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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY LYNN NICHOLS,

Defendant.

ff

9

REPORTER'S TRANSCRIPT
(Trial to Jury: Volume 17)

10

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ff

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

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Transcription
Street,
629-9285

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

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

13

PROCEEDINGS

14

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

15

THE COURT: Be seated, please.

16

Good morning.

17

ALL: Good morning, your Honor.

18

the

THE COURT: I can say good morning, also, to

19

the

people in Oklahoma City this morning. I'm told that

20

any

transmission is back working, and I don't really have

21

failure or

explanation to offer except that it's an equipment

22

So we

was an equipment failure. I guess it's been remedied.

23

yesterday

are ready to resume with the gentleman who was here

24

afternoon and whom I questioned.

25

have a

Before doing that, though, I noticed that we

1912

1

work in

nurse coming up today -- excuse me -- who appears to

2

as

the same hospital facility and in exactly the same area

3

that

another person we had earlier, but I can't remember who

4

other person is. So if counsel know, we might -- we

probably

5 won't get to her until the break, after the break. If
you
6 could give me that person's name, then I think I could
write
7 the name down and ask this potential juror if they work
8 together. So if you can check that out and let me know
who it
9 is, I think that would be advisable for us to know if
these two
10 people work together and know each other.

11 MR. MACKEY: Judge, I think it may be Juror
512, but
12 we'll verify it as well.

13 THE COURT: Okay. Check it out.

14 So we'll resume with No. 342.

15 (Juror No. 342 was recalled to the stand.)

16 THE COURT: Good morning, sir.

17 JUROR: Good morning.

18 THE COURT: If you'll resume the chair there
under the
19 oath taken with us yesterday, we'll have some questions
for you
20 from counsel.

21 Mr. Mearns, do you have questions for the
Government?

22 MR. MEARNS: I do, your Honor, thank you.

23 VOIR DIRE EXAMINATION

24 BY MR. MEARNS:

25 Q. Good morning, sir. How are you?

1913

Juror No. 342 - Voir Dire

1 A. Good morning.

2 Q. As the Judge told you yesterday, my name is Geof
Mearns,
3 and I'm one of the prosecutors who will be presenting
the
4 evidence in this case.

5 You asked yesterday before you left whether
you would
6 be the first one up. We were curious whether you would
have an
7 appointment on a golf course.

8 A. No, it's raining outside. The weather took care of
those
9 plans.

10 Q. I'd like to ask you a little bit about your
employment
11 background. I understand you were a postal employee
for 25
12 years?

13 A. Yes I was.

14 Q. In that capacity you were a federal employee?

15 A. I was a federal employee. I guess it's federal
employee.

16 I worked for the Postal Service from about 1971. As a
result

17 of the Postal Reorganization Act, yes, we came under
kind of a 18 semi-government, semiprivate.

19 Q. I see -- I'm sorry, I didn't mean to interrupt you.

20 A. No.

21 Q. And then as I understand your career, in 1975 you
became 22 president of the postal -- one of the postal workers'
unions?

23 A. I became a full-time employee of the union. I
became 24 president in 1981.

25 Q. I see. And to become president, did you run for
that

1914

Juror No. 342 - Voir Dire

1 position or campaign for that position?

2 A. Yes, I did. It's a national election among the
members of 3 the union or of the association.

4 Q. Why did you seek out that responsibility?

5 A. The salary was better and I just liked the work.

6 Q. Did you feel -- did you feel that you would be an
effective 7 leader of the organization for your fellow workers?

8 A. Yes.

9 Q. What is it about you that made you feel that you
would be

10 good in that capacity, that you'd be a good leader?
11 A. Well, I'd developed -- I thought I'd developed a
full,
12 complete knowledge of the union or of the association
and its
13 history and its goals and that sort of thing. And I
had had
14 some experience in leading organizations, you know,
local
15 organizations in my local area, clubs and lodges and
church
16 groups and that sort of thing.
17 Q. Did -- you also, as I understand it, engaged in
some
18 lobbying on behalf of the organization?
19 A. Yes, I was a registered lobbyist in Washington,
D.C.
20 Q. What kind of lobbying would you do, generally
speaking?
21 A. For bills seeking improvement for the Rural Letter
Carriers
22 or the Postal Service employees, for their salaries and
23 benefits and retirement benefits and health-insurance
benefits
24 and that sort of thing.
25 Q. Now, if I understand your questionnaire correctly,
you have

1915

1 one son who has a master's in business, an M.B.A.?

2 A. Yes.

3 Q. What kind of job does he now have?

4 A. He's a global account executive for Oracle Corporation here

5 in town. It's a computer -- a computer -- in the computer

6 field. That's about all I know about it.

7 Q. He's essentially now working for management, as opposed to

8 your career which was working on behalf of labor and the

9 workers?

10 A. I think so. I'm not sure whether he's a manager or what.

11 He's a global account manager is all I know.

12 Q. How do you feel about his career choice as compared to the

13 way you spent your career?

14 A. I think he made a good decision.

15 Q. I'd like to ask you -- and if you could turn to pages 31

16 and 32 of your questionnaire.

17 A. All right.

18 Q. And there are -- there's the follow-over question that

19 begins on the bottom of 31 and your answer is on the top of 32.

20 And these have to deal with some issues regarding firearms.

21 And I may have misunderstood some of your answers or
there may
22 be a discrepancy there. On the top of 32, I think you
write
23 something that a citizen with a clear criminal record
should be
24 able to own small arms.
25 A. Yes.

1916

Juror No. 342 - Voir Dire

1 Q. And then in page -- Question 140, about the middle
of the
2 way down, it says, "A criminal record should prevent
owning
3 firearms."
4 Is there a distinction there in your answer,
or did
5 you mean to say on the top that somebody with a clear
criminal
6 record should not be able to own small firearms?
7 A. Well, by clear criminal record, I meant a record
that was
8 free of any criminal charges or convictions.
9 Q. Okay. So that if somebody has a criminal record,
they
10 should not be able to possess firearms?
11 A. Yes.
12 Q. You indicate then over on -- actually let me see.

Just

13 above that, on Question 139 on that same page, page 32.

14 A. Yes.

you did

15 Q. That you've attended a gun show. Is that something

16 once or more than once?

17 A. Oh, maybe two or three times in my lifetime.

gun

18 Q. What was your interest that prompted you to go to a

19 show?

20 A. Curiosity.

21 Q. Were these here in Colorado?

22 A. In my hometown of Greeley, all three times.

sale in the

23 Q. Did you see anything besides guns that were for

24 gun show?

25 A. Oh, yeah, there were knives, different kinds and

1917

Juror No. 342 - Voir Dire

bayonets, some

1 descriptions, hunting knives, sporting knives,

2 ammunition, that sort of thing.

or

3 Q. Do you remember any political literature for sale

4 distribution at a gun show?

5 A. It wasn't called to my attention, no.

about 6 Q. Finally I'd just like to ask you some questions
asked 7 some -- or follow-up on some of the questions the Court
those 8 you about the possible punishment in this case, and
28. 9 questions as you may remember were on pages -- on page

10 A. All right.

us a 11 Q. And the questionnaire essentially asked you to tell
you 12 little bit about what you think the law should be, and
some 13 answered those on the questionnaire, and you answered
the 14 questions from the Court yesterday. At that point then
the 15 Court also explained the process that we'll follow, and
the law 16 Court gave you some preliminary instructions about what
during the 17 is or what the law will be as it will be explained
18 course of this case, if we get to a penalty phase.

19 A. Yes.

you 20 Q. Now, on page 30, Question 129, you indicated that
important to 21 agreed strongly with the proposition that it was
22 follow the Court's instructions; is that correct?

23 A. Correct.

24 Q. Do you have the same view with respect to the

Court's

25 instructions with respect to possible punishment as
well? Is

1918

Juror No. 342 - Voir Dire

1 that your same view?

2 A. Yes, I think so.

3 Q. Would you have any problem in setting aside
whatever

4 personal views you might have about punishment and
follow the

5 Court's instructions in this case?

6 A. I would do my best to follow the Court's
instructions.

7 Q. Now, if we get to a penalty phase in this case,
will you be

8 able to keep an open mind and consider all of the
evidence

9 before you determine what the appropriate punishment
will be?

10 A. I believe I would.

11 MR. MEARNS: Thank you, your Honor.

12 Thank you, sir.

13 THE COURT: Mr. Woods.

14 MR. WOODS: Thank you, your Honor.

15 VOIR DIRE EXAMINATION

16 BY MR. WOODS:

17 Q. Good morning.

18 A. Good morning.

19 Q. As the Judge introduced me yesterday, my name is
Ron Woods.

20 I'm one of the lawyers that was asked by the court to
represent

21 Terry Nichols in this case.

22 In the case that you set on as a juror, was
there a

23 court-appointed lawyer representing the defendant in
that case?

24 A. I don't know. I would guess that it would have
been, but I

25 don't know for sure.

1919

Juror No. 342 - Voir Dire

1 Q. And I take it it would have made no difference to
you

2 whether or not it was retained lawyer or a court-
appointed

3 lawyer?

4 A. Wouldn't make any difference to me, no.

5 Q. The lawyer was doing his duty in representing the
client in

6 that case; is that correct?

7 A. Yes.

8 Q. Now, in that case the defendant testified at the
trial, as

9 I understand your explanation.

10 A. Yes, he did.

11 Q. Can you think of an instance where an innocent
person would

12 not testify at their trial, why -- what reasons that
person

13 might not testify?

14 A. Well, I suppose from personal embarrassment or
chance of

15 being -- perjuring themselves or something of that
nature,

16 being asked questions that might be -- have to answer
or would

17 answer that would be hurtful to his own case.

18 Q. And those are the reasons you can think of why a
person

19 wouldn't testify, given their Fifth Amendment right not
to

20 testify and require the Government to prove the case
against

21 them?

22 A. Well, I would guess that probably the advice of his
attorneys would be one of the major reasons for not

23 testifying.

24 Q. And can you think of an instance, then, where an
innocent

25 person would choose not to testify in a case?

1 MR. MACKEY: Judge, objection.

2 THE COURT: Sustained.

3 BY MR. WOODS:

4 Q. Rephrasing it, then, can you think of reasons why
an innocent person would not want to testify in a trial?

6 MR. MACKEY: Objection.

7 THE COURT: Same question. I'm excluding it.

8 MR. WOODS: Thank you, your Honor.

9 THE COURT: We have these little disagreements
from time to time about what can be asked. I hope you
forgive us that.

12 JUROR: I understand that.

13 THE COURT: All right.

14 BY MR. WOODS:

15 Q. I assume you saw that in the trial that you were
the foreman of; is that correct?

17 A. Yes, I did.

18 Q. And you understand that's the duty of both sides:
to object to questions they think are not permissible.

20 A. Yes.

21 Q. Okay. On the rural letter carrier association that
you were active in and became president, when you joined

22

the

23 organization, what position did you take? After you
left the

24 Postal Service here in Greeley and went to Washington,
what

25 position did you take?

1921

Juror No. 342 - Voir Dire

1 A. Well, first, to explain, I didn't leave the Postal
Service.

2 I was -- when I was elected to be representative of the
union,

3 I was on a leave-without-pay status until I either lost
an

4 election or retired or whatever.

5 Q. Okay.

6 A. But then my -- I was called a regional
representative. I

7 represented -- in my initial time, represented these 11
western

8 states.

9 Q. Okay. Now, as representing that association which
is,

10 what, about a hundred thousand members right now?

11 A. It's getting close to that. It was about 70,
75,000 when I

12 was president.

13 Q. Was it your job to negotiate with the Postal
Service on

14 behalf of the Rural Letter Carriers Association for
their
15 benefits and their salary, et cetera?
16 A. I was the chief spokesman for the 1984 national
agreement
17 between the rural carriers and the Postal Service and
also
18 worked at the table in the 1981 national agreement.
19 Q. Okay. And so I assume that you entered into a lot
of
20 negotiation and that's solely with the Postal Service?
21 A. Yes.
22 Q. And then your lobbying efforts were with Congress
in
23 attempting to ensure that the proper laws were passed
--
24 A. True.
25 Q. -- and those that were detrimental to the
association were

1922

Juror No. 342 - Voir Dire

1 examined and spoken out against?
2 A. True.
3 Q. Okay. Now, that organization: Is it continuing to
grow
4 because of the continuing routes that are being
assigned to the
5 association?

desired
city
because
efficient.

6 A. That's primarily the reason. And we seem to be the
7 method of delivery right now between city delivery, the
8 delivery craft and the rural delivery craft mainly
9 rural carriers are a little more economical and

president
yesterday

10 Q. But you've done your time and you've served as
11 and you come back home, and you told the Court
12 just cut loose from everything; is that correct?
13 A. As of a couple months ago, yes.

14 Q. Now you're playing golf?

15 A. That's about it, yeah.

16 Q. Anything else that you're involved in?

17 A. Not at the point.

evidently?

18 Q. You're active in the country club up there,

19 A. Yes.

20 Q. An officer?

21 A. No longer an officer. I'm past that, also.

22 Q. You passed that off, too?

23 A. Yeah.

while up

24 Q. How long were you -- you were a director for a
25 there; is that correct?

1923

Juror No. 342 – Voir Dire

1 A. Yes.

2 Q. How big is that organization? How many members in
the club
3 that you interact with, play golf with?

4 A. I'd say 350 to 400 memberships. Family memberships
and
5 business memberships.

6 Q. When you're playing golf, do you have a certain
foursome
7 you play with, or do you play with a number of people?

8 A. It's primarily a group of about six of us that
gather up in
9 a foursome, occasionally play in tournaments and things
that
10 you're paired up with other people.

11 Q. And are they retired also?

12 A. Some are; some aren't.

13 Q. Okay. The reason I ask these questions, because on
the
14 publicity phase of your questionnaire, which is on page
33,

15 Question 144, "If you have heard or read anything about
the
16 Oklahoma City bombing, please indicate where you've
heard or
17 read about it," you checked off TV news, radio news,
newspaper,

18 and heard other people discussing the case.

19 Has it been an item of discussion amongst you
and your

20 friends over the past two and a half years?

21 A. Not an item of discussion. It would come up
occasionally

22 sitting around the clubhouse after a round of golf or
23 something, just in normal conversation. Not any more
than the

24 Bronco football game or anything, just current events.

25 Q. Right, current events, mainly centered in Colorado,
I would

1924

Juror No. 342 - Voir Dire

1 take it?

2 A. Yeah.

3 Q. Matters of interest to people here in Colorado.

4 A. Yeah.

5 Q. Do you recall where you were when the verdict of
death came

6 in for McVeigh?

7 A. I don't recall.

8 Q. Do you have any recollection of conversations with
any of

9 your friends or family concerning that verdict?

10 A. Not any specific recollection, no. I'm sure we --
my

11 family, my wife and I probably discussed it when we
heard it on

12 the news or read it in the newspaper, but I don't
remember any

13 details of the conversation.

14 Q. Did you have any opinion as to the appropriateness
of that

15 verdict?

16 A. I don't have any opinion any more than it was a
verdict of

17 the jury and apparently through the judicial system,
and I

18 agreed with whatever they did.

19 Q. Did you have anybody say to you that that was an
20 inappropriate verdict?

21 A. No. Didn't have any opinions from either side that
I can

22 recall.

23 Q. Now, you've stated that, on further on page 36 and
37, when

24 the questionnaire asked what you know about the case,
162,

25 "What have you heard or read about Terry Nichols as a
result of

1925

Juror No. 342 - Voir Dire

1 the trial of Timothy McVeigh," and you stated, "Only
that he

2 may have been a friend of McVeigh, but he was not in

Oklahoma

3 City on day of blast."

4 A. That's about the extent of my knowledge about the
man.

5 Q. Now, through the TV news and radio news and
newspaper -- in

6 Greeley do you get the Denver stations?

7 A. Yes.

8 Q. The TV stations? Okay. Do you watch the news up
there

9 occasionally?

10 A. Yes.

11 Q. Would you -- how frequent would you watch the news,
would

12 you say?

13 A. Oh, I'd say once a day at least. One, either the
5:00 or

14 the 10:00 news.

15 Q. All right. And do you take any of the Denver
newspapers?

16 A. Rocky Mountain News.

17 Q. All right. From what you've seen, read, or heard,
do you

18 have a recollection of how many people were killed in
the

19 bombing?

20 A. I believe 168.

21 Q. All right. Do you recall whether or not there were
any

22 children amongst that group?

23 A. I recall there being a child-care center or
something of

24 that nature, and there were some children, yes.

25 Q. Do you recall what type of bomb that it was, from
what

1926

Juror No. 342 - Voir Dire

1 you've seen, read, or heard?

2 A. The type?

3 Q. Yes, sir.

4 A. I don't know what type. It was in a truck, if I
remember

5 right.

6 Q. All right. And when you say it was in a truck, do
you mean

7 that the truck was parked at the building; is that what
your

8 recollection is?

9 A. That's what I understood at the time.

10 Q. Okay. And do you recall anything about the type of
11 explosives that it was?

12 A. No. Yeah, seemed to me like it was a fertilizer
bomb or

13 something of that nature, about all I would know about
it.

14 Q. All right. Do you recall from what you've seen,
read, or

15 heard how Tim McVeigh was arrested by law enforcement?

16 A. How he was arrested?

17 Q. Yes, sir.

18 A. No.

19 Q. Or how he came into custody of the federal
authorities?

20 A. If you mean like how and where, no, I don't recall
anything

21 like that.

22 Q. Do you have any image in your mind from having
watched the

23 evening news or afternoon news over the past two and a
half

24 years of him being in custody of the federal
government?

25 A. I remember seeing him transported from one area to
another

1927

Juror No. 342 – Voir Dire

1 in an orange prison suit and accompanied by marshals, I
guess.

2 Q. Okay. From what you've seen, read, or heard, do
you have

3 any recollection of Mr. Nichols initiating contact with
the

4 federal law enforcement authorities?

5 A. I can't remember anything like that.

6 Q. All right. Now, you've stated on your
questionnaire that

7 from what you recall, Terry Nichols may have been a
friend of

8 McVeigh, but he was not in Oklahoma City the day of
blast. Do

9 you have any recollection from what you've seen, read,
or heard

10 about where he was on the day of blast?

11 A. Where Mr. Nichols was?

12 Q. Mr. Nichols, yes, sir.

13 A. No more than he wasn't in Oklahoma City; I don't
know

14 where.

15 Q. Now, what information are you referring to when you
say

16 that he was a friend of McVeigh?

17 A. Well, I understand, I guess, from either the news
or the

18 newspapers or something that I've read or heard that
they were

19 acquainted.

20 Q. All right. And do you know through -- how that
21 acquaintance came about?

22 A. No.

23 Q. Do you know how close the acquaintance was from
what you've

24 seen, read, or heard?

25 A. No.

Juror No. 342 - Voir Dire

Court has

1 Q. All right. Now, do you understand from what the

at the

2 told you yesterday and also on September the 17th, out

charges

3 fairground, that Mr. Nichols stands accused of the same

4 that Mr. McVeigh was charged with?

us, yeah.

5 A. That's what I understand the Judge has instructed

6 Q. Yes, sir, okay. And just basically what's your

7 understanding of what those charges are?

bomb.

8 A. That he was a conspirator or conspired to build the

9 Conspired with McVeigh to build the bomb.

when the

10 Q. All right. Now, if you would, turn to page 28,

imprisonment

11 questionnaire asked you questions concerning life

12 and the death penalty.

13 A. Okay.

cases is

14 Q. On C and D -- in No. C, it says, "In what kind of

life in

15 it appropriate, if ever, to impose the punishment of

16 prison without the possibility of being released?"

case." Is

17 And you stated, "I would have to hear the

18 that correct?

19 A. That's correct.

20 Q. And then in D, "In what kind of cases is it
appropriate, if

21 ever, to impose the punishment of death?"

22 And you state, "When a person's life has been
taken."

23 A. Yes.

24 Q. Now, can you give me a little more information how
you're

25 distinguishing those two, C and D?

1929

Juror No. 342 - Voir Dire

1 A. Well, I don't think I would agree that the death
penalty

2 would be appropriate punishment if the crime hadn't
caused the

3 death of another person. There would have to be life
taken

4 before the death penalty should be imposed.

5 Q. All right. And are you aware of any crimes where a
death

6 (sic) is not taken that has the death penalty assigned
to it as

7 a possible punishment?

8 A. I'm not aware of any.

9 Q. Okay. So what we're talking about here is the
question of

10 a death penalty when there's been an intentional,
premeditated,

that 11 deliberate taking of someone's life; would you agree

12 that's where the death penalty comes at issue --

13 MR. MACKEY: Objection.

14 BY MR. WOODS:

15 Q. -- before the jury?

16 MR. MACKEY: Judge, objection.

17 THE COURT: Overruled.

18 JUROR: I think I would agree with that.

19 BY MR. WOODS:

assume 20 Q. Okay. So I assume, then -- well, I don't want to

case is 21 anything. In D, when you're talking about what kind of

death, 22 it appropriate, if ever, to impose the punishment of

taken? 23 you're limiting those to when a person's life has been

24 A. Yes.

25 Q. All right. Now, what is your view concerning the

1930

Juror No. 342 - Voir Dire

'cause 1 appropriate punishment when a person is convicted --

this or any 2 we're only going to get to that punishment stage in

3 other trial if the Government proves that a defendant

has

murdered 4 intentionally, deliberately, with premeditation
punishment 5 someone. What is your view as to the appropriate
taking 6 for someone that's been convicted of that offense, of
7 someone's life with intent and deliberateness?

8 MR. MACKEY: Judge, objection.

9 THE COURT: Well, I don't understand the
question,

10 Mr. Woods.

11 MR. WOODS: Yes, I'll reword it.

12 BY MR. WOODS:

13 Q. You understand that to get to a punishment hearing
in any
14 murder case, the Government first has to prove the
defendant
15 guilty of the offense of deliberate, intentional,
premeditated
16 murder?

17 MR. MACKEY: Judge, objection.

18 BY MR. WOODS:

19 Q. Are you with me there?

20 THE COURT: Overruled. Let him continue.

21 JUROR: Yes, I follow.

22 BY MR. WOODS:

23 Q. Now, do you have a view as to what the appropriate
24 punishment should be in any case where the Government

has

25 proved that the defendant intentionally, deliberately,

1931

Juror No. 342 - Voir Dire

1 premeditatedly killed another person?

2 MR. MACKEY: Same --

3 THE COURT: Well, are you asking whether
that's an

4 automatic death sentence?

5 MR. WOODS: I'm not using those words, I'm
trying to

6 get to the man's feelings as to his view of when it is

7 appropriate that the death penalty be imposed --

8 THE COURT: I'll sustain --

9 MR. WOODS: -- when a person's life has been
taken.

10 THE COURT: I'll sustain the objection.

11 JUROR: Would you --

12 THE COURT: I ruled out the question.

13 MR. WOODS: Is it the Court's view the Court
has

14 already covered this --

15 THE COURT: Yes.

16 MR. WOODS: -- and I'm not to further ask any
17 questions along this line?

18 THE COURT: I think this man has answered the

19 questions concerning what he would take into
consideration --

20 MR. WOODS: Yes --

21 THE COURT: -- under the law.

22 MR. WOODS: Yes, he has answered the Court's
question

23 and the prosecutor's question. We're not to ask
questions, is

24 that the Court's ruling, on this area of the death
penalty?

25 THE COURT: No, that's not it. You can
certainly ask

1932

Juror No. 342 - Voir Dire

1 whether his view is whether separately, from what we've
talked

2 about under the law, he would impose a death penalty
under

3 those circumstances without regarding -- under such a
crime

4 without regard to the circumstances. That's the area
you want

5 to inquire about, you may.

6 MR. WOODS: All right.

7 BY MR. WOODS:

8 Q. Did you understand what the Court instructed you as
to

9 circumstances that the jury is to take into account?

10 A. I believe I understand, yes.

11 Q. All right. Now, given these instructions and given
a case

12 where you're on a jury and the jury has found the
defendant

13 guilty of taking another person's life with intent and

14 premeditation, what do you feel that the appropriate
verdict

15 would be on a murder case where the defendant has been
accused

16 and convicted of that offense?

17 MR. MACKEY: Judge, same objection.

18 THE COURT: Overruled.

19 JUROR: Well, the death penalty would be
appropriate

20 if it was the will and the determination of the jury.

21 BY MR. WOODS:

22 Q. Yes, sir. It's going to take a vote of 12 people?

23 A. It would take a vote of all 12 people.

24 Q. Yes, sir. But each person's going to have to bring
their

25 view to that vote and their decision on that vote. And
we're

1933

Juror No. 342 - Voir Dire

1 asking you your opinion on any murder case --

2 A. Well, I don't believe it would be an automatic
death

3 penalty. It would depend upon the case and what
evidence was

4 presented and how I interpreted it, I suppose.

5 Q. All right.

6 A. What instructions were given by the judge and so
on.

7 Q. It would depend on the case, the facts of the case.

8 A. Yeah.

9 Q. All right. What if the facts of the case were that
there

10 were multiple deaths in the case?

11 MR. MACKEY: Objection.

12 THE COURT: Sustained.

13 MR. WOODS: No further questions.

14 THE COURT: All right.

15 Well, sir, you've answered the questions that
we have

16 for you, and now we're going to let you go. You're
going to be

17 excused, but we may have you back, and we can't -- to
serve on

18 this jury. We can't tell you this morning whether you
will or

19 won't be on this jury because it will take us some time
in

20 talking to some more people before the jury is
selected. So

21 what we're going to ask you to do is to continue as you
have

22 been, avoiding discussion with others about anything

connected

23 with the case, being careful as you read, see, and hear
the

24 news to avoid anything about the case so that you can
come back

25 to us in the same frame of mind as you are now and be
open to

1934

1 the evidence and the law. Can you do that?

2 JUROR: I can do that.

3 THE COURT: Okay. You're excused for now.

4 JUROR: Can you give me an idea of the time
frame

5 about notification -- how available should I keep
myself?

6 THE COURT: I wish I can, but I can't. Just
stay in

7 touch and don't take any long trips.

8 JUROR: All right, sir.

9 THE COURT: I'm sorry that we can't be more
precise.

10 JUROR: All right.

11 THE COURT: But I hope you understand --

12 JUROR: I do --

13 THE COURT: -- the seriousness of this and
what we're

14 struggling with.

15 JUROR: I do.

16 THE COURT: All right.

17 626.

18 If you will -- you can put that down, and
raise your

19 right hand, take the oath from the clerk, if you will.

20 (Juror No. 626 affirmed.)

21 THE COURTROOM DEPUTY: Thank you.

22 THE COURT: Please be seated there in that
chair by

23 the microphone. You can turn it around so that you're

24 comfortable. You don't have to talk right into the
microphone,

25 but anywhere near it and we'll be able to hear you.

1935

1 JUROR: Okay.

2 VOIR DIRE EXAMINATION

3 BY THE COURT:

4 Q. We kept you waiting a long time before your coming
in, and

5 we're sorry to keep you waiting, but I'm sure you
understand it

6 takes some time and we can't estimate too exactly how
much time

7 it takes to visit with people.

8 You understand now that you received a jury
summons

9 and you were here -- here now as a result of that to
answer

10 some questions regarding the possibility of your
serving as a

11 juror in -- one of the 12 jurors in the trial of United
States

12 against Terry Lynn Nichols?

13 A. Yes, sir.

14 Q. And that you filled out a questionnaire for us when
you got

15 that summons, a short one, and then you were notified
to come

16 out to the fairgrounds at Jefferson County at the
auditorium

17 building there and answer some more questions when we
gave you

18 a long questionnaire.

19 A. Yes.

20 Q. And at that time before you were asked to complete
the

21 questionnaire, I introduced myself and also introduced
lawyers

22 for both sides in the case, so I want you to -- I'm
going to

23 reintroduce them, because you may not remember, and you
should

24 know who's here with us this morning.

25 Here at this first table, nearest to you, are

1936

Juror No. 626 – Voir Dire

at the
in this
Geoffrey
now.

1 Mr. Lawrence Mackey and Miss Beth Wilkinson, who were
2 Jefferson County; they are attorneys for the Government
3 case, joined this morning by Mr. Patrick Ryan and Mr.
4 Mearns, who were not there before, but have joined us

Michael
Terry

5 You'll recall the lawyers for the defense, Mr.
6 Tigar and Mr. Ronald Woods, who were with us with Mr.
7 Nichols, the defendant in the case.

and
time
because I
understand, you
questions and

8 And I just want to take you back to that day
9 remind you of some of the things that I said at that
10 before, again, giving you the questionnaire to answer
11 gave a little explanation to try to help you
12 and the others, why we had to ask some of these

13 what the process involves.
14 So I explained that this case arises out of an
15 explosion that took place in Oklahoma City, Oklahoma,
on April
16 the 19th of 1995, which resulted in the destruction of
a

17 federal office building there and the deaths and
injuries of
18 people who were in it; that then the Government filed
an
19 indictment in Oklahoma City bringing criminal charges;
and that
20 in that indictment, the Government charged that a man
named
21 Timothy James McVeigh and Mr. Terry Lynn Nichols, the
defendant
22 here, and other persons not named in the indictment
formed a
23 conspiracy or an agreement to bomb that building and to
kill
24 and injure people in it; and that the indictment
further
25 charged that acts were done to carry that out and that
it

1937

Juror No. 626 - Voir Dire

1 included the murder of eight law enforcement agents
working in
2 the building.
3 I explained further that both named
defendants,
4 Mr. McVeigh and Mr. Nichols, entered not guilty pleas
and
5 thereby created the issues to be tried, the reasons for
trial;
6 that the case was then moved from Oklahoma City here to
Denver;

7 and that the Court also ordered separate trials to be
sure that
8 each of the named accused, both Mr. McVeigh and Mr.
Nichols,
9 would get separate trials to be fair so that the
evidence,
10 whatever it is with respect to each of them, would be
11 separately considered by separate juries. You
understand?

12 A. Yes.

13 Q. And then I explained that there had already been a
trial of
14 the charges as they related to Mr. McVeigh, and he was
found
15 guilty by a jury and that the jury also recommended the
16 sentence to death in his case.

17 And then I explained that the results of that
case and
18 even the evidence of that case cannot in any way be
considered
19 in this case because that's the whole reason for
separate
20 trials, to avoid the spillover from one case to the
other,
21 recognizing that the defendants are different and the
cases are
22 different. You understand what I said there?

23 A. Yes. Yes, I do.

24 Q. Okay. Then I gave some more explanations about
some very
25 fundamental rules of law that we must follow in our

criminal

1938

Juror No. 626 – Voir Dire

1 courts in the United States because these are rules
that are
2 based on the Constitution of the United States, our
fundamental
3 law; and that the rules are that no person who is
accused of
4 any crime, no matter what that crime is or where the
court is
5 in this country, or the nature of the charges, you
know,
6 everybody is the same on this, that a defendant is
presumed to
7 be innocent of the charges. And it is up to the
Government
8 who's made the charges to prove them so that the
evidence must
9 be brought in by the prosecutors. That's the people
who were
10 first introduced to you here, and they must call the
witnesses
11 and introduce exhibits or whatever is being relied on
to try to
12 prove what is being charged.

13 And a defendant in a criminal case, again no
matter
14 who he is or what the charges are, has no burden or
duty of

15 producing any evidence, can simply remain silent and
challenge
16 the Government's evidence through cross-examination and
17 objections and so forth, the kinds of things that we
expect
18 lawyers to do in trials. And the defendant has no duty
of
19 taking the witness stand and testifying or explaining
anything.
20 He can just remain silent.

21 Now, you remember me talking about those
things?

22 A. Yes, I do.

23 Q. I suspect you've heard similar things before about
these
24 fundamental rules?

25 A. Yes.

1939

Juror No. 626 - Voir Dire

1 Q. And what we say to jurors, too, just so you clearly
2 understand, is that in a case in which a defendant does
not
3 testify, the jury may not consider that in any way;
they can't
4 say, well, you know, if he's innocent, he should have
testified
5 and told us that; can't say anything like that or think
6 anything like that, because that would violate this
fundamental

7 rule of our law. So what I tell juries in trials like
that is,

8 "Look, you can't even talk about that. That's off
limits.

9 That's not a part of the case." You understand?

10 A. Yes.

11 Q. So what it all means here is that Mr. Nichols sits
with us

12 this morning presumed to be innocent of these charges
the

13 Government has made, and that carries throughout the
trial and

14 entitles him to an acquittal, a verdict of not guilty,
unless

15 at the end of the trial, having heard all of the
evidence and

16 following the law, the jury decides, well, the evidence
shows

17 guilt beyond a reasonable doubt. In other words, if
the jury

18 has a reasonable doubt, they have to give that -- the
defendant

19 the benefit of that doubt; in this case, Mr. Nichols.

20 A. Yes.

21 Q. Now, are you agreeable with that?

22 A. Yes.

23 Q. Do you accept that as the rules of law that you
would

24 follow if you were on this jury?

25 A. Yes.

1940

Juror No. 626 - Voir Dire

1 Q. I want to talk a little about this questionnaire,
some of
2 the things that you've said in it. You have it there
with you
3 now. And we're not going to go over all these same
questions
4 again. We've accepted what you've told us here under
your
5 oath, and we also recognize that we asked you some
things that
6 are personal and private, and we try to protect your
privacy by
7 not using your name and by not giving the copies of
your
8 answers out to anybody except the people who are
directly
9 involved in this process. And they of course will not
give
10 that information out to the public.

11 You should recognize that you are in court, in
a
12 public courtroom, and you're somewhat shielded here
from view,
13 but -- and we also brought you in and out of the
courthouse in
14 a way that shields you from photographers and the like;
but
15 here your answers and my questions and the lawyers'
questions

16 are in the open, they are public; you understand?

17 A. Yes.

18 Q. Okay. Now, as I understand it from what you have
said in

19 your questionnaire, you were born in Texas?

20 A. Yes, sir.

21 Q. Your parents came from Mexico?

22 A. Yes.

23 Q. And I don't know where -- is this Decken, Texas?

24 A. Dickens, D-I-C --

25 Q. Okay. Well, I misread that, I'm sorry. And you
apparently

1941

Juror No. 626 - Voir Dire

1 lived in Texas, then, for a while, when you were a
child --

2 A. Yes.

3 Q. -- and family lived there. And you came up to
Colorado in

4 about 1957, was it?

5 A. Yes.

6 Q. And then you went back to Texas for a while?

7 A. Yes.

8 Q. And why was that? Why did you go from Colorado
back to

9 Texas?

10 A. My husband was in the Air Force.

11 Q. Okay. And in fact, he served in the Air Force for
a number

12 of years and retired?

13 A. 25.

14 Q. So you were at an Air Force base?

15 A. Yes.

16 Q. And you followed him to other Air Force bases?

17 A. Yes.

18 Q. Any of them overseas, outside the United States,
19 continental United States?

20 A. Yes. Japan. I mean the Philippines.

21 Q. Philippines?

22 A. Uh-huh.

23 Q. How long were you in the -- excuse me, in the
Philippines?

24 A. Three years.

25 Q. And when was that?

1942

Juror No. 626 - Voir Dire

1 A. 1960 to '63, I think, something like that.

2 Q. And was that -- what is that, Clark?

3 A. Yeah, that was Clark Airfield.

4 Q. Clark Air Force Base?

5 A. Yes.

6 Q. Did you live on base there?

7 A. We lived off of the -- out in the compound, and
then we got

8 quarters on base.

9 Q. When you lived off of the compound, were you in a
--

10 A. It was kind of like a surrounded compound that was
-- had

11 security and everything.

12 Q. Oh, all right. So it was still an American service
--

13 A. Yes, there was --

14 Q. -- families' compound?

15 A. Yes.

16 Q. Did you, when you were in the Philippines, travel
around

17 some?

18 A. Yeah.

19 Q. To various islands?

20 A. Yes. Uh-huh.

21 Q. And sort of sightseeing?

22 A. Yeah, just sightseeing.

23 Q. All right. And were you in any other countries
besides the

24 Philippines?

25 A. Just when we passed the Continental Divide, you
know. I

Juror No. 626 - Voir Dire

1 mean the countries when we were crossing.

2 Q. Uh-huh. All right. The International --

3 A. Yes.

4 Q. -- Date Line you're talking about?

5 A. Yes.

6 Q. Now, when you were growing up there in Texas, was
that on a

7 farm?

8 A. Yes, it was on a farm.

9 Q. And what kind of farming was your family doing?

10 A. Cotton.

11 Q. All cotton?

12 A. All cotton.

13 Q. And was this a farm that your parents owned the
land or --

14 A. No, they were sharecroppers.

15 Q. Okay. So they had an arrangement with the
landowner --

16 A. Yeah.

17 Q. -- to do the work and then --

18 A. Yeah, uh-huh.

19 Q. -- share the rewards?

20 Did you work in the fields?

21 A. Yes, lots.

22 Q. Starting at what age?
23 A. Oh, gosh, very, very young.
24 Q. Whole family worked in the fields, I suppose?
25 A. Yes, the whole family did.

1944

Juror No. 626 - Voir Dire

farming? 1 Q. And then how old were you when you left the
2 A. Oh, I guess I was 18.
suppose? 3 Q. Okay. You remember these years pretty well, I
4 A. Oh, yes, sir, I sure do.
5 Q. Back-breaking work?
6 A. Yes, it is. Very rewarding.
you were 7 Q. Now, when your husband retired from the Air Force,
8 living here --
9 A. Yes, we were --
10 Q. -- in the Denver area?
11 A. Uh-huh.
12 Q. And then as I understand from what you said on page
8, he
13 went to work for the Denver Sheriff's Department?
14 A. Yeah. Yes.
15 Q. Out on Smith Road?

16 A. Yes.

17 Q. So that was the county jail out there?

18 A. Yes.

19 Q. How long did he work in the county jail?

20 A. I'm not sure if he worked 17 or 18 years.

21 Q. And do you know what his assignments were? I mean
did he

22 work up to a supervisor position?

23 A. He had a supervisor -- as a kitchen -- in the
kitchen.

24 Q. Did he do all of his work there in the kitchen
area?

25 A. Yes.

1945

Juror No. 626 - Voir Dire

1 Q. Did he work at all with the inmates or prisoners?

2 A. Yes, he did.

3 Q. What did he do with them, to your understanding?

4 A. Well, I never went in. All I know is they kept
them fed

5 and they, you know, fix meals for them whenever they
were to be

6 required on the certain diets and things like that.

7 Q. Was there ever a time that he told you about some
kind of

8 an incident or something happened at the jail that was
unusual?

9 A. No, I don't think so. It wasn't all pleasant, I
know, but
10 he -- one time when they did have an incident, he just
happened
11 to be off. And I was kind of glad.

12 Q. Okay. Now, he retired from that work, too?

13 A. Yes.

14 Q. How long ago?

15 A. I think he retired in '88, '89, something like
that.

16 Q. And now does some part-time volunteer --

17 A. Oh, yeah, he does a lot of volunteer for the VA
hospitals.

18 Q. What does he do out there?

19 A. Well, whatever he can.

20 Q. Working with --

21 A. With the patients that they're sick. And I do,
too. I

22 worked in the nursing home a lot, in the various things
in

23 Aurora. I help with the -- every year with the senior
dinner

24 that they have for Thanksgiving that they do free for
them,

25 that they serve about 3,000 people. I've been doing
that for

1946

Juror No. 626 - Voir Dire

1 about 10 years.

2 Q. Now, when -- who is the "they" that you're
referring to

3 there?

4 A. The Aurora people do a senior citizens' free dinner
for

5 Thanksgiving.

6 Q. I see. Is that through the city government there
in

7 Aurora?

8 A. Yes. It's different organizations that donate.

9 Q. I see -- excuse me?

10 A. Food. They donate the food, and we volunteer our
time.

11 Q. All right. And that's at Thanksgiving?

12 A. Yes.

13 Q. And at Christmas, too?

14 A. No, just Thanksgiving.

15 Q. And then do you work in a nursing home as a
volunteer?

16 A. No. Well, I mean he does. I don't.

17 Q. Okay. So he works with people who are patients at
the VA

18 Hospital?

19 A. Yes.

20 Q. And then also with people who are in nursing homes?

21 A. Uh-huh.

22 Q. Because he likes people and wants to help them; is
that

23 the --
24 A. I think it's just to help. To help. And then,
too, a lot
25 of them don't -- no longer have families.

1947

Juror No. 626 - Voir Dire

--
1 Q. True. And so he kind of gives them companionship

2 A. Uh-huh.

3 Q. -- and talks with them some?

4 A. Yes.

5 Q. And you work in people's homes?

6 A. Yes, sir.

7 Q. Still do?

8 A. Yes.

--
9 Q. And do you have, you know, a regular sort of daily

10 A. Yes.

11 Q. -- or weekly --

12 A. Yes, I do a daily thing.

13 Q. Okay. And you do that by working directly with the
people

14 whose home it is?

15 A. Yes.

16 Q. Make your own arrangements with them?

17 A. Yes.

18 Q. Is that full-time for you?

19 A. Yes.

20 Q. Now --

and
21 A. Plus I take care of my little grandchildren before
22 after school.

23 Q. Yes. How old are they?

24 A. Six and nine.

25 Q. And are these your daughter's children?

1948

Juror No. 626 - Voir Dire

1 A. My son.

2 Q. Son's children.

3 A. Uh-huh.

you --
4 Q. Does he have somebody else to take care of them if

5 A. No, not right now, he doesn't.

6 Q. How about your husband, is he able --

7 A. Well, yeah, he can kind of look after them.

--
8 Q. What I'm getting to is if you were on this jury if

9 A. Yes.

to be
10 Q. -- and got involved with us here so that you'd have

11 here every day --

12 A. Oh, I know.

13 Q. -- somebody else could take care of the
grandchildren and

14 perhaps your husband?

15 A. Oh, the grandpa definitely would have to.

16 Q. Yeah. Apparently he would probably enjoy that,
too?

17 A. Yeah, teach him a thing or two. That's the reason

18 yesterday I got home. I walk in the door and both of
the

19 little girls are screaming and holler, "Oh, Grandma is
home.

20 They didn't keep her."

21 "Oh, gosh, they weren't going to keep me.
They don't

22 need me."

23 But I do also have a daughter that's got
leukemia.

24 Q. Is she hospitalized?

25 A. No.

1949

Juror No. 626 - Voir Dire

1 Q. That goes into remission sometimes?

2 A. Well, she's not in remission, she's kind of in
a I

3 can't explain that.

4 Q. I'm sorry to trouble you with these questions, but

I'm sure

5 you understand we need to know some things.

disease?
6 How long has she been suffering from that

7 A. Going on two years.

is not
8 Q. And I take it from your reaction here, the outlook

9 good?

10 A. Yes.

11 Q. Are you caring for her?

12 A. I help her as much as we can.

13 Q. And does she --

14 A. She works part-time, too.

15 Q. Does she?

16 A. She has to work to keep her sanity.

17 Q. Is she married?

18 A. Yes.

19 Q. Living with her husband?

20 A. No. He up and walked out.

21 Q. He went and left her.

22 A. Yes.

23 Q. After this diagnosis?

cope with
24 A. He was there for a while, and he couldn't really

you have
25 it and talk about it. And I told him, I said, "Well,

1950

Juror No. 626 - Voir Dire

1 to talk about it to somebody, regardless of what."

2 She kind of goes into -- you know, her count
goes way

3 far down, and then it all of the sudden just shoots up.
And I

4 can tell it.

5 Q. Has she gone in for treatments like --

6 A. Yeah, she takes treatments once a week, and then
she

7 finally got caught up on them and they're giving her
the pill

8 now. But I don't think the pill's working for her, so
they're

9 going to have to give her -- they already give her once
10 platelet, as they call it, more blood. But it didn't
affect a

11 whole lot, and that's going up again. So they're going
to have

12 to redo it.

13 Q. Well, obviously this is very troubling to you and
your

14 whole family.

15 A. Well, yes, it is. And she's got a twin sister, so
it

16 really affects her.

17 Q. And does the twin sister live here?

18 A. Yes.

19 Q. Does she assist in her care, too?

20 A. Yeah, she tries to help as much as possible.

21 Q. But it's a hard time for you all.

22 A. Yes, it is, it's very hard.

23 Q. Well, if I can turn to a couple of other things.

You

24 mentioned on page 20 that you have at a time worked for

some

25 lawyers?

1951

Juror No. 626 - Voir Dire

1 A. I do; I work for three.

2 Q. Is that in their houses?

3 A. Yes, in their houses.

22 --

4 Q. And you mentioned also -- and I'm referring to page

5 there's some kind of a lawsuit many years ago?

and he

6 A. Through insurance, his insurance had been dropped,

it was.

7 didn't know it or failed to pay it; I can't recall how

The

8 And that's how it was settled, through the insurance.

9 people -- no, wait a minute.

10 accident with

He had insurance, and when he was in the

sued him

11 the -- with the other driver, they turned around and

12 instead of the insurance. But the insurance paid it.

13 Q. Finally it worked out, did it?

14 A. Yes.

15 Q. And that was how many years ago, would you say?

16 A. Oh, gosh, it must have been about '59, something
like that.

17 I'm not sure.

18 Q. And he hired a lawyer for that?

19 A. No. Consequently, we were overseas at the time.

20 Q. Oh. Was he active in the Air Force then?

21 A. Yes, he was active, uh-huh. We were in the Air
Force; and

22 then when we come home -- I guess they decided to
postpone it

23 till we came home. And then we came home, we got
stationed in

24 Texas, and then we drove to Denver to come to the
hearing. And

25 then he just met with the lawyers for the insurance,
and it was

1952

Juror No. 626 - Voir Dire

1 settled that way.

2 Q. Okay. So it never was in a court in trial?

3 A. Oh, no, huh-uh.

4 Q. All right. Now, you were asked some questions here
about

of the 5 watching Court TV. Page 33, we asked you at the bottom
you see 6 page there, Question 147, do you watch Court TV. Do
7 that?

8 A. Yes, I do.

9 Q. And you say, yes, you do --

it here 10 A. Once in a while. But I don't know what happened to
11 lately, because I can't find it on the TV.

12 Q. Do you have a cable, cable TV?

13 A. Yes.

the 14 Q. Did you watch TV, Court TV, when they discussed --
McVeigh at 15 people in there talked about the trial of Timothy

16 all?

17 A. No.

18 Q. You don't recall that being on?

19 A. Nope.

opinion 20 Q. On page 37 at Question 160, you told us you have an
21 about Terry Nichols.

you hear 22 A. Well, I guess when you read the paper so much and

all 23 it on TV, you got to come to one conclusion: that they

24 think it's guilty, you know.

25 Q. And what kinds of things do you remember from TV

about

1953

Juror No. 626 - Voir Dire

of what 1 Mr. Nichols, if you do? I mean, just give us an idea

2 you remember seeing or hearing.

stuff 3 A. Well, I guess the part where he -- they gathered up

don't 4 or something like that to -- for the bombing and -- I

more; but 5 know. It just -- I try not to pay attention to it no

way the 6 I just felt that he was guilty, I guess, because of the

7 TV carried on.

8 Q. Do you and your husband talk about it?

9 A. No.

10 Q. I don't mean since you got the summons.

11 A. No, no. Even before that, no, we didn't. Huh-uh.

about a 12 Q. Okay. And when there was a -- you remember hearing

13 verdict from the jury in Mr. McVeigh's case?

14 A. Yeah, I did. On the radio.

anyone 15 Q. Okay. And do you remember talking about that with

16 else?

17 A. No.

18 Q. Not even your husband?

19 A. Huh-uh.

20 Q. Or your children?

21 A. No, I didn't.

22 Q. Okay. And you remember hearing about a sentence of
death
23 for him?

24 A. Yes.

25 Q. Did you talk about that with anybody else?

1954

Juror No. 626 - Voir Dire

1 A. No; I just thought it was kind of stiff.

2 Q. Stiff?

3 A. Uh-huh.

4 Q. Now, we've asked you some questions here about your
views
5 about the death penalty. And we go to page 28 where
your
6 answers are. Please take a look at that. You remember
that --

7 A. 38?

8 Q. 28. I'm sorry.

9 A. Oh, 28, okay.

10 Q. And, you know, there was explanation given before
these

11 questions were put to you. You remember coming to this
part of

12 the questionnaire?

13 A. Yeah.

14 Q. And you say in your answers you have mixed
feelings?

15 A. Yes, I do.

16 Q. And you said that with respect to the question
about life

17 in prison without the possibility of ever being
released. And

18 then for the death penalty, you said you don't know;
and

19 there's some follow-up questions there where you, I
guess, also

20 show some uncertainty about it.

21 Let me just ask you this -- and that's not
anything

22 against you, please understand. It's not a test. We
just want

23 to know something about your thinking and your opinions
on this

24 subject because we want to explain how the death
penalty could

25 be an issue for a jury; but before doing that, we
wanted to get

1955

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1 some, you know, what you think about it before talking
about

2 the law as it is or the procedure that would be

followed.

3 So have you, you know, as a result of cases
that
4 you've heard or read about, other cases, but including
5 Mr. McVeigh's case, or any books that you've read or
movies
6 you've seen or anything, thought very much about the
death
7 penalty and whether it is something the law should
include so
8 that under the law people would be put to death or
could be put
9 to death for murder?
10 A. Oh, that . . . that's . . . I could never think of
putting
11 a person to death, because how can you take a person's
-- I
12 mean put them to death when they won't bring the rest
of the
13 people back? I mean that would be on a person's
conscience.
14 Q. Now, you go to church?
15 A. Yes, sir, I'm Catholic.
16 Q. And you go regularly?
17 A. Well, as best as I can.
18 Q. Go to Mass weekly if you can?
19 A. Yes.
20 Q. And is the subject of the death penalty something
that you
21 understand the Catholic Church to have taken a position
on, the

22 leaders of the church?

23 A. Yes.

24 Q. What is your understanding of that position? What
is the
25 Church's teaching as you know it?

1956

Juror No. 626 – Voir Dire

1 A. Oh, I don't know. As a little girl, we were very
sacred,
2 we learned to obey; and how can you take a person's
life,
3 though, you know? I don't know; it's just

4 Q. Are you aware of any official Church papers on this
5 subject?

6 A. No.

7 Q. Okay. Is this something that in your church the
pastor has
8 from time to time discussed, or other priests?

9 A. Yes.

10 Q. When do you recall the last time that this subject
was
11 addressed in a homily or in some way in church?

12 A. I can't recall. I don't remember.

13 Q. Okay. But what you remember is against the death
penalty,
14 is it?

15 A. Yes, I do.

16 Q. And let me just go through that a little more with
you to

17 explain why we asked you these questions. Now, we've
already

18 talked a little bit about a trial and the burden of
proof and

19 the evidence it is the Government's burden to come in
with and

20 how at the end of the case the jury is asked, well,
does this

21 evidence prove guilt beyond a reasonable doubt. And,
of

22 course, if the jury says no, they have a reasonable
doubt, as I

23 said, they must give that benefit of doubt to the
defendant and

24 find him not guilty.

25 On the other hand, if the jury is convinced
beyond a

1957

Juror No. 626 - Voir Dire

1 reasonable doubt and all of the jurors agree, all 12 of
them,

2 that the evidence proves guilt, then the verdict is
guilty.

3 And in cases that do not involve the question
of life

4 or death, where there is no death penalty involved, the
5 question of punishment is a matter left to the judge,

the

6 court; the jury has done its job, evaluating the
evidence and
7 coming to a conclusion. And then the judge has to
decide a
8 sentence that is for this particular person as an
individual
9 human being. And so before there can be a sentence,
there has
10 to be more information than just whether that person
committed
11 a crime. And that additional information can involve
more
12 circumstances about the crime, but also must include
things
13 about the defendant as a person.

14 A. Yes.

15 Q. You know, things about his background, where he was
born
16 and raised, some of the kinds of things we've asked you
here.

17 And the law recognizes that each one of us is a unique
18 individual human being and that we should be judged
19 individually.

20 A. Yes.

21 Q. So then the judge has a hearing and hears from both
sides,
22 the prosecution and the defense, and makes a decision:
Well,
23 this is the sentence for this individual person for
this crime.

24 You understand that?

25 A. Yes.

1958

Juror No. 626 - Voir Dire

1 Q. Now, the laws are different among different courts
here
2 with respect to this matter of punishment by life or
death,
3 life in prison or death; but we're in Federal Court
now, so
4 we're under federal law. And what the federal law
says, the
5 statutes that are involved here, is that for certain
kinds of
6 crimes, including the ones charged in this case, if a
defendant
7 is found guilty, then a jury should decide, not the
judge -- a
8 jury -- whether the punishment should be life in prison
without
9 any possibility of ever being released, no, you can't
get out,
10 the rest of your life is in prison; or (2) death; or
(3) some
11 other punishment. And if it's that decision, then it
goes back
12 to the judge to decide the individual punishment. But
the
13 life-or-death decision is not left to a judge. That's
up to

and 14 the jury, the 12 jurors who come in from the community
15 really form the conscience of the community.
16 But just as with a case as a judge sentencing
can't be 17 decision, the jury's decision must be individual. It
guilty of a 18 based just on the fact that a person has been found
sentence, 19 murder or any other crime that involves the death
situation 20 involving a killing of people. So there is in such a
defendant 21 another trial before the same jury that found the
trial, 22 guilty. But in the first case -- I mean in the first
involved 23 when the issue is guilt or non-guilt, punishment's not
24 in that decision at all. Do you understand?
25 A. Yes.

1959

Juror No. 626 - Voir Dire

tell me -- 1 Q. And if you don't understand at any point, please
2 A. Yes.
you and 3 Q. -- because it's very important to go over this with
4 make sure that we talk in the same understanding.
5 Now, when the second trial is held, now on the

6 question of punishment, life or death, really, it is
like the
7 judge's sentencing, in that more information is
provided, not
8 only again information about the circumstances of the
9 particular trial but information again about the
individual
10 defendant: who he is, how he was -- where he was born
and
11 raised, how he was brought up, what his family
relationships
12 are and have been, what his work history is, a lot of
these
13 things, all these things that are unique and individual
to him.

14 And then the law says that the court instructs
the
15 jury about what it's heard and how the information can
be
16 considered as aggravating factors, on the one hand,
meaning the
17 jury could consider them in support of the death
sentence as
18 being appropriate and just for this case and this
defendant,
19 and also the mitigating factors: the things that the
jury can
20 consider to suggest that death is not a deserved
punishment for
21 this man, regardless of the crime. You understand what
I'm
22 saying there?

23 A. Yes.

24 Q. So that even in a case where you have two people
who are

25 involved with the same crime, then found guilty of the
same

1960

Juror No. 626 - Voir Dire

1 crime, each person is entitled to an individual
judgment of him

2 as an individual, considering the crime but also these
other

3 circumstances unique to him.

4 A. Yes.

5 Q. You understand?

6 A. Yes.

7 Q. Then in the end -- now, the judge gives
instructions about,

8 well, how you can consider these things and certain
questions

9 that should be -- the jury should ask of themselves.
But the

10 final choice is not a matter of some kind of formula or

11 something where you, say, add them up on this side and
that

12 side; nothing like that. The final decision is really
a moral

13 judgment about another human being and whether that
human being

14 should live or die.

15 You've listened very carefully to what I've
been
16 saying, I know.
17 A. Yes.
18 Q. Now, I want you to think about that for the moment
and then
19 tell us -- we've already talked about your general view
without
20 regard to the law. Now I'm talking about the law as it
is.
21 You understand?
22 A. Yes.
23 Q. And the process that is there. And then the
question is:
24 If you were on the jury and had to make a decision
about the
25 life or death of a person, would you be open to full

1961

Juror No. 626 - Voir Dire

1 consideration of all of the information that you'd
received,
2 these aggravating factors, mitigating factors, before
making
3 that decision about life or death?
4 A. I would have to really read up on it and listen to
it very
5 carefully before I could judge the man.
6 Q. Yes. Well, this -- you wouldn't be reading up on

it; it

7 would be provided to you in the trial --

8 A. Yeah.

9 Q. -- this penalty phase hearing that I'm talking
about. But

10 it's a question of whether in deciding whether a
defendant

11 should live or die you would take into consideration
that

12 you've heard, including the background and the personal
13 characteristics, and so forth.

14 A. Yes.

15 Q. And then make a decision that really is a moral
judgment.

16 A. Yes.

17 Q. Now, you talked about your religious views and that
you're

18 a practicing Catholic.

19 A. Yes.

20 Q. And as I understand what you've said, that view is
that

21 it's wrong to --

22 A. Yes, I think it's wrong.

23 Q. -- from your religious point of view.

24 A. Yes.

25 Q. But now you're, you know, to put it plainly --
you're not

Juror No. 626 - Voir Dire

1 in church; you're in court.

2 A. Oh. Yes.

3 Q. And the question here is: Regardless of that
religious

4 view that you have in following and practicing your
faith, can

5 you set that aside and decide under the law and the
principles

6 of law that I've talked about?

7 A. I still don't feel that a person should be put to
death.

8 Q. I understand that. But now, please, I'm not
quarreling

9 with you, I'm not trying to get you to say anything.
But we do

10 need to know whether that view of yours is such that
you can

11 put it aside and say, Well, you know, I don't believe
in this,

12 but I'm a citizen and the judge has told me what the
law is,

13 and I'm going to follow the law and make a decision and
include

14 the possibility of death in the decision.

15 A. Well, it could be possible.

16 Q. Well, it's a question of whether it's possible for
you to

17 do it.

18 A. No, I don't think I can do it.

19 Q. Let me put it in a different sense now. Again,
please, I'm
20 not arguing with you. Do you think that it would be a
sin for
21 you to do that?
22 A. Yes, for me, it would.
23 Q. Would it be a mortal sin for you to do that?
24 A. I think so.
25 Q. Well, we're not trying to argue against your views.

1963

Juror No. 626 - Voir Dire

1 A. Yes.
2 Q. We just need to know exactly what they are. Have
you told
3 us just, you know, honestly what your views are?
4 A. Yes.
5 THE COURT: All right. We'll see if the
lawyers have
6 any questions.
7 MR. RYAN: Just a moment, your Honor.
8 THE COURT: Yes.
9 MR. RYAN: We'll pass on questions, your
Honor. No
10 questions.
11 THE COURT: All right. Mr. Tigar, Mr. Woods?
12 MR. TIGAR: Just a moment, your Honor.

13 We have no questions of the juror, your Honor.
14 THE COURT: All right, thank you.
15 Well, we're done with the questions, and we
appreciate
16 your coming in and opening yourself up to these
questions. It
17 helps us. We can't tell you now about your status on
the jury,
18 whether you will or won't be on. I think we will be
able to
19 tell you at the end of the week.
20 JUROR: Okay.
21 THE COURT: And we'll get back to you.
22 JUROR: Okay.
23 THE COURT: But please do follow the cautions
in the
24 meantime. Don't talk about it.
25 JUROR: Oh, no.

1964

1 THE COURT: Okay.
2 JUROR: Oh, no.
3 THE COURT: Thank you very much, and we hope
the best
4 for your daughter.
5 JUROR: Oh, I do, too. Thank you.

6 THE COURT: You're excused.

7 JUROR: Do I take this with me?

8 THE COURT: Yes, they'll pick it up.

9 JUROR: Don't take it home with me, do I?

10 THE COURT: No, they'll pick it up out there.
You're
11 done with that for now.

12 (Juror out at 9:54 a.m.)

13 THE COURT: Mr. Tigar?

14 MR. TIGAR: Yes, your Honor. Without waiving
the

15 contention we previously made, this appears to fall
within that

16 category, and this did appear to be a juror as to whose

17 personal situation, should your Honor think it
appropriate, an

18 early decision might be helpful; and we would certainly
have no

19 objection to having that determination made at this
time,

20 provided it's understood what our position was.

21 THE COURT: Yes, there's no waiver of your
position,

22 and this is a combination of factors, of course,
including some

23 personal hardships on her and her family.

24 MR. TIGAR: Yes, your Honor.

25 THE COURT: Are you in agreement?

1965

1 MR. MACKEY: We are, your Honor.

2 THE COURT: We'll advise her directly and
appreciate

3 your --

4 MR. TIGAR: Like to be heard on another matter
at the

5 next recess.

6 THE COURT: All right.

7 Take up 876.

8 Good morning.

9 JUROR: Good morning.

10 THE COURT: Would you please raise your right
hand,

11 take the oath from the clerk.

12 (Juror No. 876 affirmed.)

13 THE COURTROOM DEPUTY: Thank you.

14 THE COURT: Please be seated, sir, in that
chair right

15 in front of you by the microphone. It swivels around,
so you

16 can adjust it as suits your convenience.

17 VOIR DIRE EXAMINATION

18 BY THE COURT:

19 Q. And you understand that the oath that you have just
taken

20 relates to the summons that you received as possibly

serving as

Lynn 21 a juror in the trial of the United States against Terry

22 Nichols.

23 A. Yes.

24 Q. And you did respond to that summons where a short
25 questionnaire was filled out, sent back to us, then you
were

1966

Juror No. 876 - Voir Dire

1 directed to come out to the Jefferson County
Fairgrounds'

2 auditorium building, and you did on September the 17th.
And at

3 that time I was there, along with some of the people
who are

4 here in the room, introduced ourselves to you, and then
5 explained something about the background of the case.

6 A. Yes, sir.

7 Q. I want you to know who is here again, so we'll
reintroduce.

8 We don't expect you to remember everybody's name. Here
for the

9 Government as counsel for the Government are Mr.
Lawrence

10 Mackey -- he's in the first chair there -- and Miss
Beth

11 Wilkinson. You met them before as lawyers for the
Government.

Mearns. 12 They're joined now by Mr. Patrick Ryan and Mr. Geoffrey

13 Also with me there at the fairgrounds and
introduced

14 to you were Mr. Michael Tigar and Mr. Ronald Woods,
attorneys

15 for Terry Nichols, who's here and was there.

16 And I went into some explanation of the
background of

17 the case as a preface to asking you a lot of questions
in

18 writing on a written questionnaire. And you recall
that I

19 explained that as a result of an explosion in Oklahoma
City on

20 April the 19th of 1995, a federal office building was

21 destroyed, people in it were killed and injured; that
the

22 Government then filed charges in the Federal Court in
Oklahoma

23 City alleging that a man named Timothy James McVeigh,
along

24 with Terry Lynn Nichols and other persons not named in
the

25 charge, in the indictment, conspired to bomb that
building and

1967

Juror No. 876 - Voir Dire

1 did certain acts to carry that out including also the
murders

2 of eight federal law enforcement agents who were in the
3 building at the time. You remember these things.

4 A. Yes.

5 Q. And I'm sure you do remember, but I'm sort of going
over
6 them just to set something of a background for some of
the
7 questioning here. Now, I also explained that because
of the
8 impact on the community in Oklahoma City, the trial was
moved
9 from there -- the case was moved from there to here,
Denver,
10 Colorado, and that an order was then entered that
separated the
11 defendants for trial so that there would be a separate
trial
12 and separate consideration given by a jury to each of
the named
13 defendants; and, indeed, as a result of that order,
there has
14 been a trial here in Denver of the evidence as it
relates to
15 Timothy McVeigh, and a jury hearing that evidence
brought in a
16 verdict of guilty and a recommendation for death after
another
17 punishment phase trial.

18 You heard me say that --

19 A. Uh-huh.

20 Q. -- did you? And you were probably aware of it

before you

21 heard me say it anyway.

22 A. Yes.

23 Q. And then I explained that -- of course that trial
and the

24 outcome could not be considered in connection with the
trial of

25 Mr. Nichols because to do so would violate the order
that

1968

Juror No. 876 - Voir Dire

1 required separate trials so that we are selecting a
jury now

2 and will be trying the evidence as it relates to Mr.
Nichols as

3 a completely separate matter. Do you understand that,
I'm

4 sure?

5 A. Yes.

6 Q. And what we're doing, of course, is asking people
questions

7 for possible service on the jury now to hear the
evidence as it

8 relates to Mr. Nichols, and that's why you're here. I
also

9 explained some principles of the law, and I notice that
you

10 have served previously on juries. Right?

11 A. Correct.

front of 12 Q. And in fact, you have your questionnaire there in
have not 13 you; right? And I want to again reassure you that we
given to 14 shared your answers with anybody publicly. They were
this 15 the people who are here in front of you to assist in
going to 16 process; but as I told you and the others, we're not
protect 17 make them public. And also we attempt in all we can to
out of 18 your privacy, not using your name, bringing you in and
that. But 19 the courthouse so you can't be photographed and all
this is 20 you know here in open court, these are open questions;
you tell 21 a public place, and your answers are public.
before. 22 But I want to go to the page 26 because there
23 us about two trials that you've served on the juries
24 Correct?
25 A. Correct.

1969

Juror No. 876 – Voir Dire

two 1 Q. Now, can you give us the approximate dates of these

2 cases?

3 A. The years? Let's see. The kidnapping trial was
the first

4 one, and I know it was more than five years ago.

5 Q. Now, was that in Federal Court?

6 A. No, that was a county court.

7 Q. And was it in Fort Collins?

8 A. No. That was in -- it had to do with something
that

9 occurred in Fort Collins, but it was held in Brighton.

10 Q. You lived in Adams County at the time, did you?

11 A. Right. Right.

12 Q. And the first trial was also in Adams County?

13 A. Right.

14 Q. Earlier?

15 A. No. The kidnapping was before the murder trial.

16 Q. Okay. I'm confused; right. And then when was the
murder

17 trial?

18 A. Oh, I'd say -- I want to say maybe three years, two
to

19 three years after that. I know they were -- they
seemed close

20 together. Each time I was called.

21 Q. And will you explain a little to us what you
remember that

22 case to involve as far as the jury is concerned because
you --

23 I got the impression from what you wrote that there had

been an

24 earlier trial.

25 A. Right. It was actually -- this is on the murder
trial.

1970

Juror No. 876 - Voir Dire

1 The person had been found guilty of murder, and then it
was a

2 decision whether it was first or second degree.

3 Q. So an earlier jury had found this person guilty of
murder?

4 A. Uh-huh.

5 Q. That was your understanding?

6 A. Right.

7 Q. And then you were called in to decide first or
second

8 degree?

9 A. Correct.

10 Q. Did you get any explanation about why that
procedure was

11 being followed?

12 A. I'm sure they did explain it, but I can't really
recall.

13 All I know was that the first trial was just to
determine

14 whether he had committed the murder, and then the
second one

15 was whether it was first or second degree.

an
trial to
16 Q. Did anybody tell you there had been an appeal from
17 earlier decision and that's why there was a second
18 decide the degree of the crime?

19 A. No, I don't recall an appeal.

20 Q. All right.

21 A. So --

familiar
questions.
22 Q. Well, this is state procedure, and I'm not that
23 with it, myself. So that's why I asked you these

ways.
24 State courts are different from federal courts in some

jury
25 Now, was it your understanding that if the

1971

Juror No. 876 - Voir Dire

decide the
1 determined first-degree murder, that the jury would

2 punishment?

3 A. No. I seem to remember the judge establishing the
4 punishment.

5 Q. Were you told --

6 A. Base --

7 Q. Excuse me?

8 A. Just based on the criteria set forth.

was the 9 Q. Was the jury told -- before you made a decision,
difference 10 jury told what the punishment would be, what the
11 would be between first and second-degree determination?
12 A. I guess what I do recall was that after we made the
hearing to 13 decision, the judge said there would be a separate
14 decide what the punishment was.
15 Q. With the same jury?
16 A. No. Huh-uh. That was his decision.
17 Q. I see. What did the jury decide?
18 A. That he was not guilty. Based on the evidence.
you were 19 Q. Well, I'm confused of that because I thought what
guilty 20 saying was that you had already been told he was found
21 and now you were to decide which degree of guilt.
22 A. Well, no, it was first- or second-degree murder.
23 Q. Yeah.
24 A. And he was already found to have killed this
person. 25 Q. Right.

1972

Juror No. 876 - Voir Dire

a 1 A. And he was found guilty. And we were to decide in

2 separate case whether it was first or second degree.

found 3 Q. Yes, but then I thought you just said that the jury

4 him not guilty.

5 A. Of first-degree murder. I'm sorry.

6 Q. You understand my confusion?

7 A. Yeah, I understand.

8 Q. All right. Now we're together. Not first degree.

9 A. Correct.

10 Q. So second degree.

11 A. Correct.

what did 12 Q. Which had to do with, what, the intention? I mean

your 13 you understand and do you understand now to have been

between 14 responsibility in deciding what was the critical issue

15 first and second degree?

16 A. Well, they had given us some guidelines --

17 Q. Sure.

18 A. -- and different questions; and based on those

questions, 19 whether we felt the prosecution had met that criteria.

20 Q. And do you understand -- well, did it have

something to do 21 with the intent and the question of premeditation?

Does that 22 word come to mind?

wasn't 23 A. Yes. Yes. And I know it was my feeling that it

24 necessarily premeditated.

evidence? 25 Q. What did happen, in summary, as you remember the

1973

Juror No. 876 - Voir Dire

1 I mean what kind of a killing took place?

and had 2 A. Well, he -- the defendant's girlfriend had left him

began 3 started seeing another man, and he became jealous and

night, 4 more or less stalking her. And he went over there one

something 5 and he was outside their bedroom. And apparently

confront her 6 stirred him enough to want to enter the house and

shooting 7 boyfriend; and in the process of doing so, he ended up

8 him.

9 Q. Had there been an argument, that kind of thing?

believe there 10 A. Yeah, there was an argument. And actually I

he went 11 was an argument between he and his girlfriend, and then

in the 12 into the bedroom where this gentleman was and shot him

13 bedroom.

you 14 Q. So again, I'm not trying -- I'm just trying to help
this then 15 express this without trying to guess at it. But was
didn't 16 a thing where you and the other jurors decided that he
it; it 17 go there to shoot him, that he didn't go there to plan
18 happened under the heat of the moment?
19 A. Correct.
20 Q. That's about it?
21 A. Correct.
you: Do 22 Q. Tell us now about the kidnap -- well, let me ask
reaching the 23 you remember how long the jury deliberated before
24 decision?
25 A. Oh, I'd say we talked three or four hours.

1974

Juror No. 876 - Voir Dire

1 Q. And then everybody came to an agreement?
2 A. Yes.
jury, I 3 Q. And were you -- you were not the foreperson of the
4 take it?
5 A. No. No, I was not.
6 Q. And now on the other case that you heard with this

evidence 7 kidnapping, describe a little, if you will, what the
8 was at that case, what --
9 A. Actually, this was -- now that I recall, it was
quite some 10 time ago. There was a man that befriended another man
that was 11 mentally handicapped. And for whatever reason, he took
the 12 mentally handicapped man at gunpoint in his car from
Fort 13 Collins to Denver and then held him hostage at a house.
And we 14 were to determine whether he was guilty or not of
kidnapping.
ransom 15 Q. And held him hostage for what objective? Was there
16 or something?
upset, 17 A. No. It appeared that the man with the gun was
some 18 emotionally upset; and it just sounded like he wanted
for that 19 help. And this is one way of gaining some attention
20 help.
help; 21 Q. Okay. So commit a crime so you'd be caught and get
22 is that --
23 A. Right.
24 Q. That was your view of it?
25 A. Right.

1975

Juror No. 876 - Voir Dire

1 Q. And what was the verdict, then?

2 A. He was guilty.

3 Q. Do you know what happened as a result of that
verdict?

4 A. No.

5 Q. Do you know what sentence there was?

6 A. No.

7 Q. Okay. Now, you were told some principles of law
there.

8 I'm not going to ask you all the instructions that the
judge

9 gave to you there. I wouldn't expect you to remember
them all.

10 But I expect you were told some things about burden of
proof

11 and presumption of innocence and the like.

12 A. Yes.

13 Q. And you recall my talking about those same things
when I

14 talked to the whole jury panel.

15 A. Yes.

16 Q. Those were familiar --

17 A. Yes.

18 Q. -- concepts to you, that you start with -- any
defendant in

19 any trial, no matter what the charge or who he is,
starts with
20 the presumption of innocence, carries through and
entitles that
21 person to an acquittal or verdict of not guilty unless
the jury
22 is convinced beyond a reasonable doubt of all of the
elements
23 of the crime charged. You understand that.
24 A. Yes.
25 Q. Now, in either of these trials where you were on a
jury,

1976

Juror No. 876 - Voir Dire

1 did the defendant testify?
2 A. No.
3 Q. And you were --
4 A. No, I'm sorry, Judge. In the murder trial, the
person did,
5 the defendant did.
6 Q. Explaining these very circumstances?
7 A. Yes.
8 Q. And how excited he was and so forth, that kind of
9 testimony?
10 A. Yes.
11 Q. On the kidnapping case, did the defendant testify?
12 A. No.

to 13 Q. And you understand that a defendant is not required

14 testify?

15 A. Yes.

kidnapping 16 Q. And I'm assuming that you were instructed in the

17 trial, then, that you could not consider that in your

silent and 18 deliberations because there is the right to remain

explain 19 not to undergo questioning or to get on the stand and

about. 20 anything; that that's not something a jury can talk

21 A. Correct.

and 22 Q. And you understand that applies, too, in all cases

23 would in this case.

24 A. Yes.

assume, 25 Q. And then "reasonable doubt" was defined for you, I

1977

Juror No. 876 - Voir Dire

the 1 and you understood that at the end of the trial on all

2 evidence being considered, if the jury had a doubt, a

benefit of 3 reasonable doubt, they must give the defendant the

4 that and find him not guilty?

5 A. Yes.

6 Q. Now, this -- in your questionnaire, at page 8, and
Question
7 38 -- well, you're married. I mean that's something
you told
8 us here. And you have two children in school; correct?
9 A. Yes.

10 Q. And your wife, as I understand it, works for one of
the
11 cities in the Denver area.
12 A. Yes.

13 Q. And has also worked for other cities in the Denver
area in
14 doing the same type of work with respect to sales tax
15 collections.
16 A. Yeah, or accounting.

17 Q. All right. But on this page here and this
question, you
18 say she's got an avocational interest in law. And I
guess that
19 piqued my curiosity as to why that is so and how she
satisfies
20 that interest.

21 A. Ever since I've known her, she's had an interest in
the law
22 and always wanted to go to law school. She was
admitted to CU
23 law school twice and turned them down.

24 Q. Because she didn't have the time and money at the
time?

anyone 25 A. Well, it's a big commitment, and she couldn't find

1978

Juror No. 876 - Voir Dire

1 that was real satisfied with the profession, and she
didn't

2 want to commit the hours and, you know, with the two
kids and

3 such. But she'll listen to Dan Caplis --

4 Q. Who's that?

5 A. He's on talk radio.

6 Q. About cases?

7 A. You know, he'll just comment on various cases and
such.

8 That's about as far as it goes.

9 Q. Did she talk about with you a lot about your --
these

10 experiences that we've talked about on your jury
service?

11 A. On this jury service?

12 Q. No, no --

13 A. On past.

14 Q. I'll get to that.

15 A. Okay.

16 Q. But on these ones that you did serve and
participated in

17 the verdicts?

18 A. Yeah, we talked a little bit about what went on
and, you

19 know, how things were presented.

20 Q. Did she give you her opinion of the juries'
verdicts?

21 A. No. No.

22 Q. Well, let's turn to this case. And by "this case,"
I mean

23 not -- first of all, not just Terry Nichols, but the
whole

24 thing about the Oklahoma bombing case, it gets referred
to, I

25 guess, in the media. Have you and she talked about it
at

1979

Juror No. 876 - Voir Dire

1 length?

2 A. In fact, she's been pretty militant about not
talking about

3 it.

4 Q. Since you got the summons?

5 A. Yes.

6 Q. But how about before that?

7 A. No. We haven't talked at all.

8 Q. Was she listening to this person who talks about
cases talk

9 about the McVeigh trial?

More in 10 A. Yeah, I'm sure we both listened a time or two.
11 passing, I think, than anything.
12 Q. And does this Dan Caplis express opinions about
what the 13 lawyers are doing and whether he thinks they're doing a
good 14 job or not?
15 A. Oh, yes. Yes.
16 Q. And -- well, let me just ask if there's anything
from that 17 or from what you heard him say or any discussions with
your 18 wife that you think would affect your ability to judge
in this 19 case as a juror?
20 A. No, sir.
21 Q. You gave an answer on page 17 about your opinion of
news 22 stories, and you used the phrase that "a person needs
to 23 consider a number of sources and then" -- and you put
it 24 "triangulate to the truth." Is that a phrase that you
-- is 25 original to you?

1980

Juror No. 876 - Voir Dire

1 A. No; I think at work we'll use that a lot to

describe how to

2 understand a customer's perception of something or try
to

3 resolve a problem by looking at various sources to zero
in on

4 what the answer is.

5 Q. It's sort of an engineer's approach?

6 A. Uh-huh.

7 Q. I mean I would say so, but maybe I'm wrong. Your
work is

8 in designing packaging for medical products, as I
understand

9 it?

10 A. Yeah. Primarily.

11 Q. Which presents some unique challenges to packaging
because

12 many of them are very fragile in nature and unusual in
form,

13 configuration?

14 A. That's correct.

15 Q. So you can't just put them in a box and a lot of
packing

16 around it; you got to design the packaging?

17 A. Yeah. As I say, packaging is a science, not an
art.

18 Q. Okay. And you're thinking about going back to
school, as I

19 have it. You told us that you've got a degree in
organic

20 biology?

21 A. Right.
22 Q. I mean that was the major.
23 A. Right.
24 Q. And you're interested in pursuing master's work in
25 engineering and marketing; is that right?

1981

Juror No. 876 - Voir Dire

1 A. It changes.
2 Q. Okay.
3 A. You know, I'm kind of a perpetual student. Now I'm
leaning
4 towards going back and taking some engineering courses.
5 Q. In a particular field?
6 A. No. I've been -- you know, I have a minor in
mechanical
7 engineer, and so I might continue to build on that.
8 Q. Progress with that. You say or you told us that
there
9 were -- page 22 is where I'm going -- excuse me. And
it's
10 Question 100. And it goes over on the next page as
well. Now,
11 are these incidents at three different times?
12 A. Yes.
13 Q. And you use the word "robbery," but sometimes
people -- you
14 know, people don't appreciate that there's a difference

between

15 robbery and burglary usually. One's sort of break and
enter a
16 house and the other is like sticking you up with a
weapon or
17 confronting you.

18 A. Right. "Burglary" is probably a better term.

19 Q. These are break-and-entering-type things?

20 A. Yeah. Although my wife, I would say that was
robbery.

21 Q. What happened there, to your knowledge?

22 A. She was -- this was before we were married. This
was

23 before we were married and she was approaching her car
and she

24 worked downtown at Petro-Lewis, and someone approached
her with

25 a knife and took whatever money she had.

1982

Juror No. 876 - Voir Dire

1 Q. How long ago was the most recent of these events
that

2 you've described?

3 A. Probably seven or eight years ago.

4 Q. And which one was that, of the three?

5 A. It was a burglary. And that's what caused us to
want to

6 move.

7 Q. And at that time you were living -- I don't mean
the
8 address, but were you living somewhere in a city other
than the
9 one where you live now?
10 A. Yes.
11 Q. Where?
12 A. In Westminster.
13 Q. Okay. Now, I want to get -- spend a few minutes
with you
14 on the question that deals with penalty here. And we
asked you
15 some questions on page 28 regarding your views of
penalties, of
16 life in prison without any possibility of ever being
released,
17 a penalty of death, and if you could decide the law as
to when
18 you would impose one and when the other, what would the
law be.
19 And you gave us some answers.
20 Now, I want to talk with you a few minutes
about that,
21 and then I will talk with you about the reasons for the
22 questions and how the matter could come up. But I want
to
23 first address -- have you tell us if you have anything
to
24 change here or to add regarding your views coming in,
so to
25 speak, to this.

1983

Juror No. 876 - Voir Dire

1 First of all, let me go back to the trial in
the
2 murder case. You went through a process somewhat like
this
3 before you were selected in that case; right?
4 A. Yes.
5 Q. And did anybody ask you questions about the death
penalty
6 there?
7 A. No.
8 Q. All right. I wouldn't expect that they would, but
I just
9 wanted to cover that with you. 'Cause the jury wasn't
involved
10 in deciding sentencing there.
11 A. Right.
12 Q. The reason that we asked you these questions as
given in
13 the explanation is that the jury would be involved in
14 sentencing if there were a verdict of guilty in this
case, so
15 we want you to tell us something about your general
opinions
16 and beliefs with respect to these types of punishment.
You
17 understand?

18 A. Uh-huh.
19 Q. And take a moment to read the answers that you
provided.
20 Okay. Now, having -- you know, it would be
expected
21 as a possibility that after answering these and going
home and
22 then thinking about it between the 17th and now, you
may have
23 some additional or -- something additional to say or
some
24 change here. You're free to do that. But I guess what
we want
25 to know is: Does this pretty much state your view as
you sit

1984

Juror No. 876 - Voir Dire

1 here now?
2 A. Yes.
3 Q. And have you held these views for some time? I
mean is
4 this a subject you've given some thought to before
answering
5 the questionnaire?
6 A. Yes.
7 Q. At a date earlier, I mean?
8 A. Yeah. Taking serious consideration, I still hold
to these

9 beliefs.

10 Q. And is this a subject that you talk with your wife
about

11 before answering these questions? I mean again,
unrelated to

12 your jury summons. Have you and she discussed life

13 imprisonment without release and death as punishment?

14 A. No. The only time maybe before this, before the
summons,

15 would have been in idle conversation, in the context of

16 whatever we were talking about.

17 Q. Okay. And you say on -- first on life in prison,
that "It

18 may be appropriate in a given case dictated by the
circumstance

19 and severity of the crime." Are you -- when you say
"the

20 circumstance," what do you mean?

21 A. I think some people make mistakes. They may get
themselves

22 into a situation that they make a poor choice and, you
know,

23 commit a crime and are probably . . . you know, they
wish they

24 hadn't of.

25 Q. So it was in the case you heard --

1 A. Yes.

2 Q. -- the case that was a murder case?

3 A. Yes.

4 Q. And then you say with respect to the penalty of
death,

5 "Same as above, the same answer."

6 A. Yeah, I saw them as -- the questions being fairly
close.

7 Q. And then again sort of a follow-up about kind of
cases, and

8 somebody suggested these are redundant questions, and
maybe

9 they are. But I think the purpose here was to have you
tell us

10 in advance some particular kinds of cases that you
think life

11 imprisonment would be appropriate, as the word is. And
you've

12 told us here, "Murder or when a crime is such that a
person is

13 considered a threat to society." Now, besides murder,
what

14 kind of crime are you thinking about there?

15 A. I guess what crossed my mind was a crime that
someone shows

16 no remorse and might be a very violent crime.

17 Q. But didn't involve the actual death of a person?

18 A. Right. I mean, you know, you think of people -- or
you

19 think of people like Charles Manson that there appears
there's

20 something wrong and he's a threat to society, just
someone you
21 wouldn't want to release.
22 Q. How about repeated offenses where you've heard, I
suppose,
23 of proposals of three strikes and you're out, three
felonies
24 and you go the rest of your life?
25 A. Yeah. Yeah. I think that's a difficult issue, and

1986

Juror No. 876 - Voir Dire

1 without -- I think it's hard to make a generalization a
lot of
2 times.
3 Q. Sure. And then finally on here, with respect to
death, you
4 say, "Murder and heinous crimes."
5 A. Yeah.
6 Q. Meaning what on the heinous crimes?
7 A. I think that one's a little more difficult. But,
you know,
8 when I think of let's say someone kidnapping someone
and
9 torturing them, I don't know, I guess I don't see -- I
guess I
10 see murder first and heinous crimes second to that.
And
11 that -- well, I guess it goes back to an individual

12 circumstance, when you look at it and say that person
13 deliberately hurt that person. That's a tough one. In
14 retrospect, I guess I see murder being the top -- top
reason.

15 Q. Well, we don't have the death penalty involved
under
16 federal law for crimes -- actually, under the
Constitution, for
17 crimes that don't involve killing, the death of people.

18 A. Right.

19 Q. So we're talking about crimes that you would
classify as
20 murder.

21 A. Right.

22 Q. And of course you already understand there can be
statutes
23 making different degrees of murder. And the one that
you were
24 told about is -- as I think you recall -- is
premeditated,
25 planned murder, being of a different degree than
impulsive or a

1987

Juror No. 876 - Voir Dire

1 murder in the heat of the moment.

2 Now, I want to visit with you about what is
the law

3 and what is the process that the jury becomes involved
with

4 when in Federal Court a jury is asked to participate in
the
5 sentencing. The case that you had here in Adams
County, you
6 said that you don't know the punishment because the
judge did
7 it. Right?
8 A. Correct.
9 Q. I guess that's actually both cases. And you
understand
10 that that's true in most cases, cases that don't
involve the
11 jury, because of the possibility of the death sentence
so that
12 in cases like the one you have -- the ones you had, the
jury
13 makes a finding, not guilty or guilty. If it's not
guilty,
14 that's the end of it, obviously. If it's guilty, then
it goes
15 back to the judge to sentence. And what judges do,
without a
16 jury, is to hear a lot more, get a lot more information
than
17 just what was given in the evidence at the trial. And
that
18 information includes more things about the crime, the
19 circumstances of the crime, what led up to it and so
forth,
20 things that might not have been admissible as evidence,
but
21 also in what, you know, impact it might have had on

others and

22 so forth and then a lot of information about the
defendant
23 himself, or herself; and that goes to the defendant's
24 individual characteristics as a person, his background,
his
25 upbringing, his family relationships, employment, work
record,

1988

Juror No. 876 - Voir Dire

1 all of those things that would describe a unique
individual
2 human being, and we all have differences.
3
a And then the judge considers all that and has
4 hearing, listens to both sides, and says, finally, this
is the
5 sentence that is a just punishment for this crime and
this
6 person who committed it. So it's quite individual in
the
7 determination. And it's not just a matter of this is
the
8 crime, this is the punishment.

9 It's different in Federal Court under federal
law when
10 the issue is life or death. We don't leave that type
of a
11 question up to a judge. We ask the jury to decide
that, and

course 12 it's the same jury that heard the trial. And again, of
charges 13 if that jury determined the evidence didn't prove the
question 14 beyond a reasonable doubt, this doesn't happen; it's a
15 that happens only if there is a guilty verdict.

16 But if there is, there's another trial; the
same jury 17 hears a lot more, sort of like the judge hears a lot
more in 18 judge sentencing. And under those circumstances, there
is 19 another trial, a separate penalty phase hearing with
both sides 20 involved, with lawyers; and the lawyers on both sides
bring in 21 a lot of additional information from the Government's
view 22 standpoint, things that would in their view support the
given 23 that death is the deserved punishment for this person,
to the 24 the guilty verdict. The defense presents information
about 25 contrary; that is, these things that I've talked about,

1989

Juror No. 876 - Voir Dire

1 background, the things that are individual
characteristics of

2 the defendant and things that he's done or been done to
him.

3 Those things, then, are presented to the jury.

4 At the end of that phase, that trial, the
court then

5 gives the jury some instructions about the question of
6 punishment. Now, those instructions say, in effect,
that,

7 well, these are the things that you've heard and these
are the

8 things that you may consider now as, on the one hand,
9 aggravating factors, things that you may want to
consider --

10 you don't have to, you may want to consider in deciding
whether

11 the punishment should be life or death. And on the
other hand,

12 these are the things that you heard that could be
considered

13 mitigating factors, again, to be considered along with
14 everything else that has been heard in deciding the
15 life-or-death question.

16 And then the court says, well, now, here are
some

17 questions to help you think about this; and, you know,
I can't

18 tell you those things now because I don't know what
would be

19 involved in this case. We can't talk about this case,
and I

20 don't know what the evidence is going to be in this

case,

21 either. The mere fact that there has been a trial of
22 Mr. McVeigh and evidence is there -- that came in there
can't
23 be thought about even by me, and I heard that trial, in
talking
24 about this case 'cause it is separate.

25 So we have to talk about this without talking
about

1990

Juror No. 876 - Voir Dire

1 any specifics. I'm sure you understand that.
2 A. Yes.
3 Q. And then the question, though, that that comes down
to is:
4 We don't triangulate to the truth here, there's no
formula or
5 equation. What there is is a moral judgment to be made
by the
6 jurors, each one of them having to decide this issue as
a
7 separate and individual judgment; and the judgment is,
then,
8 considering it all -- mitigating, aggravating,
everything that
9 has been heard -- should the particular defendant live
or die.
10 That's the question. Do you understand how this comes
into

11 focus?

12 You have to answer out loud, sir.

13 A. Yes.

14 Q. Now, what we want to hear from you is, given this
15 explanation of the process -- and do you have any
question
16 about what I've gone over with you?

17 A. No. No.

18 Q. All right. With that explanation in mind, what we
want to
19 know from you is whether you will be able to base a
decision
20 about life or death as to the defendant on everything
that
21 you've heard, including circumstances of the offense
and
22 including personal background and individual
characteristics of
23 the defendant.

24 A. Yes.

25 THE COURT: We're going to take a little
recess now.

1991

1 You'd like to finish this off, but we've got the
opportunity

2 for some questions by counsel, and it's time for us to
take a

minute
3 little rest stop. So we're going to take about a 20-
you back
4 recess during which you will step out and we'll have
questions
5 in 20 minutes, and please listen to and answer the
6 the lawyers will be putting to you.

7 Okay. You're excused for now.

8 (Juror out at 10:42 a.m.)

9 THE COURT: Mr. Tigar.

Juror
10 MR. TIGAR: Yes, your Honor. With respect to
for our
11 342, I just wanted to put on the record that the basis
objections
12 asking the questions to which your Honor sustained
answer
13 was that this juror had given us a danger sign in an
and
14 that looked like he might be a-life-for-a-life person,
probe ahead
15 that's the reason that we thought that we needed to
your --
16 with those questions. I'm not attempting to argue with

17 THE COURT: No, I understand.

but I
18 MR. TIGAR: I understand the Court's rulings,
the
19 thought it would be helpful that I pointed that out to
20 Court, that that's our position.

rulings in
21 THE COURT: We don't want to explain these

22 front of the prospective juror, obviously --

23 MR. TIGAR: Yes, your Honor.

24 THE COURT: -- or your making your objections,
as you
That's
25 appreciate, and therefore reserved it to the recess.

1992

I did
questions
can
Woods
situation --
answers
7 what I want to do. But in the exchange with Mr. Woods,
8 not mean to say that counsel cannot ask death penalty
9 simply because I covered that material. Certainly they
10 follow up. But my concern was that I thought that Mr.
11 was trying to direct an answer and putting this
12 this person into a situation where he would be saying
13 that Mr. Woods wanted him to say, that was --

I heard
9 MR. TIGAR: Your Honor, and I -- Mr. Woods and
10 the questions differently from your Honor.

10 THE COURT: Okay.

it's an
a
11 MR. TIGAR: With respect to triangulation,
12 orienteering and coast-wise navigation term. You take

a map. 13 bearing on three known points, triangle-shaped thing on

14 THE COURT: It's also an engineering term.

results 15 MR. TIGAR: Any bearing on three known points

16 in a triangulation on your map.

memory 17 THE COURT: I wasn't unaware of that use of
18 triangulation; but as I say, it has more to do with my

19 with placing shells in the right place.

memory. 20 MR. TIGAR: I see. I appreciate your Honor's

21 THE COURT: Court's in recess.

22 (Recess at 10:44 a.m.)

23 (Reconvened at 11:04 a.m.)

24 THE COURT: Be seated, please.

25 Thank you. We're ready to resume.

1993

1 Ms. Wilkinson?

2 MS. WILKINSON: Thank you, your Honor.

3 VOIR DIRE EXAMINATION

4 BY MS. WILKINSON:

5 Q. Good morning, sir.

6 A. Good morning.

I'm one 7 Q. You're almost done. My name is Beth Wilkinson, and
the 8 of the prosecutors who is responsible for presenting
like to 9 evidence against Mr. Nichols in this case. And I'd
touched 10 review with you a few different areas that the Judge
questions. 11 upon, if you wouldn't mind answering a few more

in 12 I see in your questionnaire that you were born
is that 13 Brooklyn, but you left there pretty quickly after that;
14 right?

15 A. Yes. I was three.

16 Q. And why did your family leave Brooklyn?

17 A. My dad was transferred.

doing 18 Q. Was your dad in the service at the time, or was he
19 something else?

opening in 20 A. He worked for the airlines; and there was an
21 Denver, so we felt it would be a nice place to live.

22 Q. Have you ever been back to Brooklyn?

23 A. A number of times.

24 Q. And are you happy always to return to Denver?

25 A. Absolutely.

1994

Juror No. 876 - Voir Dire

every
And I
answers that
heart

1 Q. One of the questions we asked you and we asked
2 potential juror is volunteer work that you like to do.
3 have to tell you you gave one of the most unusual
4 we've had: You like to give mini seminars on open-
5 surgery.

6 A. Yes.
7 Q. Is that right? Can you tell me a little bit about
8 that? I
9 found that intriguing.

offer the
teach them
bring in
are used,
little

9 A. Well, I like the kids at school; and every year I
10 teachers some of my time to come in and, you know,
11 somewhat about open-heart surgery, what it's about. I
12 the equipment we use and some of the techniques that
13 and I show them a film and just try to educate them a
14 bit.

15 Q. What grade do you usually teach when you --
16 A. I've done it from kindergarten up to probably
17 fourth grade.

job

17 Q. And are these machines that you work with in your

18 currently?

19 A. Yes.

20 Q. And are these some of the machines that you design
21 packaging for?

22 A. Well, it's a little misleading. I also do
manufacturing

23 engineering, and so -- and we do the disposables end,
rather

24 than the equipment end. So I bring all my disposables
in and,

25 yeah, I bring the packaging with it.

1995

Juror No. 876 - Voir Dire

1 Q. Do you actually do the product design for some of
those
2 disposables?

3 A. Sometimes.

4 Q. And I also saw you listed for us three books that
you've
5 been reading.

6 A. Yes.

7 Q. Cover the bases: One is Keep Winning, which you
told us
8 was a golf book; right?

9 A. Right.

10 Q. That is a big interest of yours, golf?

11 A. Yeah, a little bit.

12 Q. A frustrating interest?

13 A. Yeah.

14 Q. And the second one -- and I'm sure all these are by
your

15 bedside -- is the FDA Regulations Design Validation?

16 A. Yes. I was courting a job that required me to
learn a

17 little more.

18 Q. And your third one was Escape from Reason.

19 A. Right.

20 Q. Do you recall what that book was about?

21 A. Yeah. It's a philosophical view of art history.

22 Q. And do you know -- do you recall who the author
was?

23 A. Francis Schaeffer.

24 Q. Is that some -- art history? That is one of your
other

25 interests?

1996

Juror No. 876 - Voir Dire

1 A. No. I just like Francis Schaeffer.

2 Q. From your questionnaire, it sounds like you have a
lot of

3 interest in outdoor activities with your family. Is
that true?

4 A. Yes.

most
5 Q. What are the activities that you and your family do
6 often?
7 A. Mostly -- well, lately it's been golf. We try to
get the
8 kids involved with golf; and we go for walks, and we
like
9 hiking in the mountains.
10 Q. In your job, do you have the opportunity, or in
your
11 personal time, to listen to the radio quite often?
12 A. Usually to and from work and at lunchtime.
13 Q. You mention that you listen to several people who I
know
14 and one I don't, so I want to ask you about them. You
listen
15 to Dr. Laura --
16 A. Yeah.
17 Q. -- who I'm familiar with -- you're making a face.
You
18 don't like --
19 A. It's one of those things where I can only listen so
long to
20 any one of them and I'll turn it to music or whatever,
but I
21 kind of like to stay in touch with what's going on; and
she's
22 just a psychologist.
23 Q. What do you like about her radio program?
24 A. I guess I like the people who call in and listening
to the

25 problems that they have and her response to those
problems.

1997

Juror No. 876 – Voir Dire

1 Q. Does it make you feel better about your life when
you
2 listen to some of those other people's problems?

3 A. Yeah.

4 Q. How about Rush Limbaugh, which I assume is who you
meant
5 when you mentioned "Rush L"?

6 A. Yeah, and I don't listen to him as much as I used
to. I
7 kind of got tired of his style, I guess.

8 Q. How would you compare yourself to him on kind of
general
9 political issues?

10 A. I guess if I were to align myself, it's more with
the
11 Republican point of view, although I think they're --
they fall
12 short on a number of issues.

13 Q. Do you find Mr. Limbaugh more conservative
generally, or
14 his callers?

15 A. Oh, yeah. He's generally more conservative.

16 Q. Peter Boyles: I'm not from here, but I've learned
who

17 Mr. Boyles is.

18 A. Yeah.

19 Q. And do you enjoy listening to him?

20 A. For a very short period of time. He's very liberal, and I

21 feel like he's not as objective as he thinks he is.

22 Q. Have you ever heard him discuss the Oklahoma City bombing

23 or Mr. McVeigh's trial?

24 A. Yeah, I believe I heard a few comments of his on it.

25 Q. You mentioned somewhere in your questionnaire -- I think it

1998

Juror No. 876 - Voir Dire

1 was about pretrial publicity that you had heard some opinions

2 of the McVeigh trial. Would that be one of the sources of

3 those opinions, Mr. Boyles' program?

4 A. It may have been. You know, you hear so much, it's hard to

5 pinpoint exactly.

6 Q. Do you recall what his opinion was generally about the

7 trial or the bombing?

8 A. No, I really don't.

9 Q. Someone you don't listen to and really --

10 A. No.

11 Q. -- take his beliefs back with you?

12 A. No, uh-uh.

13 Q. Who is Dr. Dean O'Dell?

14 A. He's -- he was an eye physician or eye surgeon who
left the
15 practice, and now he does radio talk shows; and he's
more on
16 the holistic health side, vitamins and things like
that.

17 Q. Are you a practitioner of holistic health and
medicine?

18 A. Well, I'm interested -- I was a premed student, so
I'm
19 interested in medicine and physiology.

20 Q. And do you ever engage in that debate with your
colleagues
21 about there is quite a difference of opinion between
doctors
22 and others on the benefits of holistic medicine?

23 A. I wouldn't say "debate," but, you know, I've had
24 discussions. You know, I'm always interested in herbs
and
25 different vitamins and their effects and such, so . . .

1999

Juror No. 876 - Voir Dire

1 Q. If we could, I'd like to turn to what you know

about the

2 Oklahoma City bombing case; and your answers, most of
them, are

3 set out on page 37, if you could turn to that page. 36
and 37,

4 really.

5 If I understood your answers to the Judge --
I'm

6 sorry. If I understood your answers to the Judge, you
have

7 heard generally about this case; is that right?
Meaning the

8 Oklahoma City bombing. I shouldn't say "this case,"
not

9 Mr. Nichols' case.

10 A. Yes. Yes.

11 Q. Do you recall where you were on the day of the
bombing,

12 April 19, 1995?

13 A. I believe I was at work. I don't recall
specifically.

14 Q. And did you come home that evening and watch the
television

15 with your family?

16 A. Yes.

17 Q. And what -- what's the impression you have from
those first

18 few days and following the coverage of the bombing?

19 A. It was pretty unbelievable that that would occur;
and, you

20 know, you ask yourself why someone would do something

like that

21 and just the number of lives that were affected.

22 Q. Did you discuss it with your children at that time?

23 A. A little bit. They didn't seem real interested, as
we

24 were, in what happened.

25 Q. So you didn't have to deal with some of those
issues that

2000

Juror No. 876 - Voir Dire

1 sometimes kids ask about that are sensitive to explain?

2 A. No. I'm sure they ask questions and we deal with
it at the

3 time they ask.

4 Q. Did you follow the case as the investigation was
ongoing

5 and then as charges were brought?

6 A. Not real intently, more in passing; but, you know,
it was

7 interesting the different -- the amount of evidence
that they

8 were uncovering or not uncovering and the different
viewpoints

9 and all the conjecture and, you know, you just -- my
mindset

10 was, well, we'll just see who is right at the end.

11 Q. You've already told us your opinion of the press;
that you

12 have to triangulate to come to any objective
conclusion; is

13 that right?

14 A. Well, you know, there is just a lot of guessing a
lot of

15 times, and you don't really know until you really have
16 evidence.

17 Q. Well, based on that view, could you set aside
anything that

18 you've heard or read about the bombing in Oklahoma City
and

19 Mr. McVeigh or Mr. Nichols and come into this courtroom
with an

20 open mind to consider the evidence against Mr. Nichols?

21 A. Yes.

22 Q. Would you have any problem doing that?

23 A. No.

24 Q. And you said in your questionnaire down here that
you've

25 heard there was enough evidence to accuse Mr. Nichols
as an

2001

Juror No. 876 - Voir Dire

1 accomplice but right now you feel neutral until the
facts are

2 presented. Is that still true today?

3 A. Yes.

4 Q. And when you say "neutral" -- and I'm sure you

understand

you 5 this because you've been a juror twice -- you mean that

the 6 will presume Mr. Nichols not guilty or innocent until

doubt, 7 Government proves its case to you beyond a reasonable

8 before you have to make that decision. Is that right?

9 A. Yes.

two 10 Q. And did you have any problem doing that in the last

open mind 11 cases that you were involved in; that is, keeping an

12 and judging just on the facts?

13 A. No.

which your 14 Q. Let's turn, if we could, to the death penalty,

already 15 answers are on pages 27 through 29, which I think you

you were 16 reviewed with the Judge. And we recognize that when

you 17 answering these questions, you were asked, you know, if

law, this 18 could be Congress for the day, if you could write the

19 would be your general opinion; correct?

20 A. Yes.

penalty 21 Q. Now, setting that aside and hearing what the Judge
22 instructed you that if this case were to go to a

23 phase -- that is, if you had already determined with

your

24 fellow jurors that this was evidence of guilt beyond a
25 reasonable doubt -- there would be a second trial. You

2002

Juror No. 876 - Voir Dire

1 understand that; correct?

2 A. Yes.

as I

3 Q. And he would give you instructions or guidelines,

the

4 think you referred to them when you were talking about

would

5 importance of following the Court's instructions -- he

making

6 give you instructions and guidelines or parameters for

to any

7 your decision, what you should consider before you came

listen to

8 decision on the penalty. Could you with an open mind

follow

9 all the evidence or information that was presented and

mitigating

10 his instructions that you had to consider all the

you came

11 information and all the aggravating information before

12 to any final decision?

13 A. Yes.

you had

14 Q. Would you have any problem doing that, even though

15 already determined the guilt? Would you have any
problem
16 keeping an open mind until the end of the penalty phase
to
17 determine what the -- whether the defendant should live
or die?

18 A. No, I wouldn't have a problem.

19 Q. Not only have you been on two trials, but you
followed a
20 few other criminal trials. You mentioned to us the O.
J.

21 Simpson trial and the Jon -- the JonBenet Ramsey case.
I guess

22 we shouldn't call it a trial. Can you tell me your
general

23 impressions of the O. J. Simpson trial?

24 A. I have a number of impressions. One is it didn't
seem that

25 the judge was able to keep things in order very well
and didn't

2003

Juror No. 876 - Voir Dire

1 keep it moving along. And I also felt that I didn't
quite

2 understand how they picked the jury that they did,
so . . .

3 Q. When you say the judge didn't keep the courtroom
running as

4 tightly as he should, was that in contrast to your
experience

5 in your -- the two trials you sat on as a juror?

6 A. Yes.

7 Q. Those courtrooms, the judges were strict and --

8 A. Yes.

9 Q. You're smiling. Very strict?

10 A. Well, the one kidnapping trial, there were some I
want to
and we
correct
11 say junior lawyers or those without much experience,
12 were called out of the room several times so he could
13 them.

14 Q. You knew that was happening?

15 A. Yes.

16 Q. Even though you were outside?

17 A. Yes.

18 Q. Tell me what your impression is of this JonBenet
19 investigation.

20 A. Oh, it -- it just seems like they don't have much
evidence
going
difficult crime
21 to really bring anything to an end, and I think they're
22 to have a tough time. Just sounds like a very
23 to solve.

24 Q. And does that cause any problems for you or any
cause for
25 concern?

2004

Juror No. 876 - Voir Dire

1 A. Well, you know, it's a shame that that has
happened, but

2 the reality is they don't have enough evidence; and you
need

3 evidence to bring something to trial, to bring an end
to it.

4 Q. I take it you understand that again because of your
prior

5 service and understanding the burden on the prosecution
team

6 to --

7 A. Yeah, it makes sense.

8 Q. -- prove the charge.

9 A. Makes sense.

10 Q. I'd like to ask you one other thing, and I don't
want to

11 get into too many personal details about this, but you

12 mentioned on your questionnaire that you've changed

13 religions -- "religion" is probably not right because
it within

14 the Protestant faith. You've changed denominations;
correct?

15 A. Correct.

16 Q. Can you just tell me a little bit about what helped
you

17 make that decision.

where
in
philosophical
opened
and it
than the
25

18 A. Well, I was raised Lutheran, and I came to a point
19 that belief system was not doing anything for me. And
20 college, I went through a lot of struggles,
21 struggles and various other things; and then I ended up
22 committing my life to Christ. And that whole process
23 other doors where I became more active in my beliefs,
24 just became more meaningful to me, that belief system,
25 previous one.

2005

Juror No. 876 – Voir Dire

have any
death
they're in
different

1 Q. Does your current belief system and your church
2 views on the death penalty?
3 A. No.
4 Q. And have you ever heard sermons preached about the
5 penalty?
6 A. No.
7 Q. Have you -- you said you've gone through a lot of
8 philosophical changes as a lot of people do when
9 college questioning their beliefs. Did you have

10 views on the death penalty earlier in your life, or
have there

11 been any transformations?

12 A. I don't believe so. I think I've always more or
less been

13 where I am now, except you have a lot more soul-
searching now.

14 You know, you have a lot more experience in life.
You've seen

15 a lot more, you know -- you experience a lot more
events and

16 people and so, you know, you constantly are revisiting
those

17 beliefs.

18 Q. What do you think that experience -- that life
experience

19 has done in terms of your views on the death penalty?
How has

20 it affected it?

21 A. To me, it's much more sobering. You know, you take
things

22 more seriously and you don't take lightly things like
that.

23 Q. So would it be fair to say, then, you realize that
it's a

24 very grave decision?

25 A. Yes. Absolutely.

would 1 Q. And getting all that information we've talked about

2 be essential to making any kind of fair decision?

3 A. Yes.

4 MS. WILKINSON: Thank you, sir.

5 THE COURT: Mr. Woods?

6 MR. WOODS: Thank you, your Honor.

7 VOIR DIRE EXAMINATION

8 BY MR. WOODS:

9 Q. Good morning.

10 A. Good morning.

11 Q. As the Judge introduced me earlier, my name is Ron
Woods.

12 I'm one of the lawyers that was appointed by another
court to

13 represent Terry Nichols in this case.

14 You stated something about the lawyers in the
earlier

15 cases that you were involved in, the kidnapping case
16 specifically. The kidnapping case was the first one,
as I

17 understand -- is that correct -- and the murder case
was the

18 second? Were there court appointed lawyers on the
kidnapping

19 case?

20 A. Yes, I believe so.

21 Q. And those were junior lawyers, inexperienced, I
believe you

22 stated?

23 A. Yes.

24 Q. Okay. And the court called them out to correct
them on

25 several occasions?

2007

Juror No. 876 - Voir Dire

1 A. Yes.

2 Q. What about the murder case? Was that a retained
lawyer, or

3 a court-appointed lawyer?

4 A. No, I believe it was retained. To be honest, I
don't know.

5 I'm not sure.

6 Q. Did it make any difference to you in the kidnapping
case

7 whether or not they were court-appointed lawyers or
not?

8 A. No. In fact, the -- the defense were the junior
lawyers,

9 so to speak; and as a jury, we commented on their poor
10 presentation. But that made no difference because the
evidence

11 was there, or not there.

12 Q. And what about in the murder case? Was there a
difference

13 in the performance?

14 A. Yes. Yes, all though the -- it was better, but I
believe
15 that the prosecution -- I felt they were somewhat
inexperienced
16 as well, but it made no difference.

17 Q. Okay. Now, in this case, Mr. Tigar and I are the
two
18 lawyers that are going to be representing Mr. Nichols,
and
19 we're both appointed by the court. Is that going to
affect you
20 in any way on this case?

21 A. No.

22 Q. Now, you stated earlier about your wife's desire to
go to
23 law school but then she kept talking to people who were
not
24 happy or pleased in the profession. How many people
did she
25 talk to that had that view of the profession?

2008

Juror No. 876 - Voir Dire

1 A. Oh, anyone she came in contact with. She even went
to the
2 point of calling a CPA who was a lawyer and just, you
know,
3 asked a few questions. And I know I talked to our
corporate
4 lawyers, and they warned me to warn her to make sure
she was

5 making the right decision.

6 And I think the number of hours really scared
her off,

7 because she still talks about it, still talks about
going back.

8 Q. With a family, it's tough, though, I take it;
right?

9 A. Yes. Yes.

10 Q. Do you have an overall feeling that lawyers in
general are

11 unhappy with their profession and what they do in that

12 profession?

13 A. Oh, I don't think so. I think it's like any
profession:

14 Some cause people to -- I don't know. You know, my job
changes

15 and I work more hours than I ever have, but it doesn't
mean I'm

16 unhappy. And I'm sure that profession is the same.

17 Q. Okay. Have you seen, read, or heard anything that
may

18 indicate to you anything about Mr. Tigar and myself and
our

19 views toward our duty in representing Mr. Nichols?

20 A. No.

21 Q. If you would, turn to page 25 in your
questionnaire. And

22 that's Question No. 113.

23 Question is, "Would you tend to believe the
testimony

24 of a state or federal law enforcement officer?"
25 And you checked off, "More than most
witnesses."

2009

Juror No. 876 - Voir Dire

1 Now, in the cases that you were involved in, I
assume
2 the kidnapping had a number of police witnesses, or
were there
3 federal agents involved? FBI gets involved in
kidnapping
4 cases, but often they're prosecuted in state court.
What type
5 of law enforcement officers testified in that
kidnapping case?

6 A. I believe it was just -- there was an officer, a
policeman,
7 who testified what was at the scene when he showed up.

8 Q. What about the murder case?

9 A. I know there was an expert witness in ballistics
who
10 testified, and I don't recall any officers testifying.

11 Q. You've read, seen, and heard quite a bit about this
case.

12 Do you realize there are going to be a number of FBI
agents
13 testifying in this case?

14 A. Probably, yes.

15 Q. What is it that you feel gives more credibility to

a

16 federal law enforcement officer?

17 A. You know, of course, it's all -- depends on the

18 circumstance; but typically they're the ones closer to
the

19 scene. They're the ones who see the most; and, you
know, I

20 think their position themselves gives them more
authority and

21 such.

22 Q. Their position as a federal law enforcement
officer?

23 A. Yeah. Yeah. I think -- you know, typically, I
think

24 that's how they're viewed.

25 Q. All right. And are you familiar, having seen any
of the

2010

Juror No. 876 - Voir Dire

1 programs that are fairly common, on the training of
federal

2 agents?

3 A. No, not really. You know, just smatterings
throughout time

4 of various things. And one of our neighbors is an
officer.

5 Q. A local officer?

6 A. Right.

7 Q. Okay. Did you ever watch "The FBI Story"? Of
course, that

8 was years ago. Let me think of a more current one.

9 Have you seen any shows at all on federal law
10 enforcement officers?

11 A. Oh, sure.

12 Q. Are you familiar from what they've shown in there
the

13 nature of their training and their background?

14 A. Yeah. As a kid, I was interested in the FBI and
read books

15 on it and such.

16 Q. All right. Do you recall which books you read on
the FBI?

17 A. No. That was when I was in grade school.

18 Q. Okay. Are you familiar with the fact that they do
receive

19 training before they go out on the street and make
arrests,

20 make investigations?

21 A. Yes.

22 Q. And do you feel that this training on a federal law
23 enforcement level allows them to be more credible,
gives them

24 more basis on being more credible in a trial?

25 A. Yeah, I'm sure it does.

Juror No. 876 – Voir Dire

FBI 1 Q. All right. What changed your desire on becoming an
2 agent?

3 A. Oh, I think it was just a passing interest when I
was
4 young, and it just seemed interesting. You know,
"Mission
5 Impossible" was on at the time and all the gadgets they
had
6 and, you know, there was just an appeal there when I
was young.

7 Q. Let's go to page 33, which starts talking about the
8 publicity. First question at 144: "If you heard or
read
9 anything about the Oklahoma City bombing, please
indicate where
10 you heard or read about it and check all that apply."

11 You checked "TV news, the radio news,
newspaper,
12 conversations, and heard other people discussing the
case."

13 And the next question is, "How would you
describe the
14 amount of media coverage you've seen about the Oklahoma
City
15 bombing?"

16 And you checked, "Quite a bit, read a few
articles or
17 watched a few television specials."

18 Do you recall what television specials you've
seen

19 concerning the case?

20 A. No, not really.

"60 21 Q. Okay. Do you watch shows like "Dateline," "20/20",
22 Minutes"?

23 A. Yes.

the 24 Q. Have you seen shows -- have you seen the story of
25 Oklahoma City bombing case on any of those?

2012

Juror No. 876 - Voir Dire

1 A. Yeah. I thought maybe it might have been
"Dateline."

2 Q. Okay. What do you recall from that?

3 A. Mostly just the pictures, just the imagery that was
4 portrayed and the various interviews with the victims
and, you

5 know, the different stories, the subplots of people and
what
6 happened with them and, you know, the stories of what
they

7 experienced, where they were and such.

8 Q. Yes, sir. From what you have seen, read, and
heard, do you

9 recall how many people were killed in the bombing?

10 A. To be honest, no.

11 Q. Can you give me an approximation, not the exact

number?

12 A. I know that the officers and --

13 Q. When you say "the officers," are you speaking --

14 A. The agents.

15 Q. And how many of those do you recall?

16 A. Was it eight agents?

17 Q. Okay.

18 A. And 300 comes to mind, but that sounds high to me.

19 Q. All right. Do you recall whether or not there were
any

20 children killed in the bombing?

21 A. Yes.

22 Q. And do you recall what the nature of that was, why
there

23 were children killed in the bombing of a federal
building?

24 A. The day-care center.

25 Q. Do you recall how the bomb was placed at the
federal

2013

Juror No. 876 - Voir Dire

1 building?

2 A. In the van.

3 Q. Okay.

4 A. Truck.

5 Q. Excuse me. I'm sorry?

6 A. The Ryder truck.

7 Q. Okay. Do you recall from what you've seen, read,
or heard

8 what the bomb was made of, what the components, what
the

9 allegation was concerning the nature of the bomb?

10 A. Yeah. The fertilizer, nitrates, whatever.

11 Q. Okay. Do you recall how Mr. McVeigh was arrested?

12 A. I believe he was leaving, or based on the hours
from the

13 bomb, they -- I believe they picked him up on the
highway

14 approximately that number of miles he would have
travelled.

15 Q. Okay. And do you recall from what you've seen,
read, or

16 heard how Mr. Nichols initiated contact with the
federal law

17 enforcement authorities?

18 A. No.

19 Q. Do you recall where he was at the time of the
bombing?

20 A. No.

21 Q. Do you have any recollection concerning where or
what he

22 was doing at the time of the bombing?

23 A. No.

24 Q. Do you think that he was with McVeigh at the time
McVeigh

25 was arrested?

2014

Juror No. 876 - Voir Dire

1 A. I thought they found him later.

2 Q. All right. When you say "they found him," what do
you mean

3 by that?

4 A. Or that -- that he was arrested later.

5 Q. And do you recall what the circumstances were, how
he was

6 arrested, or what he was arrested or why he was
arrested?

7 A. Just that he may have been an accomplice.

8 Q. Do you recall how later it was?

9 A. No.

10 Q. What's your understanding of what an accomplice is?

11 A. Perhaps someone that planned the action. They
could have

12 been someone who designed -- help design the bomb or
gather

13 materials or took part in such fashion.

14 Q. Okay. And from what you've seen, read, or heard,
what did

15 you hear about Terry Nichols that led you to state -- I
believe

16 you stated here, "All I've heard is that there is
enough

17 evidence to accuse him as an accomplice."

led 18 What did you hear that the evidence was that
19 Mr. Nichols to be accused as an accomplice?
just 20 A. I just -- I don't believe I heard anything. It was
that 21 the fact that -- you know, I was a juror and he was in
that, 22 same room and just the circumstances. I just concluded
23 well, there must be enough evidence he may be an
accomplice.
that you 24 Q. Okay. I'm a little confused on your answer there;
following 25 were a juror and he was in the same room. I'm not

2015

Juror No. 876 - Voir Dire

1 you there.
need to 2 A. No, I guess I'm just saying that -- I think you'd
3 restate the question.
on page 4 Q. Okay. All right. You stated in your questionnaire
you 5 37 -- and you've already given your definition of what
the 6 understand an accomplice to be, someone who helped plan
stated in 7 bombing, who helped gather the materials, etc. You
8 Question 162, "All I've heard is that there is enough

evidence

9 to accuse him as an accomplice."

10 And I was asking: What did you hear, read,
see

11 concerning Mr. Nichols in relation to being an
accomplice?

12 A. I didn't hear anything.

13 Q. On this same area of questioning on page 33, you
checked

14 off that you've had conversations with other people
concerning

15 the case and that you've heard about it from other
people

16 discussing the case. How many people work with you
where you

17 work?

18 A. I'm probably in constant contact with maybe 25
people.

19 Q. Okay. And do you recall within this past two-and-
a-half-

20 year period, since it's been in the news for that long
-- do

21 you recall conversations you've had with co-workers
concerning

22 the case?

23 A. Sure.

24 Q. Can you give me the substance of the conversations
over

25 this two-and-a-half-year period? I'm not asking you
for you to

2016

Juror No. 876 - Voir Dire

1 recite verbatim what anybody said, but what's been the
2 substance of the conversations over this two-and-a-
half-year
3 period of talking about the case?

4 A. I believe just how terrible it was, the
senselessness of

5 it, the fact that children were killed; that -- I
remember

6 discussing, gee -- oh, about -- we talked about them
destroying
7 the building.

8 Q. By "them," are we speaking of the initial blast or
the

9 one --

10 A. No.

11 Q. The one when it was cleared?

12 A. The one when it was cleared.

13 Q. Okay.

14 A. And just the different specials people would see on
TV and

15 bring out the fact that they saw such and such a
program; and

16 to be honest, it wasn't -- it was casual conversation,
I think,

17 more than anything.

18 Q. All right.

19 A. That I recall.

20 Q. What about the verdict when the death penalty
verdict came
21 in? What was the nature of the conversations amongst
your
22 co-workers concerning the death penalty for that case?
23 A. I think everyone was glad that I talked to.
24 Q. Hear anybody say that that was an inappropriate
verdict?
25 A. No.

2017

Juror No. 876 - Voir Dire

1 Q. What about with your family? Have you discussed
the case?
2 When you list conversations, are you listing just co-
workers,
3 or did you discuss it with friends and your family?
4 A. Yes. Both.
5 Q. What has been the consensus of the conversations
with your
6 friends and family concerning the death penalty
verdict?
7 A. That the punishment fit the crime.
8 Q. Okay. Hear anybody say that that was not the
appropriate
9 verdict for that case?
10 A. No.
11 Q. Now, do you understand from what the Court told you
out at

Nichols 12 the Jeffco Fairgrounds and then this morning that Mr.
stood 13 stands accused of the same offenses that Mr. McVeigh
14 accused of? There are 11 separate charges.
15 A. Would you say that again?
told you 16 Q. Yes, sir. Do you understand from what the Court
Fairgrounds -- 17 on September 17 when we were all out at Jeffco
18 A. Yes.
you. At 19 Q. The Court explained the nature of the charges to
charged 20 that time, the Court told you that Mr. Nichols stands
McVeigh 21 with the same 11 counts, the same offenses, that Mr.
22 stood accused of.
23 A. Yes.
understand 24 Q. And he told you that again this morning; and you
and will 25 that that is what Mr. Nichols is standing accused of

2018

Juror No. 876 - Voir Dire

1 be tried by a jury here in this court.
2 A. Yes.
3 Q. It's the same 11 counts that Mr. McVeigh was

convicted of.

4 A. Yes.

25, 5 Q. I have one other question in another area. On page

would 6 Question 114, this question had to do with what factors

7 be important in determining whether an eyewitness

8 identification was reliable; and you stated,
"Consistency of

9 the story, how close were they, were they impaired,
their

10 relation to the case."

11 I want to talk about impairment. Have you
ever seen

12 or observed anyone under the influence of narcotics?

13 A. Yes.

14 Q. And that is in connection with your job, or just
your

15 day-to-day exposure to people in the community?

16 A. Yeah, day to day.

17 Q. Okay. Are you familiar with the drug
methamphetamine,

18 speed, or crystal, as it's called on the street?

19 A. (Juror nods head.)

20 Q. What's your understanding of what effect that has
on

21 someone?

22 A. Probably very little, except I remember working
with

23 someone who had been on those drugs at a restaurant in

college;

used 24 and basically just like caffeine, just to stay up, they

25 that drug.

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1 Q. All right. So --

2 A. That's about --

3 Q. So your experience with it is it's basically
harmless; it's

4 just like caffeine?

5 A. No, no. I'm not trying to say it's harmless.

6 Q. I'm sorry. I don't mean to put words in your mouth
on

7 that; but it's similar to caffeine, the effect on a
person?

8 A. I -- I would think that it would increase your
metabolism

9 and -- and -- but in such a way that I'm sure it
impairs

10 judgment. I wouldn't -- I can't imagine someone
driving or

11 whatever on it.

12 Q. Are you familiar with what it does to somebody's
13 personality or their truth-telling ability?

14 A. No.

15 Q. Okay. Now, further in the area of publicity, you
said

16 that -- I believe that the -- when you mentioned about
17 triangulating, you said that the press was, what,
unreliable?

18 I can't find the question right -- oh, here it is.
"The news

19 is not objective," and your statement was "A person
needs to

20 listen or read a variety of news sources to triangulate
'the

21 truth.'" And you put "the truth" in quotation marks.
In the

22 next sentence, "The news is not objective."

23 A. I think they try to be, but I think it's just human
nature

24 to place a bias in a story; and when you hear a story
-- I've

25 heard stories where I've witnessed firsthand, and
they've been

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1 very accurate; and there has been other times when they
haven't

2 been accurate. And so, you know, a lot of times you
try to --

3 that's why you listen -- I'll listen to a talk radio
program to

4 try to get the different viewpoints and just see where
5 everybody is coming from.

6 Q. Okay. And your use of the word "triangulate." In

your

7 studies -- and you apparently are interested in a great
deal of

8 things and keep your interest and your intellectual
growth

9 going -- have you ever studied navigation?

10 A. Just a small amount.

11 Q. Tell us what you mean by triangulating.

12 A. I guess navigation would be a good example. If --
well,

13 aviation would be another good one. If you have a wind
blowing

14 and you're in one place and the wind is blowing to
another

15 place, you can see what direction you need to fly to
end up

16 where you want to be. And it's lining up the points to
arrive

17 at your destination, so . . .

18 Q. Would it be fair to say, then, that rather than
rely on one

19 sighting, you're taking different views and trying to

20 triangulate those to get a definite view to get the
truth?

21 You're taking in all sides. Is that correct?

22 A. Yes, and placing a value on each.

23 Q. Okay. And would you say that's fairly
characteristic of

24 your life history up to now, the way you've studied
religion

25 and made your own decisions in the religious field and

made

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and
1 your own decisions in your occupation; you've looked
2 studied various areas and carefully analyzed all the
facts?

3 A. Yeah. I think it's important not to be close-
minded.

4 Q. Okay. Let's talk about the death penalty questions
on page

5 28. In C and D, the question is in C, "What kind of
cases is
6 it appropriate, if ever, to impose the punishment of
life in

7 prison without the possibility of ever being released?"

8 And you gave the answer, "Murder or when a
crime is

9 such that a person is considered a threat to society."

10 And then D, "In what kind of cases is it
appropriate,

11 if ever, to impose a punishment of death?"

12 And you again list, "Murder," comma, "heinous
crimes."

13 Now, in distinguishing those two murder

14 classifications, one where there is life in prison and
the

15 other where there is the death penalty as the
appropriate

16 punishment, I heard you explain to the Court the
distinction
17 that where there is a heat-of-moment murder against a
planned,
18 premeditated murder, that's one distinction you make in
murder
19 cases. Is that correct?
20 A. Correct.
21 Q. And also heard, if I'm correct, that you did not
believe
22 the death penalty was proper for the heat-of-moment
murders;
23 that the life sentence was the appropriate sentence for
those
24 kind of cases. Is that correct?
25 A. Correct.

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1 Q. And then also I heard you say that death penalty
was the
2 appropriate sentence on a planned, premeditated murder
and that
3 life was not the proper sentence for a person found
guilty of a
4 planned, premeditated murder. Is that correct? Is
that what
5 you said?
6 A. Uh-huh. Yes.
7 Q. All right. Do you understand on this case, if the

jury

8 gets to a punishment stage -- and we're certainly not
-- excuse

9 me -- we're not conceding that a jury is going to get
to a

10 penalty stage on this case. We are contesting the
allegations

11 of the Government and will contest them with every
single

12 witness they put on the witness stand. But the Court
explained

13 to you that in the event a guilty verdict is returned,
we can't

14 stop the crime -- the trial then and then start talking
to the

15 jurors about their views on punishment; we have to do
this

16 before the trial even starts, and that you are to keep
in mind

17 that Mr. Nichols is presumed guilty -- excuse me --
presumed

18 innocent as he stands now. Is that correct?

19 A. Correct.

20 Q. Now, you understand that we're not going to get to
a

21 punishment phase until a jury finds Mr. Nichols guilty
of

22 murder involving those eight federal agents by
premeditation,

23 intent, and deliberateness.

24 MR. MACKEY: Judge, objection to that
statement.

25

THE COURT: Overruled.

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1 BY MR. WOODS:

2 Q. Do you understand where we would be in the event
that we

3 got to a penalty stage in this case; that the jury
would have

4 already made the decision that it was planned,
premeditated,

5 intentional and deliberate involving murder of
individuals?

6 A. Yes.

7 Q. And that the decision then by the jury would be the
proper

8 punishment to assess for those murders.

9 A. Yes.

10 Q. Now, my question is to you: Based on the answers
that

11 you've given to the Court, do you believe that the
death

12 penalty is the proper sentence to assess on a case
where there

13 is planned premeditation and not life imprisonment?

14 A. Yes.

15 Q. Okay.

16 MR. WOODS: Thank you, sir; and I appreciate
you

17 answering my questions.

18 VOIR DIRE EXAMINATION

19 BY THE COURT:

20 Q. I have to follow up a little on your answers,
because there

21 is some confusion in my mind with respect to your mind.
And

22 with respect to the matter of -- that you were asked
about with

23 Mr. Woods here about FBI agents or other law
enforcement agents

24 and their training and that they are more credible than
other

25 people, do you think, or people who haven't had such
training?

2024

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1 A. Well, my feeling is your tendency is to accept
their

2 testimony more so than someone else, but that doesn't

3 necessarily mean that what they saw is true. I mean,
you know,

4 there is a certain value you have to place on their
judgment.

5 Q. Do you remember instructions about credibility of
witnesses

6 or believability of witnesses and how a jury should
consider

7 that when the judges in those other trials gave you

8 instructions?

9 A. Yes.

10 Q. And as I understand from what you've said here, you
didn't

11 have -- well, you had a police officer in one of them

12 apparently, a local police officer, who testified to
what he

13 found at the scene or something.

14 A. Yes.

15 Q. But you didn't have FBI agents or a number of
police

16 officers. I mean, would it be fair to say that what
the police

17 officer testified about was pretty direct and not
controverted?

18 A. Yes, I believe so.

19 Q. In a case where, you know, the testimony of
witnesses is

20 controverted and may conflict with other witnesses and
what

21 they have to say -- now, the instruction that we give
to juries

22 in those situations; and really, it's a standard
instruction --

23 is that you have to judge the credibility of the person
as a

24 person and what he or she says as testimony the same:
They're

25 all subject -- everybody is subject to the same tests,
as it

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1 were, to be applied by the jury, regardless of who they
are.

2 And law enforcement people have to be evaluated as
witnesses

3 and their testimony the same as anybody else. You
know, this

4 is a little different from what you say the inclination
is,

5 because you have to consider everything that is
involved in the

6 case.

7 A. I guess when I speak of an inclination, to me,
that's an

8 emotional reaction to testimony; and, you know, of
course in my

9 profession, I have to be objective in what I do at
times. And

10 so, you know, that's the other part of it, is trying to
be

11 objective and look at that.

12 Q. And when you say "be objective," do you mean set
aside

13 these emotional reactions or impulses?

14 A. Yeah. At times, yes.

15 Q. So, you know, I just want to find out from you
whether you

16 can set aside that sort of "inclination," as I think
you called

17 it, and judge FBI agents just like the same as anybody

else.

18 A. Yes.

19 Q. And similarly, coming back to this question of life
or

20 death, now, you know, Government counsel asked you some
more

21 questions about that and defense counsel asked you some
more

22 questions about that, and you were taken back to what
you said

23 in your questionnaire. Before, I have talked with you
about

24 the process and the procedure and how the jury goes
about

25 deciding punishment in a sentencing decision after a
sentencing

2026

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1 hearing. Do you recall?

2 A. Yes.

3 Q. I mean, sure you recall. It was just a few minutes
ago.

4 But -- and you just now answered about premeditated
murders,

5 death is appropriate.

6 A. Yes.

7 Q. Or something like that.

8 A. Yes.

9 Q. I'll come back to the more general question; and
that is,
10 given that view, the requirement of jurors -- and some
people
11 can do this and some people can't -- you know, because
some
12 people have preformed conceptions that get in the way
of it;
13 some people have religious conceptions or beliefs that
get in
14 the way of it. But the question that you must answer
for us is
15 whether you could do and can do this matter of weighing
16 everything that you hear and considering everything you
hear
17 and give consideration in deciding life or death to not
only
18 the circumstances of the offense, like premeditation,
how many
19 people, all of those things could be circumstances of
the
20 offense, but also the background and individual
characteristics
21 of the defendant.

22 A. Yes.

23 Q. So --

24 A. I could.

25 Q. You know, you have to focus on all of those things,
not

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1 just on any one thing.

2 A. Right.

3 Q. And are you telling us that you can do that with an
open
4 mind?

5 A. Yes, I believe I can.

6 THE COURT: Okay. Well, we're done with all
this
7 questioning of you now; and I'm not going to be able to
answer
8 the question that you have, which is "When am I going
to know?"

9 I mean, I know that's a question in your mind, as it is
all of
10 the people who come in here and talk with us; but I
can't tell
11 you today. We're not making these choices as we go
along, so
12 there will be a type of uncertainty when you won't know
whether
13 you will serve on this jury.

14 What I must ask of you and indeed direct you
to do is
15 to continue to do as you did when you left the
fairgrounds out
16 there when we last were together and you answered these
17 questions in writing. Please stay away from publicity
about
18 the case or anything that may relate to it and, you
know, the

the
here.
that.
with it
called upon
this case

19 broad scope of what we're talking about as a result of
20 questions that have been asked you, both in writing and
21 So, you know, it's a lot to ask; but we want you to do
22 And don't talk about the case or anything in connection
23 with your wife or co-workers or anybody, so that if
24 you can come back into this room, sit in judgment of
25 and decide fairly.

2028

1 Will you do that?
2 JUROR: Yes.
3 THE COURT: All right. As I say, we can't
tell you
something
that, you
4 when, but we'll be back in touch with you. If
5 happens that takes you out of town or anything like
6 have the number to call to let us know.
7 Thank you. You're excused for now.
8 Well, I'm going to recess now. I mean, I've
got a
longer
9 meeting unfortunately, so that I've got to take a bit

going to -- 10 again for the noon recess than I would like; so I'm

recess 11 let's see, it's five minutes to 12. About 1:25. We'll

12 till 1:25.

name of 13 Excuse me. Before we leave, I do have the

14 that other person given by counsel.

counsel and 15 MR. TIGAR: Yes, your Honor. Government

juror 16 Mr. Nichols' counsel have agreed on who that -- which

17 number that was, yes.

can just 18 THE COURT: Are we also in agreement that I

19 hand that name to the -- she's up next, I think.

20 MR. TIGAR: Yes, your Honor, she is.

someone she 21 THE COURT: And simply ask her if this is

22 works with?

sorry. 23 MR. TIGAR: Right. And may she also -- I'm

24 MR. MACKEY: Standing to agree, Judge.

25 THE COURT: Go ahead.

2029

1 MR. TIGAR: We would have no objection to

2 Mr. Manspeaker saying that just as we refer to the
juror we're
3 talking to by number, we're also going to talk to that
person
4 by number. If, indeed, they are co-workers, we
wouldn't want
5 the name to slip out.

6 THE COURT: Well, I'll mention that to her.
That's
7 why we're giving it to you in writing instead of asking
you
8 outright.

9 MR. TIGAR: Yes, your Honor.

10 THE COURT: Okay. What did I say? 1:25?

11 MR. RYAN: 1:25, your Honor.

12 THE COURT: Thank you. Recess.

13 (Recess at 11:57 a.m.)

14 * * * * *

15

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15 REPORTERS' CERTIFICATE

16 transcript from

We certify that the foregoing is a correct

Dated 17 the record of proceedings in the above-entitled matter.

18 at Denver, Colorado, this 8th day of October, 1997.

19

20

Paul Zuckerman

21

22

Kara Spitler

23

24

25