
14 know, I'm not going to be one to say that I disagree  
with the  
15 situation.  
16 But like I wrote in here, also, you know, if  
someone  
17 kills somebody . . . hypothetical, they're out in --

you know,

18 they're driving and they've had too much to drink,  
should

19 someone be put to death over that? You know, you get a  
teenage

20 kid or a, you know, whatever the age may be, no. But  
if it's

21 somebody that's been in trouble over and over for that

22 situation and has been -- you know, gone through the  
court

23 system, have had things, you know, they've tried all  
they can

24 to change that person's ways, taking his license, her  
license,

25 whatever, they still want to break the law and  
something like

1854

Juror No. 435 - Voir Dire

1 that happens, death penalty, I don't know; but maybe  
life in

2 prison, you know. That's a possibility.

3 Q. Okay.

4 A. I think that the crime has to fit the punishment.

5 Q. And you say here under B, the crime and punishment  
doesn't

6 always fit.

7 A. I don't know. In some cases I think maybe the  
penalty of

8 death would be right.

9 Q. And in here you're kind of -- and what I just heard  
you

10 say, you distinguish in part what the crime was?

11 A. Well, that's --

12 Q. And then the background of the person. Is that  
what you're

13 saying, like with the repeated --

14 A. Well, I think you have to take in -- you know, you  
have

15 to -- if you're a juror, you don't know that person;  
and I

16 think you need to try and take in all the information  
you can

17 from both sides and decipher what you feel is the right  
thing

18 in your mind how you would decide, you know, what that  
-- if it

19 went that far, that this person was found guilty and  
you needed

20 to do -- to determine what the punishment should be. I  
think

21 you need to take in all the information, whether it be  
22 background, childhood, upbringing, different things  
like that.

23 People are a picture of how are they brought up,  
situations

24 that arise within their upbringing and their daily  
lives. I

25 don't think anybody just is born a killer, goes their  
whole

## Juror No. 435 - Voir Dire

one day 1 life as just this perfect citizen, then all of a sudden  
happen. 2 wakes up and is a murderer. I mean, that just doesn't  
change 3 There are things that happen in people's lives that  
4 their outlook or their attitude.

5 And so I think you have to take the whole  
picture into 6 consideration when you make that decision.

7 Q. Well, let me discuss with you a little about the  
way the 8 law works here in situations where the jury gets  
involved with 9 punishment. Normally, the jury's not involved with  
punishment.

10 Normally -- that is, by "normally" I mean the nature of  
the 11 crime charged, if it doesn't carry the possibility of a  
death 12 sentence or a life in prison with no release sentence,  
the 13 jury's not involved, because in those cases the jury is  
14 involved to decide does the evidence show the defendant  
guilty 15 of whatever is charged beyond a reasonable doubt.  
That's the 16 choice, considering only the evidence and following the  
law and

17 without regard to punishment. Juries are told in those  
cases,  
18 Look, you can't talk about punishment. Your job is to  
decide  
19 on the evidence. And then if the jury says, No, it's  
not  
20 proved beyond a reasonable doubt, obviously the  
verdict's not  
21 guilty and the case is over.  
22 And if the jury says, Yes, the evidence does  
prove the  
23 crime beyond a reasonable doubt, it's over as far as  
the jury  
24 is concerned, because in those cases it goes back to  
the judge  
25 and the judge decides the sentence.

1856

Juror No. 435 - Voir Dire

1 But no judge can make a decision like that  
without  
2 getting a lot more information; so there is a  
sentencing  
3 hearing in front of a judge without a jury. And before  
that  
4 hearing takes place, there's a lot of information  
gathered  
5 about circumstances of the crime, on the one hand, and  
also a  
6 lot of things about the defendant, on the other, the  
kinds of

7 things that you've just mentioned: background of this  
person,  
8 the family history, how he and where he grew up, what  
things  
9 have influenced him in his life, and what he's done  
with his  
10 life up to this point.

11 These are the things that make each one of us  
12 different from everybody else, the things that are  
unique to us  
13 as an individual.

14 The judge then hears both sides, the lawyers  
on both  
15 sides, and says at the end: This is what's right, this  
is the  
16 just sentence for this person through this crime. And  
it may  
17 be different from person to person, even though the  
crime is  
18 the same. Do you understand?

19 A. I do.

20 Q. Now, when the issue is life or death -- and under  
the  
21 statutes here the choices are life in prison with no  
22 possibility of ever being released, death, or a lesser  
23 sentence, if the jury decides that, and then it goes  
back to  
24 the judge. But the life or death is a jury decision.  
We say  
25 under federal law -- and there are differences here now  
among

## Juror No. 435 - Voir Dire

1 the states and the federal. Here, we're in federal  
courts,  
2 federal law. Federal law is that the jury has to  
decide life  
3 or death. And here's the way the jury has to approach  
that.  
4 First of all, of course, there's the question  
of guilt  
5 or non-guilt. And that's just like any other trial;  
and the  
6 jury doesn't consider punishment when they're deciding  
does the  
7 evidence prove the crime beyond a reasonable doubt.  
And again,  
8 if the verdict is not guilty because the evidence isn't  
there,  
9 that's it; it's over.  
10 But if the verdict is guilty, then there's  
another  
11 trial, because now the jury has to focus on punishment.  
And  
12 they have to address that question with open minds,  
even though  
13 they've just found the person guilty. Now, they've got  
to look  
14 at everything; and here again, just like the trial, the  
15 prosecution comes in with things they ask the jury to  
consider

16 in support of a sentence to death. The defense comes  
in with  
17 things that they ask the jury to consider in support of  
a  
18 sentence other than death for the defendant as an  
individual  
19 human being. And those -- at that hearing, you know,  
it's very  
20 open as to the things that can be presented but  
certainly  
21 things about the individual person who has just been  
found  
22 guilty. All of these things, again, as we've just been  
talking  
23 about: the background of that person, how and where he  
was born  
24 and raised, what influences there have been in his  
life, what  
25 he's done with his life as far as other people, and so  
forth.

1858

Juror No. 435 - Voir Dire

1 And in cases where more than one person has  
been  
2 involved, the question is still unique to the person  
being  
3 tried and being sentenced. Understand?  
4 A. I do.  
5 Q. And, you know, just as here, we have an outcome  
with

to do 6 respect to Mr. McVeigh; and that doesn't have anything  
as 7 with, first of all, the question of the evidence as far  
of 8 Mr. Nichols is concerned. And in the event of a guilty  
because 9 verdict, it would have nothing to do with a sentencing  
10 Mr. Nichols. You don't sentence people the same just  
understand 11 they were involved in the same offense. Do you  
12 that?

13 A. I do.

instructions 14 Q. And then what the jury is given is a set of  
is 15 from the judge about, well, now, these are the -- this  
these 16 what's been presented to you in this second stage, and  
can 17 are the things that you consider -- you can consider as  
18 aggravating factors, and these are the things that you  
Talk 19 consider as mitigating factors. Think about all of it.  
20 about all of it. And then come to a decision.

gives some 21 And to assist in that decision, the court  
But 22 questions to be asked and to be answered by the jurors.  
anything, 23 that isn't some kind of a formula or an equation or  
24 because there's no way to do that. You're judging

another

die; 25 human being and whether that human being should live or

1859

Juror No. 435 – Voir Dire

moral 1 and that's a moral choice in the end and requires a

And the 2 judgment based on everything that's been presented.

that 3 jury talks it over, and then each juror has to decide

4 life-or-death question. Do you understand?

5 A. I do.

us is: 6 Q. And, you know, the question you have to answer for

7 Will you be able to do that?

8 A. Sure. I can make that decision.

the 9 Q. And give consideration to all of the possibilities,

10 choices?

11 A. Yes.

provide an 12 THE COURT: Okay. Well, we're going to

13 opportunity for the lawyers to ask you some additional

we do 14 questions, but I'd like to take a little break before

15 that.

16 JUROR: Okay.

minutes 17 THE COURT: So we're going to take about 20  
out and 18 out -- off here, a little rest stop; and you can step  
questions and 19 we'll have you back. And please listen to their  
20 answer them as you have me.

21 JUROR: Okay, great.

22 THE COURT: You're excused now for 20 minutes.  
23 (Juror out at 3:32 p.m.)

24 THE COURT: We'll take a 20-minute recess.  
25 (Recess at 3:32 p.m.)

1860

Juror No. 435 - Voir Dire

1 (Reconvened at 3:51 p.m.)

2 THE COURT: Be seated, please.

3 We have Ms. Wilkinson. Do you have questions?

4 MS. WILKINSON: I do, your Honor.

5 THE COURT: Please proceed.

6 MS. WILKINSON: Thank you.

7 VOIR DIRE EXAMINATION

8 BY MS. WILKINSON:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. How are you?

12 A. Oh, just fine.

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

14 one of the prosecutors who will be presenting the  
evidence

15 against Mr. Nichols in this case.

16 A. Right.

17 Q. I have some questions I want to ask you. I'd like  
to go

18 back to your work, if we could, for a moment.

19 A. All right.

20 Q. Not too much about your work but more about your  
membership

21 in your union.

22 A. Uh-huh.

23 Q. You mentioned, I think, to us or on your  
questionnaire that

24 you belong to the Teamsters. Is that right?

25 A. Right.

1861

Juror No. 435 - Voir Dire

1 Q. How long have you belonged to that organization?

2 A. For just a little over 18 years.

3 Q. The whole time you've been with your employer?

4 A. Right.

5 Q. And tell me what you think about your union. Have

they

6 done a good job for you over the years?

7 A. Yeah, I think so.

8 Q. Are you active in the organization?

9 A. No, not really. I guess my outlook -- probably  
until

10 recently -- was most of the people that I have worked  
for

11 there, I've felt that I could talk to them on a person-  
to-

12 person basis; and if there was anything that -- job-  
related we

13 needed to get taken care of that, you know, we could do  
it

14 together. But there has been a few times where I've  
had to get

15 the union involved in some situations and file  
grievances and

16 things like that because the people -- like I said  
before that

17 you don't always work for the same people, so there are  
times

18 that you work for someone that just, you -- you know,  
what you

19 say, it doesn't go through, and so you, you know --  
we're lucky

20 enough to have somebody behind us that we can get  
involved with

21 these situations and have some support, I should say.

22 Q. When you say until recently you had pretty good  
opinion of

23 them, are you referring to the strike, or are you --

24 A. Yeah, to the strike.

25 Q. And how did you think they handled that, the union?

1862

Juror No. 435 - Voir Dire

1 A. The union, I think they handled it very well.

2 Q. You were happy to have them back you all at that  
time?

3 A. Right, right.

4 Q. And have you ever held a leadership position in the  
union?

5 A. No, no.

6 Q. Have you ever supervised anybody at work?

7 A. Not -- I mean we have driver helpers at  
Christmastimes and

8 things, and I've done some, like, temporary training of  
other

9 drivers and things like that, so -- but that -- I mean,  
I don't

10 really consider that supervising them.

11 Q. Is that part of the stress, then, and all the  
12 responsibility falls upon you? I mean you're the --

13 A. Well, no. I mean, you have a certain amount of  
time in a

14 day to get as much work or -- well, all the work done;  
but, you

15 know, when -- when you have someone with you, I mean,  
it makes

16 it actually a little bit easier because you've got more  
time to  
17 spend in the truck doing -- setting things up and  
routing  
18 things while the other person is actually doing the  
deliveries,  
19 so, you know -- I think Christmastime, people say, Oh,  
20 Christmas is such a terrible time; but actually, this  
will be  
21 my 19th Christmas, and they're actually, I think,  
better than  
22 the rest of the year.  
23 Q. You told us in the questionnaire that you also have  
two  
24 small children. Is that right?  
25 A. Right.

1863

Juror No. 435 - Voir Dire

1 Q. Do you get to spend much time with them?  
2 A. I do. I took a route near where I live almost a  
year ago,  
3 and so I'm pretty much home for lunch daily with them.  
4 Q. That's good, I take it, now, since they're still at  
home  
5 all the time?  
6 A. Yeah. You know, they're home; and when they are in  
school,  
7 I deliver to the school, so I'll be around a lot, as  
long as I

8 stay on the route.

9 Q. Now, you answered some questions about the pretrial  
10 familiarity publicity in this case and you said you weren't that  
11 with the details. Is that right?

12 A. Right.

13 bombing Q. Do you remember where you were on the day that the  
14 occurred back on April 19, 1995?

15 A. I -- no. I'm sure I was at work.

16 listen to Q. When you're at work driving around, do you often  
17 the radio?

18 haven't had A. I used to. I have one in my locker at work. I  
19 years. my radio in my truck for probably the last couple

20 Q. Is there a reason for that?

21 them in A. Well, we supply our own radios and we have to strap

22 here in daily. I started -- when the Rockies first started

23 -- my Colorado, I used to listen to them quite a bit. I've

24 really lifestyle has changed now with children. I just don't

25 listen to the radio nowhere near as much as I used to.

Juror No. 435 – Voir Dire

1 Q. So do you remember how you heard about the bombing  
in  
2 Oklahoma City?  
3 A. It was probably while I was working, throughout the  
day,  
4 because I'm sure now that -- you know, I think back,  
I'm sure  
5 yes, I was at work that day. And I think most of the  
people at  
6 that time, you know, did you hear about this or, you  
know,  
7 things like that.  
8 Q. Do you remember going home and talking to your wife  
about  
9 it that evening and watching it on the television news?  
10 A. Yeah. Yeah. I don't remember exactly, you know,  
what we  
11 talked about; but yeah, I can recall, you know,  
watching the  
12 news and seeing the pictures of -- you know, and things  
like  
13 that of what has happened.  
14 Q. What's the impression you have in your mind of what  
you saw  
15 and what stayed with you for those first few days?  
16 A. Just that it was a shame that something like that  
would  
17 happen, but it wasn't a shock to me in a sense that,  
oh, my  
18 goodness, it happened in America, it happened, you

know, in the

19 country have

20 of

21 take

22 time,

23 taking care

24 addressing?

United States. I mean, things here within our own

20 changed a lot over the years. You know, there is a lot

21 things here in the United States that I think we should

22 care of more so than we -- than we do and we spend more

23 say, overseas taking care of things there.

24 Q. What are the things that you think we should be

25 of here, the priorities that maybe we're not

1865

Juror No. 435 - Voir Dire

things

homeless,

country?

that we did

know, by

different;

1 A. Oh, well, I mean, look at a lot of the kids and the

2 they're doing and ending up in jail, the gangs, the

3 the -- you know, things like that.

4 Q. Do you see crime as a growing problem in our

5 A. It has, I think, since I was a kid. The things

6 as kids and may have gotten into trouble for or, you

7 our parents and things, today's society is totally

8 but I -- I look at my two kids and their age, and I

hope that

9 when they're in their teens and 20's that things are  
not the

10 way they are today. I mean, I know they have to be  
brought up

11 the best they can and have enough knowledge and  
12 responsibilities to stay away from, you know, the bad  
parts of

13 life, I should say.

14 Q. Do you feel like people in the community take  
enough

15 responsibility for helping out with those issues?

16 A. Maybe not as much as they could.

17 Q. Well, I know you've said in your questionnaire you  
have

18 quite a story about the purse snatcher --

19 A. Right.

20 Q. -- where you intervened there and really --

21 A. Right.

22 Q. -- assisted someone. Do you feel like your  
behavior is

23 typical of a lot of people you know in the community --

24 A. No, probably not. Most people would turn and not  
want to

25 get involved.

1866

Juror No. 435 - Voir Dire

involved? I 1 Q. And what do you think made you decide to get  
2 realize it's a split-second decision, but --  
wasn't right, 3 A. When the situation happened, I knew something  
4 just the way this person happened to be coming by where  
we were  
5 at; but then when these -- when these two girls came  
down the  
6 street and kind of yelled out what had happened and  
this person  
7 took off -- I don't know, I guess I'm pretty much a  
helpful  
8 person in a sense and have always been that way. You  
know, my  
9 suggestion was, hey, just, you know, drop the purse;  
you know,  
10 keep going, just drop the purse; I'm not going to  
tackle you  
11 or -- and as we -- as I approached him and this person  
started  
12 to run off, I wasn't going to chase him; but then my  
brother  
13 ran up behind me; and, I don't know, I just felt, well,  
there  
14 is two of us now, so maybe we have a better chance of  
catching  
15 this person and getting this purse back.

whether he 16 I wasn't really concerned at the time of  
17 got away or not but just, you know, there is -- there  
is a  
18 woman whose purse was stolen and, you know, it's not

right.

19 Q. Did law enforcement get involved eventually?

20 A. Yeah. They showed up at my house and asked me, you  
know,

21 could I identify him; and I'm like, well, yes and no,  
to a

22 point. Well, we may be back, because like in the thing  
-- the

23 purse finally did fall out from underneath his coat  
when he

24 jumped the fence, and then he just took off running; so  
I gave

25 the purse back to the girls. And actually, I never saw  
the

1867

Juror No. 435 - Voir Dire

1 lady -- I never saw the girls again. And I thought  
later, you

2 know, Oh, I hope they took it back to her; but then the

3 officers showed up to my house and I had told them what  
had

4 happened and that was the extent of it. I mean, there  
was

5 never anything after that.

6 Q. So you don't know whether they were caught or  
anything?

7 A. No, not at all.

8 Q. And do you have any opinion about how well the law

9 enforcement officers handled it with you, or --

10 A. No. I mean probably they did what they could at  
the time,

11 I think.

12 Q. I have another question to ask you about your  
interaction

13 with the criminal justice system, if you could turn to  
page 25,

14 Question 111. It's -- Question 110 and 111 go  
together.

15 A. Oh.

16 Q. On pages 24 and 25, and it's about a close friend.

17 Do you recall answering those questions?

18 A. Yeah. I'm trying to now think here.

19 Okay.

20 Q. Do you remember that incident that you were  
thinking of

21 when you checked that off?

22 A. Well, there has been a few in my younger days. And  
a lot

23 of them were as teenage kids, alcohol-related. You  
know, I've

24 known quite a few people that have been stopped and  
taken in,

25 you know, for driving while, you know, having a few too  
many.

1868

Juror No. 435 - Voir Dire

1 And like I said earlier that, you know, the situation

that

2 happened to me and the outcome was a benefit to me; but  
I've  
3 also seen on the opposite side where a slap of the hand  
and let  
4 go, where I think then, you know -- you know, it's  
wrong. I  
5 mean, if you're -- you have to be responsible for your  
own  
6 actions; but also, too, you have to accept whatever the  
outcome  
7 may be. I mean at the time when I told the judge that  
I  
8 wasn't, you know -- when I was sentenced, I wasn't  
happy about  
9 it; but the more I thought about it, you know, I mean,  
it was  
10 my fault. No one put me up to this; no one, you know,  
coaxed  
11 me into it. I did it on my own, and I accept the  
12 responsibility for that and I accept the situation, the  
outcome  
13 of it.

14 And I think a lot of times with the  
overcrowding and  
15 this and that in the courts and in the jails that, you  
know,  
16 some of these people walk away with little to nothing  
and  
17 they're back out there doing it again. So what did we  
gain by  
18 arresting this person, sending them through the process  
and

more 19 then put them back out on the street? We've just spent

20 taxpayers' money and they're doing it again.

point 21 Q. Do you feel like your experience was a real turning

22 in your life, where you really -- you said accepted

23 responsibility?

weren't 24 A. Well, I was never brought up -- I mean my parents

beer in 25 drinkers or anything like that. I mean there may be a

1869

Juror No. 435 - Voir Dire

peer 1 the refrigerator or something like that. So this was a

kids 2 pressure. You're in high school, you know, things that

sit in 3 do. Today, I could buy a six pack of beer and it may

over and we 4 the refrigerator for months and a relative may come

was a 5 may have a beer. But at that point in time, yeah, it

to do 6 turning point. I realized that, you know, I don't need

same 7 this. You know, I've got two -- I was working at the

just 8 place that I've been, you know; and, you know, there is

I'm not 9 too much to jeopardize. You know, I realized then that  
I do 10 a kid any more and the outcome of what happens and what  
old. 11 has a lot more weight than it did if you were 15 years  
are born 12 Q. Well, you said earlier that you don't think people  
true? 13 to be criminals and that they make choices. Is that  
14 A. Right.  
the death 15 Q. With that in mind, can we turn to your answers on  
16 penalty, which are on pages 28 and 29.  
28, do 17 Okay. Now, if you'll look down at D on page  
18 you see that?  
19 A. Uh-huh.  
might be 20 Q. And you were asked about what cases you thought it  
said 21 appropriate to impose the punishment of death, and you  
the right 22 murder cases and only if you can prove the reason is  
doubt. 23 one, the person is the right one beyond a reasonable  
24 And that was when you were asked before you were  
instructed 25 about the law. Correct?

Juror No. 435 - Voir Dire

1 A. Right.

2 Q. Now, do you understand from what the Judge told you  
that of  
3 course you can't even get to this decision unless you  
believe a  
4 defendant --

5 A. Is guilty.

6 Q. -- is guilty beyond a reasonable doubt?

7 A. Right.

8 Q. And that's a separate part of the trial. You make  
that  
9 decision first; right?

10 A. Right.

11 Q. And then you'll be asked if you make that decision  
that the  
12 Government has proved beyond a reasonable doubt that it  
is the  
13 person who committed the crime to consider which  
penalty you  
14 should give them. Do you understand that?

15 A. I understand that.

16 Q. And can you do that? Can you -- even if you  
decided that  
17 there was evidence beyond a reasonable doubt that  
someone  
18 committed a very heinous murder with maybe some of the  
19 circumstances that you've described before as may be  
justifying

made any 20 the death penalty, could you sit back and before you  
you 21 decision listen to all the evidence on both sides, like  
before 22 said, about the person's background and about the crime  
23 you came to any decision?

24 A. I believe I can.

that? 25 Q. Do you have any doubt about your ability to do

1871

Juror No. 435 - Voir Dire

1 A. No.

us to sit 2 Q. Now, it's one thing, obviously, for you to -- for

do. 3 here and have a discussion about what you think you can

4 A. Right.

going 5 Q. And you understand that this is the only time we're

6 to get to discuss this with you?

7 A. Right.

with you 8 Q. If you're chosen as a juror, we don't communicate

9 anymore, we present the evidence --

10 A. Right.

that's it. 11 Q. -- you deliberate with your fellow jurors, and

12 So we want to make sure that you're not going to change  
your  
13 mind; that you could consider both of these penalties  
and make  
14 a decision based on what the evidence and the  
information is  
15 that you see in the courtroom.

16 A. I can do that.

17 Q. Okay. Can you, if you thought the evidence  
warranted --  
18 that is, you thought that a defendant was guilty beyond  
a  
19 reasonable doubt, you listened to all the evidence and  
you  
20 determined that death was the proper penalty -- could  
you come  
21 into a courtroom and look a defendant in the eye and  
tell him  
22 that you had sentenced him to death?

23 MR. TIGAR: Object to that.

24 THE COURT: Sustained.

25 BY MS. WILKINSON:

1872

Juror No. 435 - Voir Dire

1 Q. If you were on a jury with 11 other people and you  
had to  
2 make a decision about whether someone could live or  
die, could  
3 you make that decision?

4 A. Yes.

5 Q. You told the Judge during the questioning that you  
had seen  
6 some of the publicity about the O. J. Simpson case. Is  
that  
7 right?

8 A. Right.

9 Q. Do you have an opinion about the outcome of that  
case?

10 A. I -- I do and I don't. I mean, I -- to me,  
everything  
11 points to that he's -- if he's not totally guilty, he  
knows  
12 what happened; but see, I don't -- you know, I mean  
even to  
13 this point, it's like -- like I just said, I don't know  
if he  
14 was actually the one that did it; but if he didn't, he  
-- I'm  
15 sure he knows who did. If he did do it, he may not  
have done  
16 it by himself. But I wasn't in the trial; and like I  
say, I  
17 saw what was on the news, you know, and maybe an  
article in the  
18 paper here and there. But I just -- it gets to the  
point  
19 where, you know, enough is enough and I don't really  
want to --  
20 it doesn't affect me in my life, so I didn't pay any  
more  
21 attention to it.

22 I mean, the Princess Di thing -- you know,  
everybody  
23 was talking about it that I had been around -- you  
know, my  
24 wife was -- wanted to watch just about every show on  
TV. I was  
25 more interested in a baseball game or -- I just, you  
know -- I

1873

Juror No. 435 - Voir Dire

1 don't mean to be, you know, not compassionate or this  
or that;  
2 but, you know -- I've got to go to work the next day.  
I've got  
3 two kids to raise. I don't have -- you know, it's not  
going to  
4 affect my life in any way.  
5 Q. Do you have an opinion about the outcome of the  
Timothy  
6 McVeigh case?  
7 A. No. I'm not really that -- I mean, I know what had  
8 happened as far as the outcome and what they had found;  
but  
9 other than that -- I mean, Oklahoma is a long way from  
10 Colorado, and it just -- it was nothing that, you know  
-- it  
11 didn't -- it didn't affect me in my life, so it wasn't  
anything  
12 that I was really concerned about or interested in, I

should

13 say.

14  
answering my

MS. WILKINSON: Thank you very much for

15 questions.

16 JUROR: Thank you.

17 THE COURT: Mr. Tigar?

18 VOIR DIRE EXAMINATION

19 BY MR. TIGAR:

20 Q. Hello again.

21 A. Hello.

22  
Terry

Q. I'm Michael Tigar. I'm asked by the court to help

23  
asked and

Nichols; and most of the questions have already been

24  
long.

answered because we go third, so this won't take too

25 A. Okay.

1874

Juror No. 435 - Voir Dire

1 Q. You said your dad had worked on a farm for a while?

2  
from a big

A. Well, when he was a kid, his brother -- he came

3  
that

family, and I can recall him talking with us, you know,

4  
and

when he was a kid he'd go out to the farm and they'd go

things 5 shoot rabbits and they used to eat a lot of rabbits and  
they'd 6 like that and milk the cows, and he had a brother; that  
7 bale hay and stack hay and just things like that.

8 Q. But did --

no. 9 A. But not when I was a child or anything like that,

were 10 Q. So the family didn't still have the farm when you  
11 growing up?

12 A. No, uh-uh.

13 Q. And that was out east of town?

14 A. Yeah.

that -- 15 Q. I guess that's east -- wherever it is. Right. Was

16 they apparently said they had some dairy cattle?

17 A. I think they had some cattle.

18 Q. Pasture?

19 A. Yeah.

20 Q. Did they irrigate?

21 A. I don't know. I just -- conversation.

on this 22 Q. Well, you said your dad had a big influence on you

talking 23 question, if I remember right, about the death penalty,

24 about --

different from 25 A. Well, him and I have a relationship probably

1875

Juror No. 435 - Voir Dire

ask a  
you know,  
because I  
well, why  
son does  
so there  
about  
test.  
you  
that  
are  
and

1 my other brothers and sisters, is that I -- I'm one to  
2 lot of questions, I guess. I can recall growing up,  
3 why don't you just be quiet a little bit, you know,  
4 always wanted to know why this; well, how come this;  
5 this; well, what about that, you know? And I think my  
6 that to me now even almost, you know, his age. But --  
7 is a lot of times we would sit down and, you know, talk  
8 things and just different things.  
9 Q. Right. Well this -- you know -- none of this is a  
10 We're just trying to find what you're thinking. Could  
11 share with me what discussions you had with your dad  
12 contributed to your view about what kind of punishments  
13 appropriate?  
14 A. Well, he's always been one to put a lot of focus on  
15 independence for us; that we should rely upon ourselves  
16 we're not -- not other people to -- to better

ourselves, to

17 get, you know, where we're going to go in life. He was  
a very

18 strict person as far as, you know, if we got into  
trouble and

19 it was our fault, then we were bound to get out of it  
20 ourselves. He wasn't going to be there to say, I'm  
dad, don't

21 worry about it, you know, I'll take care of it. It was  
more,

22 Hey, you did this, you know it's wrong, you know that  
it's

23 wrong; now, you get out of it, you know.

24 When I got into trouble in '89, he came and  
got me;

25 but after that, I mean, you know, it was my -- my  
choice. So

1876

Juror No. 435 - Voir Dire

1 it was up to me to take care of the situation.

2 The -- the, you know -- we've talked about  
things in

3 the past. Just the other day, we were talking about  
the Gary

4 Davis thing, you know; and like I had said earlier, you  
know, I

5 mean, here's a person that's admitted to what he's  
done. You

6 know, there is no -- it's not that we've got the wrong  
person

7 maybe. I mean, this man did what happened; and, you  
know, I  
8 think in this case, the outcome is justified.

9 Q. Well, could I talk a little bit about that? Your  
dad  
10 thought that for sure?

11 A. Yeah.

12 Q. What kind of work does he do?

13 A. He's retired.

14 Q. From?

15 A. He used to work for Civil Service out at  
Fitzsimmons Army

16 Hospital. He was an ambulance driver, he was a  
construction

17 engineer, he was a -- oh, just a lot of different jobs.

18 Q. Well, looking at that Gary Davis case -- now, I  
don't know

19 any more about it than I read in the paper. But it is  
clear

20 that there was a brutal crime. It is clear that he  
admits that

21 he did it. And did you also read about his background?

22 A. No. I mean -- no.

23 Q. Just because none of us in this courtroom knows  
what the

24 evidence in this case is going to be -- that's why  
we're not

25 asking you about it because, you know, we might think  
we know;

## Juror No. 435 - Voir Dire

1 but we don't know what the other side is going to ask  
by way of  
2 questions, and so on. And as his Honor said, having  
presided  
3 over the McVeigh trial, he granted separate trials  
because he  
4 thinks the evidence is going to be different; it will  
be  
5 different enough to require that.

6 So the Davis case is a good way we could talk  
about  
7 this issue without getting into speculating about this  
case.

8 In that case, would you think that it was important  
that he had  
9 been in trouble with the law before; I mean, had  
committed  
10 other violent crimes?

11 A. Would that be important?

12 Q. Yes.

13 A. I mean, someone that -- that's like -- if someone,  
you  
14 know, drinks and drives and gets his license taken away  
and  
15 keeps doing it and keeps doing it, I mean, there is --  
you  
16 know, there is a pattern there and I think something  
needs to

17 be done about that; so if in his, you know, past, he  
had other  
18 violent things happen or had caused other violence, you  
know,  
19 that's an important thing to take into consideration.  
20 Q. And conversely, if you were judging somebody who it  
was  
21 clear beyond any doubt had committed a brutal murder,  
would you  
22 be willing to consider and give effect to that, really  
put it  
23 into your thinking process that they had never been in  
trouble  
24 with the law before or that certain things had happened  
in  
25 their upbringing and things like that?

1878

Juror No. 435 - Voir Dire

1 A. Yeah. I mean, I would take all that into  
consideration.  
2 Q. And when you say "take it into consideration,"  
could it --  
3 could it be something that moved you in choosing what  
the  
4 appropriate punishment is?  
5 A. Possibly.  
6 Q. Okay. I guess what I'm asking is -- go ahead.  
7 A. You know, it would have to -- I mean, I would have  
to know

8 what it is. You know --

9 Q. Of course. Of course.

10 A. To just say one thing, yes or no or --

11 Q. I'm not trying to get a commitment from you. The  
only

12 question I'm asking you is if you were making a  
decision, the

13 judge would instruct you about all of these different  
things

14 that were supposed to be considered and you'd hear a  
lot of

15 information. Are you a person who thinks, gee, if a  
crime is

16 real bad and the evidence is they committed it, then  
click, off

17 goes the reasoning process, you won't consider anything  
about

18 the individual?

19 A. No, no, I wouldn't do that.

20 Q. And you could consider individual facts about that  
--

21 A. Right.

22 Q. -- about that individual human being?

23 A. Right.

24 Q. Okay. Well, let me ask you a little bit about  
leisure

25 time. You said everything you like to do in leisure is  
out of

Juror No. 435 – Voir Dire

1 doors. Right?

2 A. Yeah.

3 Q. And fishing, boating, so forth and so on. Do you  
have a  
4 boat?

5 A. Yes, I do.

6 Q. Power boat, sailboat?

7 A. Ski boat, yeah.

8 Q. Oh, ski boat. Okay. And is that something you  
look  
9 forward to doing with your kids?

10 A. Sure.

11 Q. Now, I noticed you've got a 1-1/2 and a 3-1/2, so  
you have  
12 emerged from the terrible 2's and you're about to start  
them

13 again?

14 A. Right.

15 Q. Is that your experience?

16 A. It's not the terrible 2's. I think it's the  
terrible 3's.

17 Q. All right. Well, nobody said it had to work like  
18 clockwork. It's an individual human matter.

19 A. Right.

20 Q. Nobody is the same.

21 A. Right.

22 Q. Do you have the same attitude towards rearing your  
kids  
23 that your dad did, do you think?  
24 A. To a point.  
25 Q. How are on the spanking vs. time out?

1880

Juror No. 435 - Voir Dire

1 A. I'd rather do a time out.  
2 Q. Would he have had a different view?  
3 A. Probably.  
4 Q. Okay. Now, I notice that -- and when you're  
talking about  
5 the criminal justice system, you had a very interesting  
6 observation about that O. J. Simpson trial. You said  
something  
7 like if he didn't do it, he knows.  
8 A. Well, that's how I feel.  
9 Q. I understand. Well, that's all we're asking. This  
is not  
10 a test; but what that prompts me to ask you is, you  
know, in a  
11 criminal case that's disputed -- and this one is -- the  
12 Government -- they go first, present their evidence,  
and then  
13 the defendant -- we have the right to cross-examine  
every one  
14 of their witnesses; but as the Judge, I think, said out  
at

We're 15 Jeffco and here, the defense doesn't have any burden.  
reasonable 16 presumed innocent. They've got to prove beyond a  
17 doubt.

the 18 Now, would it bother you that -- in a case if  
19 defendant didn't take the stand and testify?

20 A. No, it wouldn't bother me.

I 21 Q. Okay. That is, you might be curious about it. As  
-- 22 understand, you probably are. You'd like to hear from

23 A. Well, yeah.

24 Q. -- from Mr. Simpson?

know, 25 A. But I understand, like the law states, that, you

1881

Juror No. 435 - Voir Dire

proven 1 you're guilty until proven -- you're innocent until  
prove their 2 guilty; so, you know, it's up to the prosecution to  
3 case to show guilt.

4 Q. Yeah. I'm not saying we're not going to put on any  
5 evidence. I'm just talking about --

wouldn't have 6 A. Yeah. If a person didn't get up there, no, I

7 no --

8 Q. Well, let me turn, then, to the questions other  
people have

9 asked you about the labor organization of which you're  
a

10 member.

11 A. Uh-huh.

12 Q. I gather you thought it was the right thing to hit  
the

13 brakes?

14 A. Yeah.

15 Q. And under your contract that you have now -- is it  
finally

16 ratified?

17 A. I don't -- no, not yet. Counting the votes, I  
guess.

18 Q. Okay. Well, under the contract, whether it's --  
whatever

19 you expect it to be, is there a provision in there on  
jury

20 service?

21 A. There is.

22 Q. Okay. And do you remember what that is? You sound  
like

23 somebody that reads your contract pretty good.

24 A. Well, yeah. I mean, any time spent on jury is, you  
know --

25 anything that I get for being here on a jury I turn in  
to work

## Juror No. 435 - Voir Dire

1 and they, you know, pay me for my full time, so  
monetarily,

2 there is no --

3 Q. You're covered under your contract?

4 A. Right.

5 Q. And that's printed right -- what -- you still get a  
little

6 booklet there with the two pictures of the horses in  
front

7 looking at each other?

8 A. Right.

9 Q. And the same logo?

10 A. Right.

11 Q. And during all those 18 years that you've been a  
member of

12 this organization, have you -- have you kept track of  
the

13 national politics with respect to it?

14 A. No.

15 Q. You don't have any opinion on Jimmy, Jr.?

16 A. No.

17 Q. Tell me. Maybe not. It's not --

18 A. I mean, I think the person that's in the -- sitting  
in the

19 main chair now has done good for the union under what I  
can

where 20 see; so, you know, I -- I would recommend that he stay

21 he's at.

I'm almost 22 Q. Okay. And could you look, please, at page 32 --

shows? 23 done -- and you said there that you had been to gun

24 A. Yes, I have.

25 Q. Could you tell me a little bit about that?

1883

Juror No. 435 - Voir Dire

was -- you 1 A. Well, my dad -- we didn't grow -- growing up, he

used to 2 know, like I said, when he lived out on the farm, they

when we 3 shoot rabbits and eat rabbits and things like that; and

to 4 were younger kids, we didn't hunt with him but he used

talking 5 hunt -- his family, you know, his brothers. And we're

there was 6 some years back. And they hunted; and growing up,

touch 7 always a gun or two around the house. We knew not to

-- 8 them, you know. They were -- they were dangerous and

9 Q. Right.

10 A. -- and kids shouldn't play with those things.

11 But as I got older, I actually had a dinner  
one night  
12 of -- we ate some antelope and it was -- I said, "Boy,  
this is  
13 the best cut of roast I've ever had."  
14 And this person, said, "Well, that was  
antelope."  
15 I said, "Yeah, okay. Right."  
16 Then when I finally realized that that's what  
it was,  
17 I said, "Boy, you know, maybe we ought to go hunting  
sometime,  
18 Dad."  
19 He said, "Hey, you know, I'd love to do that,"  
you  
20 know.  
21 And so I went through hunter safety and  
purchased a  
22 hunting rifle, and he -- he and some friends of ours,  
we  
23 started to go hunting together; and it was something  
that we  
24 could do. My brother got involved in it as he got a  
little bit  
25 older; and it was something that we could do as a  
family and,

1884

Juror No. 435 - Voir Dire

1 you know, be together.

2 Q. About how old were you at that time?

3 A. I want to say I was about 17.

4 Q. 17. So you'd gotten past 14; so you took, what,  
the NRA  
5 safety course?

6 A. Yeah. It was through one of the like Gart  
Brothers, one of  
7 the sporting goods stores here in town.

8 Q. How about the gun show?

9 A. Then we had gone to -- I think I've been to two of  
them,  
10 just to look around, price things.

11 Q. Sure.

12 A. That's about it.

13 Q. Now, did you buy anything there?

14 A. No. See, I got to the point where I thought I  
would want  
15 to reload my own shells so I wouldn't have to have the  
expense,  
16 and I went out and, you know, I was a -- 18-, 19-, 20-

17 kid making pretty good money, living at home; so I  
purchased a

18 lot of things to do reloading. To this day, dad has  
got all

19 that stuff, and he's done more of it than I have.

20 But, you know, he's got a place at his house  
that it's

21 all set up. I figure some day when -- you know, when  
my kids

22 are older, it's something that shows them some  
responsibility.

23 Q. Sure.

24 A. And, you know, I don't see anything wrong with  
that.

25 Q. Oh, sure. Now -- these gun shows you went to -- so  
that

1885

Juror No. 435 - Voir Dire

1 was a number of years ago?

2 A. Last one I was probably at was about six years ago.

3 Q. Okay. So -- now, at the gun show you were at, did  
you see

4 people selling things other than guns, military surplus  
items,

5 literature and things like that?

6 A. Literature, reloading, you know, but -- yeah, I  
guess they

7 sell a little bit of everything there.

8 Q. Okay. Final question: You have two kids.

9 A. Right.

10 Q. And if you're selected as a juror in this case,  
there will

11 be evidence, of course, that there were children in a  
day-care

12 center in that federal building and they died, and  
there will

13 be other evidence. It will be pretty graphic evidence.

Will

14 you be able to see that evidence, listen to that  
evidence, and  
15 despite how heart-wrenching that may be, keep focused  
on the  
16 question: Is there proof beyond a reasonable doubt  
about Terry  
17 Nichols?

18 A. I can.

19 Q. And so you could look Terry in the eye today and  
say you  
20 could give him a fair trial?

21 MR. MACKEY: Objection.

22 THE COURT: Overruled.

23 You may answer.

24 JUROR: Yeah, I can.

25 MR. TIGAR: Thank you very much, sir.

1886

1 THE COURT: Well, we're done with all the  
questions.

2 JUROR: Okay.

3 THE COURT: But we can't answer your question,  
which  
4 is probably am I going to be on this jury, now because  
it takes  
5 a while for us to do this; so you'll have to live with  
some

6       uncertainty for a while. And I can't even tell you  
when we'll  
7       let you know, but I'm sure you understand that this  
process is  
8       a careful one and the importance of it. So please bear  
with us  
9       and follow the cautions you've been given before and  
that you  
10      have been following now: Avoid discussions that could  
relate  
11      to the case and influence you and be careful about all  
of the  
12      things that you may read, see, and hear to avoid things  
that  
13      relate to this case and which could affect your ability  
to  
14      serve on the jury, operating on the assumption that  
you're  
15      going to get a call to come back here and sit on this  
jury.

16      Can you do that?

17                 JUROR: I will.

18                 THE COURT: All right. You're excused for  
now, and  
19      we'll let you know.

20                 JUROR: Thank you.

21                 THE COURT: 342.

22                 Will you just stand there for a moment and  
raise your  
23      right hand and take the oath from the clerk here.

24                 (Juror No. 342 affirmed.)

25 THE COURTROOM DEPUTY: Thank you.

1887

1 THE COURT: Please be seated there now --

2 JUROR: Thank you.

3 THE COURT: -- by that microphone. The chair  
swivels

4 around, so you can adjust it. And you don't have to  
speak

5 right into the microphone. It will pick you up if  
you're in

6 the neighborhood.

7 JUROR: Okay.

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q. Now, you understand that the case now on trial and  
the case

11 for which we're picking a jury is United States against  
Terry

12 Lynn Nichols.

13 A. Yes.

14 Q. And you got a summons awhile back advising you of  
that and

15 advising you that your name has come up through a  
computer

16 chance system as possibly a juror in the case.

17 A. I did.

18 Q. And you did -- and you've been waiting all day to  
come in  
19 here and answer questions?  
20 A. Yes, sir.  
21 Q. And we apologize for keeping you waiting, but --  
22 A. That's fine.  
23 Q. -- we can't know exactly how much time it takes;  
and you  
24 came all the way from Greeley?  
25 A. Yes.

1888

Juror No. 342 - Voir Dire

1 Q. And you may have to be back again tomorrow.  
2 A. Whatever.  
3 Q. We may not get done.  
4 A. Whatever.  
5 Q. All right. Good.  
6 Well, and then you got a notice to come out to  
7 Jefferson County Fairgrounds' auditorium building on  
8 September 17, and there you were with a lot of other  
people who  
9 got the same summons.  
10 A. Uh-huh.  
11 Q. And I was there and so were some of these folks who  
are in

12 the courtroom now.

13 I want to reintroduce the people who were  
introduced

14 to you at that time so you know who is here.

15 A. Right.

16 Q. And you'll recall being introduced to Mr. Lawrence  
Mackey,

17 who is right here at the first table, and Ms. Beth  
Wilkinson,

18 attorneys for the Government. They're joined now by

19 Mr. Patrick Ryan and Mr. Geoffrey Mearns. They weren't  
there,

20 Mr. Ryan, Mr. Mearns weren't there. They've joined us  
here.

21 You also met Mr. Michael Tigar, Mr. Ronald  
Woods,

22 attorneys for Terry Nichols. Mr. Nichols was with us.

23 And I talked to you about the background of  
this case,

24 explaining how it arises as a result after an explosion  
in

25 Oklahoma City, Oklahoma, on April 19 of 1995, and that  
on that

1889

Juror No. 342 – Voir Dire

1 day there was a federal office building destroyed by an  
2 explosion and people in there were hurt and killed.  
And after

3 that, there was an indictment, charges filed, in the

United

4 States District Court in Oklahoma City, charging a man  
named  
5 Timothy James McVeigh and also Terry Lynn Nichols and  
then the  
6 indictment says "and other persons not named" in the  
indictment  
7 with a conspiracy to plan a bombing of that building  
and with  
8 crimes about carrying it out and with the murder of  
eight law  
9 enforcement agents who were in the building.

10 You remember that?

11 A. Yes.

12 Q. And I also explained that the defendants entered  
not guilty  
13 pleas, creating the issues to be tried; that the case  
got moved  
14 from Oklahoma City here to Denver because of a concern  
about  
15 getting a fair jury there in Oklahoma City and that  
also an  
16 order was entered separating the named defendants for  
trial so  
17 that there would be a separate trial of the case as it  
related  
18 and the evidence as it related to Mr. McVeigh and  
another  
19 separate trial for Mr. Nichols, because it wouldn't be  
fair to  
20 try them together because of differences in the  
evidence. You

21 understand that, too.

22 A. I do.

23 Q. And I explained something that you probably already  
knew

24 when you were out there: that there had been a trial  
here with

25 a jury hearing the evidence as it related to Timothy  
McVeigh

1890

Juror No. 342 - Voir Dire

1 and that the outcome of that trial was a guilty verdict  
and a

2 death sentence.

3 A. Yes.

4 Q. And that wasn't news to you. You already knew  
that.

5 A. I did.

6 Q. And then I explained that the outcome of that case  
could

7 not be considered by a jury in this case, because  
that's

8 exactly why separate trials were ordered and that in  
this trial

9 of Mr. Nichols with respect to the evidence, whatever  
it is

10 that is to come in here, that has to be judged fairly  
and

11 separately from whatever was presented in the McVeigh  
trial.

12 You understand that?  
13 A. Yes.  
14 Q. Now, you were on a jury before -- right -- in Weld  
County?  
15 A. One other occasion, a county court I believe it  
was.  
16 Q. Yeah. And we'll talk about that in a minute.  
17 A. All right.  
18 Q. But because you were on a jury before, you knew  
before I  
19 explained it, too, some fundamental principles of our  
criminal  
20 justice system under our Constitution. In all courts  
in the  
21 United States, whatever the charges are and whoever the  
22 defendants may be, the defendant is presumed to be not  
guilty;  
23 "presumption of innocence," as it's referred to. That  
carries  
24 over throughout the trial, entitles that person to an  
25 acquittal, a verdict of not guilty, unless a fair-  
minded jury

1891

Juror No. 342 - Voir Dire

1 decides by unanimous verdict that the evidence shows  
guilt,  
2 shows it beyond a reasonable doubt. That's a principle  
that  
3 you're familiar with --

4 A. Yes.

5 Q. -- is it?

6 And that no defendant has any duty or  
responsibility

7 of defending himself by presenting evidence. There is  
no duty

8 on a defendant to testify or to call any witnesses, and  
the

9 burden is on the Government making the charge to come  
in with

10 the witnesses and whatever else in the way of evidence  
by

11 exhibits and the like to prove the charge. And if it  
be the

12 case that a defendant does not testify at his or her  
trial or

13 offer any evidence, that's not something the jury can  
consider.

14 Certainly that's not to be considered some kind of an  
admission

15 or inference of guilt that he's got something to hide  
or

16 anything like that. In fact, what juries are told here  
when

17 that happens -- and no defendant -- and the defendant  
does not

18 testify -- is don't even talk about it, because that  
can't

19 weigh in or enter into your decision as to whether the  
evidence

20 that you did hear shows guilt and shows it beyond a  
reasonable

21 doubt. Agreed?

22 A. Yes.

23 Q. And so what it all comes down to is at the end of  
the

24 trial, the jury considers the evidence; and then if  
there is a

25 reasonable doubt remaining, they give the defendant the  
benefit

1892

Juror No. 342 - Voir Dire

1 of that doubt and find him not guilty. That's what the  
2 Constitution requires a jury to do. Do you accept  
that?

3 A. I do.

4 Q. And you'd follow that as a juror if you were to be  
a juror

5 in this case, I take it.

6 A. I will.

7 Q. Now, we asked you after these explanations to fill  
out a

8 questionnaire, a long one; and you did. And there it  
is in

9 front of you now, or should be in that folder, your  
completed

10 questionnaire; and as I told you we would do, we have  
made

11 copies of that and provided it to the people who are  
here in

12 front of you but to nobody else, because some of these

things

13 are quite personal to you. And we respect your privacy  
and

14 your personal interest and have not divulged your name  
to

15 anybody, and these answers haven't gone to anybody  
other than

16 the people who are directly involved.

17 And we try to maintain your privacy by not  
referring

18 to you by name and also having you go through an  
arrangement so

19 you can come and go in the courthouse without being

20 photographed or any of those things. But you do  
recognize that

21 now you're in a courtroom in open court, so what  
happens here

22 is public.

23 A. Yes, I understand.

24 Q. Okay. And I -- I'm going to ask you some  
questions, some

25 of them to expand a little on some of the things you've  
told us

1893

Juror No. 342 - Voir Dire

1 in your answers, some unrelated to that; and then the  
lawyers

2 will have a chance -- lawyers on each side -- to ask  
you some

3 questions.

4 A. Fine.

5 Q. So bear with us for asking yet more questions.

6 A. I'll do it.

7 Q. Okay. You live in Greeley?

8 A. Yes.

9 Q. And you were born and raised there?

10 A. Yes.

11 Q. And you lived there up to now except for part of  
your time

12 was in Washington, D.C.

13 A. That's true.

14 Q. And about seven years ago or so, you had a setback  
as far

15 as your health is concerned. You've told us here on

page 4

16 about that and that you take some daily medication.

And that

17 is something you do every day and you feel all right.

Is that

18 right?

19 A. That's true.

20 Q. So you don't have any physical limitation now in  
sitting on

21 a jury, do you?

22 A. No.

23 Q. You, as I understand it, worked for the Postal  
Service or

24 its predecessor for quite a while and then went to work

as an

25 officer of the union, Rural Letter Carriers; and then  
there was

1894

Juror No. 342 - Voir Dire

1 a time when you were the president of it.

2 A. That's true.

3 Q. The national president?

4 A. Yes.

5 Q. And is that when you -- and you were also then in  
6 Washington and, of course, representing the interests  
of the

7 union before the Congress and the executive branch  
agencies?

8 A. Correct.

9 Q. How long -- did you live in Washington at that  
time?

10 A. Lived there for about, oh, six years. I went in  
'81, I

11 believe, and retired then at the end of 1986.

12 Q. Did you live in the District?

13 A. No. Our office was in the District for the first  
couple of

14 years. I lived across the river in Arlington.

15 Q. Okay.

16 A. Right near the Arlington Cemetery.

17 Q. Yeah. And you retired, then, about what year?

18 A. In 1986.

19 Q. Yeah. You said that. Then you came back to  
Colorado?

20 A. Yes.

21 Q. Back to Greeley?

22 A. Uh-huh.

23 Q. And are you doing some things now part-time, or --

24 A. No. I --

25 Q. Enjoying life?

1895

Juror No. 342 - Voir Dire

1 A. I just recently -- I was doing still a little --  
some

2 lobbying and some PR work; but in August, I've unhooked  
from

3 everything, play golf.

4 Q. Looks like it suits you.

5 A. Thank you.

6 Q. You're married?

7 A. Yes.

8 Q. Your wife does some volunteer work, as I understand  
it. Is

9 she still doing that?

10 A. A lot of volunteer work, yes.

11 Q. And before that worked out of a store, a gift shop,  
did

12 she? Am I reading this right?  
13 A. She was a buyer for a number of years of ladies'  
sportswear  
14 for a store in Greeley when we lived in Greeley. And  
when we  
15 were in -- the years we were in Washington, D.C., she  
worked  
16 most of the time as an executive secretary at one of  
the  
17 Marriott hotels.  
18 Q. All right. And was that across the river, too?  
19 A. Yeah. Yes.  
20 Q. Now, she volunteers at a hospital there in Greeley  
now?  
21 A. At the local hospital and at the schools and at  
22 municipal -- museums and so on.  
23 Q. She stays pretty busy, it sounds like.  
24 A. Sure does.  
25 Q. Okay. You were in the Navy?

1896

Juror No. 342 - Voir Dire

1 A. Yes, sir.  
2 Q. What years were you in the Navy?  
3 A. 1946 and come out in 1948.  
4 Q. Okay.  
5 A. 22 months, I believe, during that time.

there 6 Q. And you had on page 13 -- you refer to an incident

7 where you got some discipline.

8 A. I did.

such -- 9 Q. And that's the abbreviated kind, not a trial as

on your 10 A. It's less than a trial but it's -- it sure is hard

11 record.

12 Q. Yeah. It's a formal thing.

thing. 13 A. I was about 18 or 19 years old and did a dumb

14 Q. Yeah. You were guilty?

15 A. Yes.

saying? 16 Q. So you deserved what happened; is that what you're

17 A. Yes.

discharged 18 Q. Now, did that affect your record as far as your

19 was concerned?

20 A. No. I got an honorable discharge.

21 Q. You got an honorable discharge?

Bill, and 22 A. And all the benefits. Went to school on the GI

23 so on.

then 24 Q. So apart from whatever discipline was imposed right

25 and there, it didn't have any effect, did it?

## Juror No. 342 - Voir Dire

1 A. No.

2 Q. Except it was in your file, as you say?

3 A. In my personnel file as far as I know.

4 Q. Yeah. And in fact, on page 14, your attitude about  
your  
things

5 whole experience in the Navy is good. Taught you some

6 about --

7 A. I think so. I learned self-discipline and --

8 Q. Sort --

9 A. -- self-appreciation, also.

10 Q. You were 17 when you went in, and you grew up some?

11 A. Right out of high school, yes.

12 Q. Now, you mentioned your prior jury time; and it's  
on page  
right

13 26 that you tell us about this. I think I have the

14 reference. Yeah. 26 where you have it -- Question 117  
at the  
15 top of the page.

16 A. Yes.

17 Q. How long ago was this jury service?

18 A. It was a one-day trial.

19 Q. Yeah, but what year was it?

20 A. Oh, what year?

21 Q. Yeah.  
22 A. I just have to estimate three or four years ago.  
I'm not  
23 sure.  
24 Q. Close enough. And the way you tell it here and the  
way I  
25 understand it is that this was someone who was accused  
of -- he

1898

Juror No. 342 - Voir Dire

1 was already in jail for something?  
2 A. Yeah.  
3 Q. And was accused of having some kind of dope in his  
jail  
4 cell?  
5 A. Marijuana.  
6 Q. Marijuana. And you were the foreman of the jury?  
7 A. Yes, I was elected foreman. I think I was the only  
one  
8 with a necktie on, so they elected me foreman.  
9 Q. There are some of us who wonder how that happens,  
and I  
10 guess --  
11 A. Well, I think that was a requirement.  
12 Q. That's a good explanation of one jury's election of  
a  
13 foreman.

day? 14 You say it was one day? The trial was one

decision 15 A. Yes. We started in the morning, and we reached a

16 about 7:00 that night.

shorter -- 17 Q. And you went through a process like this but

18 A. Yes.

jury 19 Q. -- in being selected as jurors. And what did the

20 decide?

21 A. Not guilty.

lawyers on 22 Q. Not guilty. And was that case -- there were

23 both sides, I take it?

24 A. Oh, yes.

testified, 25 Q. And was that a case where this accused person

1899

Juror No. 342 - Voir Dire

1 or --

2 A. Yes, he did.

3 Q. He did testify.

4 A. Yeah.

why 5 Q. And, what, generally denied that it was his, or --

6 should I -- you know, you tell me what happened.

7 A. Relate the story briefly?

8 Q. Yeah.

9 A. He was an inmate in the county jail, and he was  
charged

10 with possession of marijuana; and he claimed in his  
defense

11 that he had been set up by another cellmate or another  
inmate

12 of the jail, anyway, to -- some sort of retaliation.  
And they

13 told the jailer on him, and they went in and searched  
his cell

14 area. Apparently there was little shelves or something  
that

15 belonged to each prisoner. And sure enough, they found  
a

16 couple of marijuana -- rolled marijuana cigarette stubs  
and

17 then preferred charges.

18 And he claimed -- as I say, he was --

19 Q. Yeah --

20 A. -- a victim of someone else in the jail.

21 Q. So the jury found at least there was enough doubt  
about it

22 that he was found not guilty.

23 A. Yes.

24 Q. And you say the jury reached this verdict about  
7:00?

25 A. It seemed to me like it was about 7:00 when we  
finally got

1900

Juror No. 342 - Voir Dire

1 out of there. Probably before then, because we had to  
go back 2 into the jury -- or into the courtroom and deliver our  
verdict.

3 Q. Yeah. And about how long did the jury talk it  
over, as you 4 remember?

5 A. Oh, it was pretty brief. Maybe 30 or 40 minutes is  
all.

6 Q. So everybody was pretty much in agreement right  
from the 7 start?

8 A. It seemed that way.

9 Q. Now, of course -- and that's the only time you've  
been on a 10 jury?

11 A. My only experience.

12 Q. Okay. Well, the basics were there; right? I mean,  
you got 13 instructions from the judge somewhat like what I talked  
about?

14 A. Similar.

15 Q. Except that was a case where the accused person did  
16 testify.

17 A. He did.

18 Q. And, of course, that isn't required. I mean, the

fact that

as, 19 an accused person does not testify can't be considered

20 well, he's hiding something.

21 A. I understand.

about 22 Q. You understand. Now, we have to talk a little

punishment, 23 punishment and your views with respect to capital

if a 24 because in this case, the charges under the statutes,

the 25 person is found guilty under these statutes, there is

1901

Juror No. 342 – Voir Dire

talk about 1 possibility of punishment by death. And we have to

with a 2 that a little, then, because although we start out here

guilty 3 presumption of innocence that there isn't going to be a

role 4 verdict, we have to talk about, well, if there is, what

comes up. 5 does the jury have then. So that's why this subject

that here 6 And we asked you about your opinions with respect to

where 7 on pages -- well, 28 is where the questions are; 27 is

8 the general explanation of why we're talking about this

is

9 there. Would you turn to that?

10 A. Yes, I have it.

11 Q. Okay.

12 A. Page 7.

13 Q. And I suppose you remember encountering these  
questions

14 when you went through this questionnaire?

15 A. Look familiar, yes.

16 Q. Okay. And let me, you know -- you've -- you have a  
general

17 awareness of a lot of things that get discussed as  
differences

18 in policy and what the law ought to be and so forth;  
and of

19 course, you've been involved in the law-making process  
in

20 Washington, representing your organization, trying to  
get

21 things that are agreeable to the membership.

22 A. Yes.

23 Q. And this matter of whether there ought to be a  
death

24 penalty is something that you know has been discussed  
and a lot

25 of disagreement over time. Sometimes the law has been  
changed

Juror No. 342 – Voir Dire

1 as a result of people's views. Sometimes the debate  
gets

2 pretty heated and there are some extreme views.

3 A. Yes.

4 Q. Some people believe you never should have death  
punishment;

5 it's wrong; the law shouldn't be that way; the court  
should not

6 make such a decision. Another point of view is, look,  
certain

7 kinds of crimes ought to result in death regardless.  
And then

8 there is a lot in between. Does that generally  
describe your

9 understanding of sort of the range of views?

10 A. It does.

11 Q. Okay. Now, we're going to talk a little about the  
process

12 and the law; but before we do, I want to talk a little  
about

13 your approach to this, because we asked you in these  
questions

14 what you think coming in here without regard to what  
the law

15 really is. You understood it in those terms?

16 A. Yes.

17 Q. And had you before answering these questions on  
18 September 17 of this year had a view about the death  
penalty?

19 Was it something you've considered and arrived at an

opinion

20 about before this?

21 A. Oh, I guess it's been a topic of conversation from  
time to

22 time over a long period of time.

23 Q. Sure.

24 A. At the family table and that sort of thing.

25 Q. Have your views changed over time? I mean, have  
you sort

1903

Juror No. 342 - Voir Dire

1 of reexamined your position --

2 A. No. I've always had about the same opinion or same  
3 philosophy.

4 Q. And your answers here are pretty short. That's not  
bad.

5 There aren't any right or wrong answers. It's not a  
test.

6 We're just asking you to tell us what you think.

7 A. Okay.

8 Q. And what you seem to be saying or what I understand  
you to

9 be saying is that you consider that a punishment of  
life in

10 prison without any possibility of release is something  
that can

11 be imposed, death penalty can be imposed, you'd have to  
hear

12 the case to decide. Is that what you're saying?  
13 A. That's what I'm saying, yes.  
14 Q. And you don't have, then, a moral or religious view  
in  
15 advance about the death penalty and whether it ought to  
be in  
16 the law.  
17 A. No, I have no --  
18 Q. That's what you say on the next page, I think.  
Right?  
19 A. Yes.  
20 Q. Now, you also said -- and I'm really jumping over  
then to  
21 the following page -- that -- page 30 at 129, you agree  
that  
22 it's important to follow court's instructions.  
23 A. Yes.  
24 Q. Okay. Now, we're here in a situation which is  
difficult to  
25 talk about penalty because, first of all, we start with  
the --

1904

Juror No. 342 - Voir Dire

1 as I just said, there is a presumption that the case  
will never  
2 get there; that the defendant is presumed innocent.  
And, of  
3 course, the first thing that a jury has to do, then, is

to hear

charges

guilty

in the

4 the evidence and decide whether the evidence proves the  
5 beyond a reasonable doubt. If not, the verdict is not  
6 and that's the end of it, just as it was the end of it  
7 case you heard out there in Weld County.

8 A. I see.

a

case did

up to

9 Q. If, on the other hand, the jury is convinced beyond  
10 reasonable doubt, the verdict is guilty; and if the  
11 not involve this life-or-death choice, then it would be  
12 the court, the judge, to decide the punishment.

13 A. Yes.

provided

circumstances of

the

14 Q. And the way that goes is that more information is  
15 to the sentencing judge, information about the  
16 the crime itself but then a lot of information about  
17 defendant; so it's not just the offense, it's also the  
18 offender.

relates to his

family

record,

19 And the information about the defendant  
20 life and what has happened in his life: born, raised,  
21 relationships, employment history, any prior criminal

22 all of those things that are in a person's background  
that  
23 makes each person unique and individual from other  
persons.  
24 And the judge holds a hearing, considers all of that,  
considers  
25 arguments from the prosecution and the defense and then  
arrives

1905

Juror No. 342 - Voir Dire

1 at a punishment decision, a sentence that is individual  
to that  
2 defendant and says for this crime and for you, the  
defendant,  
3 this is the just sentence. So it's a very separate and  
4 individual thing. You understand that explanation?  
5 A. I do.  
6 Q. Now, when the -- and now we're talking federal law,  
because  
7 there are some differences in the states; and we're not  
8 concerning ourselves with that. We're in Federal  
Court. So  
9 under federal law, the choice of a sentence in a life-  
or-death  
10 situation, is not something that's left to the judge.  
That  
11 goes to the jury, the jury who comes in here  
representative of  
12 the community.

really 13 And what the jury is asked to do is consider  
put in 14 three possibilities: whether the defendant should be  
out, 15 prison for life with no possibility of ever getting  
lesser 16 whether the person should be put to death, or any  
judge to 17 sentence than those, in which case it goes back to the  
jury. 18 decide. But the life-or-death question is for the

19 Understand?

20 A. Yes.

they've 21 Q. And before a jury can make a decision like that,  
trial; so 22 got to hear a lot more than what they heard at the  
event of 23 there is a separate and second trial or hearing in the  
and 24 a guilty verdict in such a case. And at that separate  
it's much 25 second trial, a lot of information is provided. And

1906

Juror No. 342 – Voir Dire

that there 1 like what I've described about a judge's sentencing:  
2 is information presented about the circumstances of the  
3 offense, there is information presented about the

defendant,

And it's 4 the things that are unique to him as a human being.

his 5 his life that's in issue, so the jury has to hear about

6 life and what it means and what it has meant.

death. But 7 And then, the jury has to decide life or

And you 8 they can't make that decision without hearing it all.

how 9 can have situations, then -- and I'm speaking now as to

can have 10 important it is to give individual consideration. You

crime, 11 situations where two people are involved in the same

considered 12 both found guilty, but separate sentences have to be

13 because we've got two different human beings. Do you

14 understand that?

15 A. Yes, I do.

decision 16 Q. And you understand, then, that before a sentence

17 is made, you have to look at that -- all that has been

the 18 presented and all that's known, then, by the jury about

19 person as well as about the crime.

the 20 Now, in the end, you know, the court instructs

right, 21 jury after this hearing or second trial and says, all

the 22 this is what information you've been given. These are  
things 23 things that you can consider as aggravating factors,  
things that 24 that may support a penalty of death. These are the  
mitigating 25 you heard and should consider on the other side as

1907

Juror No. 342 - Voir Dire

deserved 1 factors, things that support a view that death is not  
2 for this person in spite of the crime. Understand?  
3 A. Yes, sir.  
give you a 4 Q. And then the jury decides -- and the judge can't  
He can 5 formula for this, can't give you some kind of a chart.  
end, 6 give you questions that guide the analysis; but in the  
7 it's a moral decision to be made by the jury whether a  
has to 8 particular person should live or die. And each juror  
9 make that decision.

that. 10 Answer the question as to whether you can do

11 Can you?

12 A. I can do that.

13 Q. And listen to it all before you make a -- that

choice?

14 A. Yes.

15 THE COURT: All right. Now, we're about out  
of time.

16 It's almost 5:00. The lawyers have a chance to ask  
some more,

17 but we're going to recess and come back tomorrow.

18 JUROR: All right.

19 THE COURT: That's all right with you?

20 JUROR: Whatever. That's fine.

21 THE COURT: Come back tomorrow? Okay. Well,  
it will

22 be an arrangement similar to now, but we'll be visiting  
with

23 you at quarter to 9 in the morning. 8:45 is when we'll  
resume.

24 And I ask you overnight to, of course, not  
talk about

25 this with anybody and follow the same cautions that I  
gave you

1908

1 when you left out there at the Jeffco Fairgrounds. You  
know,

2 this is something where we don't want you to be  
influenced by

3 the opinions of others or come into contact with any  
publicity

4 about this process, even, so that you can respond to us

here in

5 court independently of the influences of anybody else.  
Can you

6 do that?

7 JUROR: Yes.

8 THE COURT: We'll see you tomorrow morning at  
8:45.

9 You're excused for now.

10 JUROR: I get to be first in the morning?

11 THE COURT: You do. You do.

12 JUROR: Thank you.

13 THE COURT: We won't keep you waiting another  
whole

14 day.

15 JUROR: Okay.

16 THE COURT: All right. Thanks for your  
cooperation.

17 JUROR: Am I excused?

18 THE COURT: Yes.

19 JUROR: Thank you.

20 (Juror out at 4:58 p.m.)

21 THE COURT: All right. We'll start with him  
at 8:45.

22 We're in recess until then.

23 (Recess at 4:58 p.m.)

24 \* \* \* \* \*

25

	1	INDEX
Page	2	Item
	3	Jurors
	4	Juror No. 550
1775	5	Voir Dire Examination by The Court
	6	Juror No. 367
1787	7	Voir Dire Examination by The Court
1812	8	Voir Dire Examination by Mr. Ryan
1821	9	Voir Dire Examination by Mr. Woods
	10	Juror No. 435
1833	11	Voir Dire Examination by The Court
1860	12	Voir Dire Examination by Ms. Wilkinson
1873	13	Voir Dire Examination by Mr. Tigar
	14	Juror No. 342
1887	15	Voir Dire Examination by The Court
	16	* * * * *
	17	REPORTERS' CERTIFICATE
	18	We certify that the foregoing is a correct

transcript from

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

20 at Denver, Colorado, this 7th day of October, 1997.

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22

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23

24

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25

Paul Zuckerman

Kara Spitler