

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

ff

9
 10 REPORTER'S TRANSCRIPT
 (Trial to Jury: Volume 22)

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12 Proceedings before the HONORABLE RICHARD P.
 MATSCH,
 13 Judge, United States District Court for the District of
 14 Colorado, commencing at 1:20 p.m., on the 10th day of
 October,
 15 1997, in Courtroom C-204, United States Courthouse,
 Denver,
 16 Colorado.

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23
24
Transcription
Street,
629-9285

Proceeding Recorded by Mechanical Stenography,
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1 APPEARANCES
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3 District of Oklahoma, 210 West Park Avenue, Suite 400,
Oklahoma
4 City, Oklahoma, 73102, appearing for the plaintiff.
5 LARRY MACKEY, SEAN CONNELLY, BETH WILKINSON,
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6 MEARNS, and JAMIE ORENSTEIN, Special Attorneys to the
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7 Attorney General, 1961 Stout Street, Suite 1200,
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8 Colorado, 80294, appearing for the plaintiff.
9 MICHAEL TIGAR, RONALD WOODS, ADAM THURSCHELL,
and
10 REID NEUREITER, Attorneys at Law, 1120 Lincoln Street,
Suite
11 1308, Denver, Colorado, 80203, appearing for Defendant
Nichols.

12 * * * * *

13 PROCEEDINGS

14 (Reconvened at 1:20 p.m.)

15 THE COURT: Please be seated.

16 Juror 452.

17 Will you please raise your right hand and take
the

18 oath from the clerk.

19 (Juror No. 452 affirmed.)

20 THE COURTROOM DEPUTY: Thank you.

21 THE COURT: If you'll be seated, please, by
the

22 microphone in that chair which you can move around a
little to

23 be comfortable. You don't have to talk right into the

24 microphone; anywhere near will do.

25 VOIR DIRE EXAMINATION

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Juror No. 452 - Voir Dire

1 BY THE COURT:

2 Q. Well, now, you know that the case now on trial
referred to

3 in the oath that you just took is the case of the
United States

4 against Terry Lynn Nichols?

5 A. Yes.

6 Q. And that you received a summons for possible jury
service
7 on this case, answered a short questionnaire about you,
and
8 then received a notice to appear at the Jefferson
County
9 Fairgrounds' auditorium building on September 17th, and
you
10 were there.

11 A. Yes.

12 Q. Along with a number of others, and I was there,
too, with
13 some other people and introduced them to you after
introducing
14 myself; and they're here again today. And I want to
15 reintroduce them so you know who's here with us this
afternoon.

16 Beginning with the attorneys for the
Government:

17 Mr. Lawrence Mackey and Ms. Beth Wilkinson were with
us; and
18 then they're joined this afternoon by Mr. Patrick Ryan
and
19 Mr. James Orenstein for the Government.

20 You met Mr. Michael Tigar and Mr. Ronald
Woods,
21 attorneys for Terry Nichols; and Mr. Nichols is here.

22 And then I explained to you and the other
people who
23 were with us the background of the case, how it arises
from an
24 event that took place in Oklahoma City, Oklahoma, on

April the

25 19th of 1995, when there was an explosion destroying a
federal

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Juror No. 452 - Voir Dire

1 office building and resulting in death and injury to
people who
2 were in that building. And then after that, charges
were filed
3 in Oklahoma City, in the Federal Court there by the
Government,
4 Department of Justice lawyers, and that these charges
in the
5 form of an indictment, which I explained is just a
statement of
6 the charges, alleged that a man named Timothy James
McVeigh,
7 together with Terry Lynn Nichols and other persons who
are not
8 named in the indictment, were involved in a conspiracy
to cause
9 that building to be bombed and destroyed and the people
killed
10 and injured; that the indictment further alleged acts
to carry
11 out such a plan and include -- included in the charges
are
12 eight counts or charges of first-degree murder of law
13 enforcement agents who were in the building. And to
these

14 charges, the accused persons pleaded not guilty. And
it is as

15 a result of that, of course, that the issues were
created to be

16 resolved by trial to jury -- to a jury.

17 And I then explained that in the procedural
history of

18 the case, it was transferred from Oklahoma to Colorado,
here to

19 this court, because of a concern about trial there and
a jury

20 having to serve there in the midst of the community
where this

21 event happened.

22 And then after the case was moved here to
Denver, I

23 entered orders separating the cases for trial; that is
to say,

24 assuring that Mr. McVeigh and Mr. Nichols would have
separate

25 trials so that the evidence could separately be
considered as

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Juror No. 452 - Voir Dire

1 it related to each of them and a separate jury decide
with

2 respect to each of the accused.

3 And of course as I'm sure you were aware
before I told

4 you -- or probably were -- there has been a trial of

the

5 evidence as it relates to Timothy McVeigh, and a jury
in that
6 case earlier in this year found him guilty; that is,
found the
7 evidence proved him guilty. Then there was another
trial on
8 the question of punishment, and that jury decided that
death
9 was the punishment for him. You know all those things?

10 A. Yes.

11 Q. And then I explained that nothing that happened at
that
12 trial and certainly not the outcome of that trial,
either the
13 guilty verdict or the death sentence, could in any way
be
14 considered with respect to the case against Mr. Nichols
and
15 that we start over and nothing that happened before can
be
16 considered now by any jury selected for this trial
because, you
17 know, that was the whole reason for separate trials:
So that
18 the evidence would be separately considered. And that,
I made
19 clear, I think, before asking you and the other people
to fill
20 out jury questionnaires. And you have your
questionnaire as
21 you've completed it in front of you now.

22 A. Yes.
23 Q. I'm sure you remember going through all of these
questions
24 and perhaps expressing in your own mind some surprise
at some
25 of the things that we asked you; and it's certainly
possible

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Juror No. 452 – Voir Dire

1 that you also were concerned that some of the things
that you
2 were asked about are quite personal and private. And
we
3 understand that and, accordingly, have taken all of the
steps
4 that we can to preserve your privacy and protect it;
and it is
5 for that reason that we have referred to you here
officially by
6 a number and will not be using your name in this
proceeding and
7 also, you know, caused you to be transported to and
from the
8 court without anybody having a chance to view you or
take your
9 picture or the like.

10 Now, these answers that you gave us have been
copied
11 and given to the people in front of you here with the
12 protection that of course we're not using them -- or

going to

13 give them to anybody else or use them for any purpose
other

14 than what we're doing right now. And you should
recognize that

15 we are now in open court and that everything that is
said and

16 done here is public and can be reported publicly. And
it is

17 for that reason, as I go through some questions with
you -- and

18 also counsel have the opportunity to ask you some
questions --

19 we'll try to be cautious and not use specific names if
it would

20 cause somebody to recognize you or understand. So I
just give

21 you that general background.

22 I want to also review with you before asking
you a few

23 questions -- and please be assured we're not going to
go

24 through this whole questionnaire with you; you're not
going to

25 get all these questions over again -- but we do want to
explore

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Juror No. 452 - Voir Dire

1 a few of your answers and then some questions in
addition to

2 what you've already been asked. And you understand the
3 importance of this process because a fair trial is the
4 objective?

5 A. Yes.

6 Q. And a fair trial begins with a fair-minded jury.
And there
7 are other aspects to the criminal justice system that I
just
8 want to review with you again to make sure that you
understand
9 them and are prepared to follow them if called upon
here. And
10 these are things that I said out there at the
fairgrounds, too,
11 but I know looking ahead to having to answer the
questionnaire
12 and so forth, you may not have heard every word and
absorbed
13 it, but I just -- you know, we want to build on the
foundation,
14 and the foundation is what are the fundamental
principles of
15 our law under the United States Constitution. That's
where
16 it's rooted. And what we start with is that each
person who is
17 accused in courts in the United States is presumed to
be
18 innocent of the charges made against that person
regardless of
19 what they are and who the people are. You understand
that?

20 A. Yes, sir.

21 Q. And that presumption of innocence carries
throughout the

22 trial and entitles the defendant to a verdict of not
guilty and

23 acquittal unless a jury, hearing and considering the
evidence

24 and following the law, decides the evidence proves that
person

25 guilty of the particular crime charged and proves it
beyond a

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Juror No. 452 - Voir Dire

1 reasonable doubt, not just more likely so than not so,
but

2 beyond a reasonable doubt. You understand that?

3 A. Yes, sir.

4 Q. And no person who is charged in a criminal case has
any

5 burden or duty of calling any witnesses or introducing
any

6 evidence. There's no obligation on the defendant in a
case to

7 prove himself or herself not guilty. You don't have to
prove

8 anything. You don't have to call any witnesses or
offer any

9 exhibits. No person has to take the witness stand and
testify

10 in response to any questions or to make any explanation

to a

11 jury. You understand that?

12 A. Yes.

having

13 Q. So it is that the Government through its lawyers

It is

14 made the charges against the accused has to prove them.

claim. And

15 up to the prosecutors to bring in the exhibits and the

16 witnesses that they rely on in support of what they

court

17 then at the end of the trial, having heard it all, the

have to be

18 gives instructions to the jury about the things that

19 proved -- we often refer to them as the elements of the

-- and

20 offense, exactly what has to be proved for each offense

heard

21 then asks the jury, you know, did the evidence that you

doubt. All

22 prove this to your satisfaction beyond a reasonable

23 jurors must agree. The verdict must be unanimous.

24 And if there is at the time a reasonable doubt

the

25 remaining after considering all of the evidence, then

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Juror No. 452 - Voir Dire

and the

1 defendant must get the benefit of that reasonable doubt

2 jury must return a verdict of not guilty. You
understand that?

3 A. Yes, sir.

4 Q. And do you accept that as principles of our law
that you

5 would follow if you were to serve in this jury?

6 A. Yes.

7 Q. Now, I want to discuss with you a little about some
of the

8 things that you have told us here and something about
your

9 background, what you -- you know, your life's
experiences that

10 you bring to us. One of the things that I was --
noticed here

11 on page 4 is that on Question 18, you take a daily
medication.

12 A. Uh-huh.

13 Q. And does that medication work in terms of
preventing the

14 condition that you take it for?

15 A. Yes.

16 Q. How long have you been taking this medication?

17 A. Five years.

18 Q. And it's -- I guess the word is "work" -- it's been
working

19 for that --

20 A. Yes.

21 Q. -- and you've avoided this difficulty?

22 A. Uh-huh.

23 Q. And before that, did you have times when this was
-- this

24 condition was disabling for a day or two days --

25 A. Yes.

2571

Juror No. 452 - Voir Dire

1 Q. -- or so?

2 A. Yes.

3 Q. Ever require hospitalization for it?

4 A. No.

5 Q. But certainly interfering with your ability to do
the

6 regular, daily --

7 A. Yes.

8 Q. -- routine?

9 Are there any kind of side effects to the
10 medication --

11 A. No.

12 Q. -- that affects your, you know, ability to sit and
hear and

13 listen?

14 A. No, sir.

15 Q. Okay. You were born in Illinois?

16 A. Yes.

17 Q. But then apparently your family came out to
Colorado while

18 you were still in school.

19 A. Yes.

20 Q. And you finished school in Greeley, high school I
mean?

21 A. Yes.

22 Q. And then you also went to college there.

23 A. Yes.

24 Q. And you also went for, what, one year back to
Lincoln,

25 Illinois?

2572

Juror No. 452 - Voir Dire

1 A. Yes. My family moved back there.

2 Q. Okay. So was that -- did you go to that school in
Lincoln

3 before you went to Northern Colorado?

4 A. No, after.

5 Q. After. And then you also at a later time took up
this

6 travel school.

7 A. Yes.

8 Q. And which is, as I understand it, a place training
people

9 for work in travel agencies and travel guides and so
forth?

10 A. Yes.

11 Q. Which indeed you then did for a time, I guess?

12 A. Uh-huh.

13 Q. Because under your employment history here on page
9, you

14 tell us about several travel positions -- travel
industry

15 positions that you have.

16 A. Yes.

17 Q. Now, would these jobs be -- should we understand
these to

18 be, you know, what we think of as a travel agent,
arranging

19 trips for people and getting tickets and all that?

20 A. Yes.

21 Q. Was there a time that you were a travel guide:
Where you

22 went with groups --

23 A. No.

24 Q. -- on particular trips? So you're sending others
out and

25 didn't go with them?

2573

Juror No. 452 - Voir Dire

1 A. Yes.

2 Q. And the last time you worked in that kind of a
position

think 3 was -- well, you say here travel leader, consultant. I

were then 4 that's what I was uncertain about, as to whether you

"travel 5 actually with groups who were traveling. What does

6 consultant" mean?

7 A. Planning trips for individuals.

trip to 8 Q. All right. If somebody wanted to say, I want a

them? 9 here or there, you can go through the whole thing with

10 A. Yes.

kind of 11 Q. And so 1995 was, what, the last time you did that

12 work?

13 A. Yes.

14 Q. And then you went to public schools?

15 A. Yes.

Question 40, 16 Q. And now you're working there where it says on

clear 17 and I think your description of what you do there is

18 enough.

we're 19 And the people -- the age group here that

eighth? 20 talking about is, what, the people in seventh and

olds. 21 A. Sixth, seventh, and eighth, 11-, 12-, and 13-year-

22 Q. Now, you were and are now divorced?

23 A. Yes, sir.
24 Q. During your marriage, your husband was in the Air
Force?
25 A. Yes.

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Juror No. 452 - Voir Dire

I take 1 Q. And page 6 tells us the different places you lived.
2 it the time you were in Germany was when he was
assigned there;

3 is that correct?

4 A. Yes.

including 5 Q. And you mention a number of other places here,

6 Enid, Oklahoma?

7 A. Yes.

also? 8 Q. Is that in connection with the Air Force duties,

9 A. Yes.

10 Q. And California and Virginia?

11 A. Uh-huh.

12 Q. And Arizona?

13 A. Yes, sir.

-- 14 Q. And New Mexico: All of these places were Air Force

15 A. Yes.

were 16 Q. -- assignments? And how long ago was it that you
17 divorced?
18 A. Four years ago.
19 Q. And you have three children --
20 A. Yes.
21 Q. -- two of them at home with you now?
22 A. Yes.
very 23 Q. There is some of these things that I want to be
we don't 24 careful about and for you to answer carefully because
25 want to cause you any distress, undue distress.

2575

Juror No. 452 - Voir Dire

1 Page 22, Question 102.
2 A. Okay.
you: 3 Q. All right. Now, how long ago is this -- let me ask
4 How old was your daughter?
5 A. 14.
6 Q. And this was, as you say, a school acquaintance?
7 A. Yes.
8 Q. Was there any sort of criminal action for that?
9 A. No.
10 Q. And it did cause, of course, some concern and

distress, I

11 assume?

12 A. Yes.

13 Q. Obviously. Was there any requirement that she have
some

14 professional counseling or something?

15 A. She did have some.

16 Q. And how is she now?

17 A. She's fine.

18 Q. Okay. And as you look back on this, you know, it's
not the

19 kind of thing I would say, well, are you over it,
'cause things

20 like that stay with you. But is there anything that
you see

21 about that entire experience that you see influencing
you as a

22 juror --

23 A. No.

24 Q. -- sitting in judgment of others?

25 A. No.

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Juror No. 452 - Voir Dire

1 Q. Okay. And with respect to your husband's
education, you

2 mentioned that he went to the university in Oklahoma
City?

3 A. Yes.

4 Q. Did you know him then?

5 A. Yes, we were married.

6 Q. You were married?

7 A. Uh-huh.

8 Q. So you lived in Oklahoma City?

9 A. No, we were living in Enid, and he was commuting to
10 Oklahoma City two nights a week to classes.

11 Q. Okay. He was in the Air Force?

12 A. Yes.

13 Q. Taking classes at night in Oklahoma City?

14 A. To get his master's.

15 Q. I understand. What was the course -- academic
course he

16 was proceeding to get a master's?

17 A. Business.

18 Q. Was that sort of looking to the time that he got
out of the

19 Air Force?

20 A. Just to further his education.

21 Q. Okay. You -- excuse me. I'm a little confused
about --

22 back on 22 again -- the Question 101, where you first
answered

23 no, and then you gave an explanation, which would
suggest your

24 answer was intended to be yes.

25 A. Yes.

Juror No. 452 - Voir Dire

1 Q. Is that right?

2 A. Yes.

3 Q. Okay. And how long ago was that?

4 A. 18, 19 years ago.

5 Q. Okay. And the place completely different from
where you

6 are now?

7 A. Oh, yes.

8 Q. All right. Now, on page 36, with respect to
Question 157

9 and your sister being over in Oklahoma City on
business, I

10 guess, a business trip.

11 A. Yes.

12 Q. And she went to the site where this explosion
occurred --

13 A. Yes.

14 Q. -- and the building was?

15 And about how long ago was that?

16 A. It was probably six months after the fact.

17 Q. All right. So still in 1995 --

18 A. Yes.

19 Q. -- at the end of the year?

20 Did she talk to you about that experience?

21 A. No, not really.

Where 22 Q. What is your -- this sister you're referring to:

23 does she live?

24 A. Here in Denver.

25 Q. Are you pretty close to her?

2578

Juror No. 452 - Voir Dire

1 A. No.

2 Q. Well, is there anything from her visit -- and we
3 appreciate, you know, that we asked you to tell us
whether it

4 was significant or not significant -- is there anything
about

5 that that would be significant for us to know?

6 A. No.

7 Q. And we want to ask you a bit about what would be
involved

8 in your role as a juror if you served in the case. And
of

9 course we've already been through what juries do,
basically,

10 hear and decide on the evidence. And have you ever
been in --

11 you know, in court watching a trial or --

12 A. No, I have not.

that? 13 Q. -- or watched a trial on television, anything like

14 A. No.

15 Q. Okay. So this is new to you, I mean --

16 A. Yes.

17 Q. And the normal thing is in a criminal case, the jury hears

18 the trial, hears the evidence, and then makes the decision:

19 Proved or not proved, or guilty or not guilty. And in cases

20 that do not involve the possibility of punishments by being put

21 in prison for life without ever getting released from it or

22 death, the jury then has completed its task once it's returned

23 a verdict, whatever that verdict is. If it's not guilty,

24 obviously that's the end of it all. If it's guilty, the jury

25 then is discharged and the question of the sentence, the

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Juror No. 452 - Voir Dire

1 punishment, is a matter for the judge. You understand that as

2 a general proposition?

3 A. Yes.

4 Q. And the judge doesn't just make a decision after
hearing
5 the evidence like the jury did. The judge goes on with
the
6 matter and has another hearing at a later time on the
question
7 of sentencing. And before a sentence is arrived at,
more
8 information is collected and presented to the judge,
and that
9 includes more information about the circumstances of
the crime
10 and its impact and its effect on other people, all of
those
11 things. And then also information is gathered about
the
12 defendant who has been found guilty, and that
information is
13 these personal things about that person, sort of like
what we,
14 you know, ask about jurors but more, because before
deciding
15 the individual sentence, the Court wants to know all it
can
16 about the defendant, that person's life story, as it
were, the
17 childhood, the growing up, the family relationships,
marriage
18 relationships, whether there was any prior involvement
with the
19 law and the courts, employment history, what a person
has
20 contributed or not to society, all of those things that
each

21 one of us has as our own personal story.

22 And then the judge at a hearing listens to the
23 prosecutor and the defense and considers all of these
things
24 and makes a judgment about what is the just sentence
for that
25 person, not just for the crime but for the person, too.

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Juror No. 452 - Voir Dire

1 Combination of the crime and the person. Understood?

2 A. Yes.

3 Q. And the sentencing then is made uniquely to that
person, so

4 there are certainly situations where two or more people
are

5 guilty of the same crime, sometimes tried together,
even, but

6 the sentences are different because the sentences
depend on

7 more than the criminal conduct that was involved. Do
you

8 understand?

9 A. Yes.

10 Q. Now, when the choice becomes one of life or death
because

11 of the nature of the crime and under the statutes
involved, the

12 punishment of death or life in prison without release

is

13 available -- I mean it's -- must be considered -- we do
not

14 give that to a judge to decide here in the Federal
Court.

15 There are differences in some of the states. Some
states don't

16 have death punishment at all; do you understand?

17 But now we're in Federal Court, and we have to
follow

18 federal law as it is given to us. And the law in
Federal Court

19 is that we rely on a jury to decide punishment like
this, and

20 the choices that are to be made by a jury in such a
case are:

21 Should the defendant be put in prison for life without
any

22 chance of ever being released, should the defendant be
put to

23 death, or should there be some lesser sentence. And if
that be

24 the choice, it goes back to the judge and goes through
the

25 judging process by one individual judge, but the life-
or-death

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Juror No. 452 - Voir Dire

1 decision is for the jury.

2 And it is for that reason that we ask you some

of your

3 views with respect to the appropriateness in your mind
of such
4 sentences to life in prison and death; and that's why
these
5 questions were given to you on page 27 and 28, and you
wrote
6 your answers on 28 and 29.

7 You've reread them?

8 A. Yes.

9 Q. And you understand there was a preface to all this
that
10 started over on the preceding page going through, look,
by
11 asking these questions, we're not trying to suggest
what the
12 outcome of the case would be, that there would be a
guilty
13 verdict. Obviously we don't know that, and we operate
on the
14 presumption that the defendant is not guilty. But we
have to
15 select our jury before we start, and therefore we need
to know
16 some things before we start the trial; and that's why
we have
17 to look at all the possibilities here.

18 And then you were asked: Regardless of what
the law
19 might be or the process, just what you think about
these
20 punishments. And I take it you answered in that

spirit?

21 A. Yes.

22 Q. And you made a distinction here in A and B -- a
couple of

23 distinctions -- one of them being on the question of

24 premeditated. Right?

25 A. Yes.

2582

Juror No. 452 - Voir Dire

1 Q. And then you also had in B an emphasis on if
children are

2 involved.

3 A. Yes.

4 Q. You mean by that children were killed?

5 A. Yes.

6 Q. And then C, you say, well, you don't know. And in
D, you

7 make a pretty strong statement: "If a life has been
taken,

8 they do not deserve to live."

9 Now, you know, I interpret that as sort of
10 an-eye-for-an-eye statement?

11 A. Uh-huh.

12 Q. Is that your meaning?

13 A. Yes.

14 Q. Have you thought about your views in this regards

since you

15 filled out the questionnaire?

16 A. No.

17 Q. If we asked you the same questions exactly in the
same way

18 today, would you give us the same answers?

19 A. Probably.

20 Q. Is it a subject that you've thought about very much
over

21 time, I mean before you did the questionnaire?

22 A. No.

23 Q. And of course you know, I'm sure, that there's a
lot of

24 disagreement about the question of whether the law
should take

25 a life. There are people who feel very strongly, no,
that

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Juror No. 452 - Voir Dire

And 1 never, it's not up to courts to judge, people to judge.

Yes, 2 then there are views -- people who very strongly say:

3 pretty much what you said, life for life. And then
there's a

4 lot of in between.

5 And this subject becomes a matter of sort of
public

6 debate and discussion sort of every time -- it comes up
every
7 time somebody offers legislation to change the law,
obviously.
8 But it often comes up every time that a death penalty
is about
9 to be carried out somewhere. And that's true here in
Colorado,
10 as you probably are aware. A man has been sentenced to
death
11 by a state court, and that judgment is to be put in
effect next
12 week, actually. And you knew that without my telling
you;
13 right?

14 A. Yes.

15 Q. 'Cause you've seen some of that?

16 A. Yes.

17 Q. I mean some of the publicity about it. Have you
read that
18 in any depth, the things that have been in the paper
and on the
19 news about people expressing opinions about whether
that
20 sentence should be carried out or about whether the
death
21 penalty is a just and appropriate sentence?

22 A. I have listened to the news on TV about it, and I
am in
23 agreement with what they've decided.

24 Q. The jury in that case?

25 A. Yes.

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Juror No. 452 - Voir Dire

1 Q. How much do you know about that case?

2 A. Probably not very much, 'cause I believe it
happened before

3 I was living here.

4 Q. Okay. So what you know about is what you've read
in recent

5 material?

6 A. Yes.

7 Q. Now, of course, I want to review with you just what
is

8 involved in court, in Federal Court now, with respect
to how

9 this issue can arise and what the jury must do. You've
told us

10 coming in some views and attitudes, but now I want to
talk with

11 you about what is actually required and then explore
your

12 ability to do that.

13 What the law says is if there's a guilty
verdict, then

14 the jury must hear more, and there is indeed a second
stage or

15 hearing -- second trial, really, that proceeds just
like the

16 trial of the evidence. And it's at that second trial

that

17 information is given to the jury about the question of
18 punishment, and it proceeds a lot like what I've
explained to
19 you about judge sentencing. It is case specific, both
with
20 respect to the crime and the defendant.

21 So we have in such situations the Government
lawyers
22 presenting information which suggests to the jury that
death is
23 the deserved punishment for the crime and the
defendant. And
24 we have presented to the jury from the other side --
excuse
25 me -- the defense side, information that suggests to
the jury

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1 that death is not deserved for this particular person.
And
2 again, it is not a question of the crime, but it's the
crime,
3 the circumstances of it, and the defendant and his
individual
4 circumstances and the things that -- you know, that
I've talked
5 about that are individual to him.

6 And then the Court gives instructions about
how to do

7 this, but they're not all that specific because there
isn't any
8 kind of formula or equation or anything like that; but
what the
9 Court's instructions in such a situation are is, first
of all,
10 identifying for the jury, based on what's been
presented now,
11 in this penalty trial, what the jury may consider and
discuss
12 as what we call aggravating factors, basically the
things that
13 are offered by the Government lawyers in support of the
death
14 sentence, and then all of the mitigating factors,
basically the
15 things that are offered by the defense. But, you know,
it's
16 explained to the jury in some detail at that point what
these
17 factors are based on that information.

18 Now, we can't give you those now, obviously,
because
19 first of all, we've got a trial to do to decide whether
there's
20 even any question here that there is a guilty verdict.
And,
21 you know, we can't even outline what the evidence at
the trial
22 may be because, you know, whatever you may have heard
or read
23 about the evidence in the McVeigh trial may not be the
evidence

24 in this trial; that's separate. Well, so, of course,
what can
25 be offered in mitigating and aggravating factors: We
do not

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1 know now. So it isn't a question of saying what do you
think
2 about this or what do you think about that. We have to
talk in
3 generalities.

4 But the important thing is the ability of
jurors to
5 hear, consider, and decide, only after hearing all of
it and
6 considering all of it. The instructions give to the
jury some
7 questions to be asked. They sort of help guide the
jury
8 through these factors. But in the end, it comes down
to an
9 individual judgment by the jurors. They talk about it
and what
10 they've seen and heard. But then each juror must
finally make
11 an individual judgment, which I guess we would say is a
moral
12 judgment, a reasoned, moral response to all that has
been
13 heard; not just the crime, but the crime and the

circumstances

14 of the defendant.

15 You've listened very carefully, I know. Do
you have

16 any question about my explanation of the process?

17 A. No.

18 Q. Then the question that I must ask of you is
considering all

19 that I have said now, do you believe that if you served
on the

20 jury and if there were a punishment hearing, that you
will be

21 able to base your decision about whether the defendant
should

22 be sentenced to life or death on his personal
background,

23 individual characteristics, all of these factors that
may be in

24 the case as well as the circumstances of the crime?

25 A. Yes. I do.

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1 Q. And that in a way, you know, involves altering I
think what

2 you said here about your view of the appropriateness of
death

3 as a sentence, because now we're talking about the law
as it

4 is, not as you would perhaps have it. Do you

understand --

5 A. Yes, I do.

6 Q. -- the distinction I have made?

7 A. Yes.

8 Q. All right.

9 THE COURT: Now, lawyers for both sides have a
chance

10 to ask you some more, so please bear with us a bit
longer and

11 answer their questions as you have mine.

12 JUROR: Okay. Thank you.

13 THE COURT: Mr. Ryan.

14 MR. RYAN: Thank you, your Honor.

15 VOIR DIRE EXAMINATION

16 BY MR. RYAN:

17 Q. Good afternoon.

18 A. Hello.

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

20 Oklahoma City, and I am here with my fellow prosecutors
to

21 present the evidence that we have against Mr. Nichols.
I'd

22 like to ask you just a few personal questions, and then
we'll

23 talk about some of the issues that Judge Matsch has
just spoken

24 to you about.

25 A. Okay.

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1 Q. Now, you have a 15-year-old daughter at home?

2 A. Yes.

3 Q. And is that a coincidence that you're reading Get
Out of My

4 Life, But First Can You Take Me to the Mall (sic)?

5 A. Yes. It was a book from school. It's very
appropriate.

6 Q. What is the basic idea behind the book? I've not
read it.

7 A. It's pretty much a comedy, just how you can deal
with your

8 teenage children and keep an open mind, a sense of
humor.

9 Q. You try to do that?

10 A. Yes. Being a single parent, I do, yes.

11 Q. It's a big load, isn't it --

12 A. Uh-huh.

13 Q. -- to work and with two children at home; correct?

14 A. Yes.

15 Q. Now, your older son, he's in college now?

16 A. Yes.

17 Q. And where does he go to college?

18 A. To the community college. Here in Aurora.

19 Q. Does he work part-time?

20 A. Yes.
21 Q. Where does he work?
22 A. For a mortgage company.
live? 23 Q. All right. Now, where does your oldest daughter
24 A. In Aurora.
25 Q. So she lives in the area as well?

2589

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1 A. Yes.
2 Q. Do you see her from time to time, I guess?
3 A. Yes, I do.
Base 4 Q. And you were at Enid, Oklahoma, at Vance Air Force
5 there, in the mid 70's?
6 A. Yes.
Force? 7 Q. Your husband -- what was his occupation in the Air
8 A. He was a pilot.
9 Q. What did he fly?
10 A. He flew T38's, F15, and then the AT38, which is a
trainer.
11 Q. Was an instructor?
12 A. Yes.
13 Q. At least at times during his career?

travel 14 Now, you indicated while you were in the
15 agent -- we won't mention this person's name -- but you
16 mentioned that while you were in the travel business,
that you 17 knew a district attorney.

18 A. Uh-huh.

19 Q. Did you know him very well?

20 A. He was one of my clients.

21 Q. Did you come away from that, knowing this
individual, with

22 any particular opinions about prosecutors as a general
rule?

23 A. If he was the norm, he was a great guy, so that --
maybe

24 they're all like that.

25 Q. He was the norm.

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1 MR. RYAN: Excuse me, your Honor.

2 THE COURT: Yeah. You're not under oath.

3 MR. RYAN: That's true, I have to confess.

4 BY MR. RYAN:

5 Q. Okay. Let -- you indicated in your questionnaire
that you

6 really hadn't seen too much about publicity concerning
Terry

7 Nichols?

8 A. No.

9 Q. And at least as of September 17 when you filled out
a
10 questionnaire, I believe you indicated in your answer
to
11 Question 160 that you had no opinion about --

12 A. No, I don't.

13 Q. -- about Mr. Nichols, and the Timothy McVeigh trial
hasn't
14 changed that opinion?

15 A. No.

16 Q. So as you sit here today in court, are you willing
to
17 afford Mr. Nichols the benefit of the presumption of
innocence
18 that Judge Matsch talked to you about?

19 A. Yes, I am.

20 Q. As he sits here today, he's presumed innocent?

21 A. Yes.

22 Q. And we, the United States and the prosecutors -- we
have to
23 produce evidence, if we can, to prove his guilt?

24 A. Yes.

25 Q. And you'll hold us to that burden?

1 A. Yes.

2 Q. Now, the second thing that Judge Matsch talked to
you about
3 was the issue of the death penalty. And if you would,
please
4 turn to -- it's page 28 of your questionnaire.

5 Do you believe that life imprisonment as a
punishment
6 tool is appropriate sometimes?

7 A. Yes.

8 Q. And the question may not have been entirely clear,
but do
9 you have in mind certain types of either offenders or
crimes
10 that you think -- that you start thinking about life
11 imprisonment?

12 A. Rape.

13 Q. Anything else?

14 A. Child molestation. Those are the only two that
come to
15 mind.

16 Q. Now, in this particular case, I think you know this
from --
17 based on what Judge Matsch has stated, but the United
States is
18 asking that the death penalty be imposed, if Mr.
Nichols is
19 guilty. But just because the United States is asking
for it
20 doesn't mean that's what happens.

21 A. I understand.

22 Q. There's a whole trial devoted to this issue of
whether or

23 not a death penalty is the appropriate punishment. Did
you

24 understand that?

25 A. Yes.

2592

Juror No. 452 - Voir Dire

1 Q. Were you aware that that occurred in the McVeigh
trial?

2 A. I assumed it did. I wasn't aware of it.

3 Q. All right. Do you recall where you were when the
verdict

4 of guilt of Mr. McVeigh came in? Where you were, were
you at

5 home or at work or at school?

6 A. I believe I was at work, at school.

7 Q. Was there any discussion about it when the -- when
you

8 learned of the guilty verdict?

9 A. You mean what everyone say --

10 Q. Yes.

11 A. -- around me? That they thought that was a just
12 punishment.

13 Q. Based on what they had read in the newspaper?

14 A. Yes.

15 THE COURT: Excuse me, there's a little
confusion. I

16 think your question was about the guilty verdict.

17 MR. RYAN: Yes, sir.

18 THE COURT: And you responded about the --

19 JUROR: I'm sorry.

20 BY MR. RYAN:

21 Q. Let's go back. I apologize, I wasn't as clear as I
should

22 have been.

23 With respect to whether Mr. McVeigh was guilty
or not,

24 when the verdict came back that he was guilty, do you
remember

25 having a discussion with anyone about that?

2593

Juror No. 452 - Voir Dire

1 A. Just, I think, everyone believed that he was. So
it was --

2 Q. Based on what they knew from the media?

3 A. Yes. Yes.

4 Q. Now, you don't believe -- you work, at least in
some

5 capacity, with the media field; correct?

6 A. Very little.

7 Q. Do you believe everything that's in the newspaper

--

8 A. No.

9 Q. -- when you see it? Or when you see something on
10 television, do you just assume automatically that
that's
11 correct?

12 A. No, I don't.

13 Q. And in terms of what the real evidence was against
14 Mr. McVeigh, you don't know that, do you?

15 A. No.

16 Q. You didn't attend the trial, I assume?

17 A. No.

18 Q. Now, when you answered my question earlier about
the death
19 penalty, being around some people when that -- when you
learned
20 that that particular jury, after listening to the
evidence
21 about Mr. McVeigh and his life and whatnot, decided on
the
22 death penalty, were you -- you think you were where you
work?

23 A. Yes, I was.

24 Q. What was the -- were you around how many people?

25 A. Two or three.

consensus?
1

Q. And what was the consensus, or was there a

that they
2

A. I believe the only thing that was really said was

3 thought that was a just punishment.

the
4

Q. Now, I take it none of these people heard any of

5 evidence that was presented --

6 A. No.

on
7

Q. -- on the question of -- after the guilty finding

8 Mr. McVeigh --

9 A. Uh-huh.

heard
10

Q. -- the guilt of Mr. McVeigh, the evidence that was

Judge
11

after that time on these mitigating circumstances that

were with
12

Matsch has talked about. Had any of the people that

13 you seen any part of the trial?

14 A. No.

to take
15

Q. Would you agree with the statement that a decision

16 the life of a human being is a serious one?

17 A. Yes.

18 Q. One that would deserve careful consideration?

19 A. Yes.

crime
20

Q. Now, as I mentioned earlier, you know, there is no

21 which there's an automatic death penalty. The law
demands that
22 all jurors sit and listen to evidence of these
aggravating
23 circumstances and mitigating circumstances before
deciding
24 whether a particular defendant should live or die. Do
you
25 understand that?

2595

Juror No. 452 - Voir Dire

1 A. Yes.
2 Q. And that's true no matter what the crime. No
matter
3 whether it's murder, planned, premeditated, no matter
how many
4 people are killed, there's still -- the law still
demands that
5 there be a hearing in which evidence of all types can
come in,
6 both in aggravation and in mitigation. Do you
appreciate that?
7 A. Yes.
8 Q. Now, are you open -- what we need to find out is:
Are you
9 open to considering all of the various options; are you
open to
10 considering whether a life sentence should be imposed
or a
11 lesser sentence should be imposed or the death penalty

be

12 imposed?

13 A. Yes, I am.

14 Q. And can you wait and listen to all the evidence
before you

15 make that decision?

16 A. Yes, I can.

17 MR. RYAN: Thank you.

18 JUROR: Uh-huh.

19 THE COURT: Mr. Woods.

20 MR. WOODS: Thank you, your Honor.

21 VOIR DIRE EXAMINATION

22 BY MR. WOODS:

23 Q. Good afternoon. As the Judge introduced me, my
name is Ron

24 Woods. I'm one of the two lawyers that was asked by
the court

25 in Oklahoma City to help Terry Nichols who stands
accused of

2596

Juror No. 452 - Voir Dire

1 this crime. It's Mr. Mike Tigar and myself's job to
represent

2 Mr. Nichols in this case.

3 There's been a lot of talk here about the
punishment

4 stage of the case. I want to emphasize with you that

we're not

5 conceding that there's going to be a punishment stage
in this

6 case. The Government has a theory about Mr. Nichols
being

7 involved and responsible for that bombing. We disagree
with

8 it. We're going to challenge each of their witnesses,

9 cross-examine them, and we're going to call a number of

10 witnesses when they get through that will also
contradict and

11 challenge their theory. So I want to emphasize to you
that

12 merely because we may be talking about punishment at
this

13 stage, it's not because all sides are conceding that
we're

14 getting there. Do you understand that?

15 A. Yes, I do.

16 Q. Okay. Back to Mr. Ryan's statement that the person
that

17 you mentioned in the district attorney's office was the
norm.

18 How close was your relationship with the district
attorney?

19 A. Just he came to the office occasionally or I spoke
to him

20 on the phone at his office.

21 Q. All right. And have you had any relationship with
any

22 defense attorney?

23 A. No.

24 Q. Do you have any feeling about defense attorneys,
especially

25 court-appointed defense attorneys who've been asked by
the

2597

Juror No. 452 - Voir Dire

1 court to assist somebody?

2 A. No, I don't.

3 Q. Would you hold it against Terry Nichols because he
did not

4 have the money to afford a lawyer and the court had to
appoint

5 someone to help him?

6 A. No.

7 Q. I'd like to go to your questionnaire on page 2,
Question

8 No. 8; and rather than read the question and the answer
out

9 loud, I would like for you just -- can you give me some

10 background about that belief? Is it a strongly held
belief, or

11 is it just something that you put in passing?

12 A. I'm . . . let's see. Black and white was my idea
of the

13 mixed marriages is what I meant.

14 Q. All right. And is that a strongly held view?

15 A. I'm not sure I know what you mean by strongly held.

don't 16 Q. Well, what is the basis of your belief that you
17 believe in mixed marriages?
18 A. Well, I don't know. I guess I hadn't really
thought about 19 or questioned about it. But . . . I'm sorry, I don't
really 20 have a good answer.
21 Q. Okay. Is it because of perhaps the children, the
burden 22 that would fall on the children?
23 A. Yes.
24 Q. And would you hold the parents responsible for
that? 25 A. I would hope that if they had children, that they
could

2598

Juror No. 452 - Voir Dire

1 bring them up through any problems that might arise.
2 Q. But would you have some ill feeling toward the
parents --
3 not ill feeling --
4 A. No.
5 Q. -- but would you feel that they were responsible
for this 6 situation?
7 A. No.

the
marriage

8 Q. Now, the reason that I ask that question is because
9 evidence may show that Mr. Nichols is in a mixed-race
10 and has two children by those marriages.

11 A. Uh-huh.

12 Q. By that marriage. Would that affect your
consideration --

13 A. No.

14 Q. -- of Mr. Nichols --

15 A. No.

16 Q. -- in any way?

17 A. No.

18 Q. Given even -- you know, these were the questions
that you
19 were asked to think about based on your own beliefs
under oath
20 before you had all these technical instructions later.
And no
21 right or wrong answers in these questions. What the
Court was
22 seeking was your honest belief at that time after he
gave a
23 brief explanation of what the case was about.

24 A. Yes.

25 Q. And so can -- back to this question again. I
assume you

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1 can understand the reason why I'm asking this, given
2 Mr. Nichols' situation. Is that something that is
going to be
3 to his disadvantage when you're considering his guilt
or
4 innocence?

5 A. No.

6 Q. Now, you stated that your sister, who works here in
7 Denver -- I assume that's your only -- you got a
brother and
8 another sister, but they don't live here?

9 A. That's right.

10 Q. Are you in contact with your sister here?

11 A. Occasionally.

12 Q. Okay. And due to her profession, I assume that she
goes to
13 Oklahoma and to Texas some; is that correct?

14 A. Yes.

15 Q. Is she an independent, or is she with a company?

16 A. She's with a company.

17 Q. Has she been to Oklahoma City only the once since
the
18 bombing, to your knowledge?

19 A. To my knowledge, yes.

20 Q. How did it come up that you were aware that she had
gone to
21 Oklahoma City and to the bombing site?

the 22 A. I was working as a travel agent, and she purchased

23 ticket from me.

went. 24 Q. Okay. So that's pretty clear proof as to where she

returned that 25 What conversation did you have with her when she

2600

Juror No. 452 – Voir Dire

site, not 1 brought to your attention that she had been to the

2 only to Oklahoma City, but to the site?

3 A. I asked her if she went, and she said yes.

site? 4 Q. And what prompted you to ask if she had gone to the

in 5 A. Because of the situation and the fact that she was

6 Oklahoma City.

see if 7 Q. Was it something that you were interested in, to

8 someone had gone by the site?

9 A. Just out of curiosity.

her 10 Q. And did you ask her what her impression was, what

11 feelings were upon appearing at the site?

don't 12 A. I may have. But that's been some time ago, so I

We 13 remember the whole conversation. It wasn't very long.

14 don't talk very much.

15 Q. What information did you get out of it, other than
the fact

16 that she visited the site? What impression did you
come away

17 with, based on your conversation with your sister?

18 A. She found it sad being there, but that was all.

19 Q. Okay. When you lived in Enid, Oklahoma, and your
husband

20 was going to Oklahoma City, did you ever become
acquainted with

21 a lawyer there by the name of Stephen Jones?

22 A. I remember the name but did not know the person.

23 Q. Okay. During the press coverage of this case, did
you

24 observe any statements by Mr. Jones?

25 A. Not that I remember.

2601

Juror No. 452 - Voir Dire

1 Q. Okay. Now, I'd like to go to your questionnaire on
page

2 33, the Question 144, "If you've heard or read anything
about

3 the Oklahoma City bombing, please indicate where you
heard or

4 read about it."

5 And you checked off: TV news, newspaper,
magazines,

6 conversations, and heard other people discussing the
case.

7 Now, the event happened two and a half years
ago. Is

8 that your recollection?

9 A. Yes.

10 Q. What TV news did you watch?

11 A. What channel locally?

12 Q. Do you have cable and do you watch --

13 A. Yes.

14 Q. -- the cable and local news also, watch CNN and
local?

15 A. I don't watch CNN. I watch Channel 4 News.

16 Q. Do you watch any of the news specials like "20/20,"

17 "Dateline" --

18 A. Occasionally.

19 Q. -- "60 Minutes," et cetera? Do you recall seeing
shows

20 about the Oklahoma City bombing case on those shows?

21 A. I probably watched some, yes, but I don't remember.

22 Q. All right. And on "newspaper," I know you
mentioned what

23 newspapers you subscribe to, but I don't have it handy
right

24 here. What, you take both papers, The Post and the
News?

25 A. No, just The Post. We have both papers at school,
but I

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1 get The Post at home.

2 Q. Now, in your job with the school as the media aide,
is that

3 working with the computers and all of the media that
are now

4 available to the children in those age groups?

5 A. We do computers in the media center.

6 Q. Do you have the Internet there?

7 A. Yes, we do.

8 Q. And do you show the students how to get on the
Internet, or

9 are they showing you by now?

10 A. They show me most of the time.

11 Q. So the Internet is available to you; is that
correct?

12 A. Yes.

13 Q. You ever see the news on the Internet?

14 A. No, I don't have the time.

15 Q. Do you all ever do current events through the media
there

16 as part of the school program, where the students have
to keep

17 up with some current event and write a little, brief
summary

18 every week?

19 A. They come in and take the newspapers, but we don't

-- we're

20 not aware of what they're taking out of the papers.

21 Q. Okay. But so the newspapers are available to you
there and

22 the Internet, too.

23 A. Yes.

24 Q. What about New York Times: Is that there available
to you?

25 Do you read it?

2603

Juror No. 452 - Voir Dire

1 A. No, we don't have it.

2 Q. It's just I take it, then, your newspapers are
limited to

3 The Post at home and possibly the Rocky Mountain News
at work?

4 A. Yes.

5 Q. And magazines: What magazines have you read about
this

6 case?

7 A. Recently?

8 Q. Well, over the two-and-a-half years that the
publicity has

9 been outstanding.

10 A. I may have glanced at Time or Newsweek, but I
really don't

11 have time at school to look at the magazines, so I
haven't read

12 them.

13 Q. And do you subscribe to any?

14 A. No.

15 Q. And conversations: You've already told us about
16 conversations at work that you had with other people
concerning

17 the verdict. Can you -- what other conversations have
you

18 had -- I assume you've had conversations at home with
your

19 family about the case and at work with co-workers.
What about

20 friends that you have friendships with here?

21 A. We may have discussed briefly just the tragedy of
what

22 happened.

23 Q. Okay. And the verdict, I assume, since that was a
big

24 event here in Denver.

25 A. Yes.

2604

Juror No. 452 - Voir Dire

1 Q. And then "heard other people discussing the case":
What do

2 you mean by that?

3 A. Basically what I just said: We discussed the
tragedy of

4 the -- It was never discussed at length.

5 Q. Okay. Do you recall the publicity at the time of
the

6 verdict when people came out of the downtown buildings
and went

7 down on the sidewalk and there were hundreds of people
lined up

8 along the sidewalk after the verdict, when people came
out of

9 the courthouse?

10 A. Vaguely.

11 Q. Did you know anybody who was part of that crowd?

12 A. No.

13 Q. Was your sister -- is her office downtown?

14 A. Yes, it is.

15 Q. Do you know whether or not she was a participant in
that

16 crowd?

17 A. I don't believe she was.

18 Q. Based on this publicity, do you have a recollection
of what

19 you've seen, read, or heard about the number of people
killed

20 in the tragedy?

21 A. A vague recollection of the number, yes.

22 Q. And what is that recollection?

23 A. 150-some, I believe.

24 Q. Okay. Do you recall whether or not there were
children

25 killed?

2605

Juror No. 452 - Voir Dire

1 A. Yes.

2 Q. And do you recall what the reason was why children
were
3 present at a federal building?

4 A. Yes.

5 Q. And when was that?

6 A. That the child-care center was in the basement of
the
7 building.

8 Q. Do you recall how many children were killed?

9 A. No.

10 Q. Do you have an estimate of what you -- just based
on what
11 you've seen, read, or heard over the past two-and-a-
half years?

12 A. 50-some. I honestly don't remember.

13 Q. Do you recall how the bomb was placed at the
building?

14 A. I believe it was in a truck outside.

15 Q. And do you recall what the bomb was made of, what
the
16 allegations were concerning what the bomb was?

17 A. It was basically beyond my realm of understanding,
so I

18 didn't pay that much attention to what it was.

19 Q. Okay. Do you recall how Mr. McVeigh was arrested?

20 A. Yes.

21 Q. And how was that?

22 A. Driving on the highway, pulled over for a traffic

23 violation, I believe; and there were some things in the
car

24 that caused them to bring him in. I think.

25 Q. Okay. Do you have a recollection from what you've
seen,

2606

Juror No. 452 - Voir Dire

1 read, or heard about where Mr. Nichols was at the time
of the

2 bombing?

3 A. No.

4 Q. Do you have any recollection through what you've
seen,

5 read, or heard about how Mr. Nichols initiated contact
with

6 federal authorities shortly after the bombing?

7 A. Oh, yes, I do remember that he turned himself in
because he

8 was being looked for, I believe.

9 Q. Okay.

10 A. That's all I remember.

11 Q. Do you recall what happened after he went to the

law

12 enforcement authorities?

13 A. No.

single 14 Q. Okay. Now, you've told the Court that you're a

jury and 15 parent, working. In the event you were chosen on the

any 16 the trial went for two to three months, would that form

17 kind of hardship for you?

18 A. No.

19 Q. Have you discussed that with your school?

20 A. Yes.

21 Q. Okay. And they can handle your absence?

22 A. Yes.

23 Q. Okay. And financially, it can be handled --

24 A. Yes.

25 Q. -- where it wouldn't be a hardship for you?

2607

Juror No. 452 - Voir Dire

1 A. No.

questionnaire again 2 Q. All right. Now, I'd like to go to your

is your 3 on page 28. In No. A -- letter A, excuse me -- "What

without the 4 view as to whether the penalty of life in prison

5 possibility of release should ever be imposed as a
punishment

6 for any crime?" And you told us, then: "I believe in
life

7 imprisonment where a death has occurred, if not
premeditated."

8 And can you tell me what you understand to
mean

9 "premeditated"?

10 A. Thought about ahead of time.

11 Q. Okay. Now, I assume that this wasn't the very
first moment

12 you thought about the death penalty, when you opened up
that

13 questionnaire and saw this question. I assume that
when you

14 were called out there, you understood what the case
was; is

15 that correct?

16 A. Yes.

17 Q. And you had read about the death penalty verdict
for

18 Mr. McVeigh; is that correct?

19 A. Yes.

20 Q. Okay. And did you anticipate that you would be
asked

21 questions concerning your views on the death penalty?

22 A. Yes, I did.

23 Q. Have you always had the same opinion about the
death

24 penalty, or has it changed over the years?

25 A. It's probably changed as I've gotten older.

2608

Juror No. 452 – Voir Dire

1 Q. Okay. What was it initially -- your views as to
the death

2 penalty? I'm sorry. It was a poor question.

3 What were your views as to the death penalty
when you

4 were younger?

5 A. Probably when I was younger, I didn't think about
it at

6 all.

7 Q. I can understand that. Do you recall when it first
became

8 a matter that you thought of? Did you ever have that

as a

9 topic in any of your civics courses or speech courses

or any

10 school?

11 A. Possibly, but I don't remember. I used to discuss
it with

12 my father.

13 Q. All right. What did your father do, as a
profession?

14 A. He was in the life-insurance business.

15 Q. Okay. Was that your first memory, then, of
actually

with 16 thinking about the death penalty, when you discussed it
17 your father?
18 A. Uh-huh.
what was 19 Q. Okay. What kind of discussions would you have and
20 your position at that time?
called 21 A. He just mentioned to me a few times if he had been
be asked 22 for jury duty that he was in favor of it and he would
views, and 23 to leave. So we just discussed it, you know -- his
24 that was all.
25 Q. Okay.

2609

Juror No. 452 - Voir Dire

1 A. That was a long time ago.
instructions 2 Q. Sure. I hope you understand from the Judge's
doesn't 3 to you that merely because someone's in favor of it
4 mean that they're going to be asked to leave.
forming your 5 Okay. What next do you recall about you
6 opinions on the death penalty?
in a 7 A. I just believe that if someone has caused the death

well. 8 very heinous manner that they should be put to death as

years; 9 Q. Okay. And those are views that you formed over the

10 is that correct?

11 A. Yes.

some 12 Q. And I take it that it's something that you've given

13 thought to, at any rate; is that correct?

14 A. Yes.

that be 15 Q. And your opinions are fairly deeply held; would

16 correct?

17 A. Yes. But depending on the individual case and the

18 evidence, as was mentioned before --

letter, B: 19 Q. Sure. Sure. I understand. And then the next

have 20 "I believe in the death penalty where a death or deaths

situation where 21 occurred, especially children." Now, is that a

appropriate 22 you were mentioning where you think it would be an

children 23 verdict, where deaths were involved, especially where

24 were involved?

25 A. Yes.

Juror No. 452 – Voir Dire

1 Q. And then as to C, the Court asks about what kind of
cases;

2 and, of course, I assume you haven't studied law, so
there's no

3 reason to list cases that might fall under life
imprisonment.

4 A. That's correct.

5 Q. And that was an accurate answer. Letter D: "In
what kind

6 of case is it appropriate, if ever, to impose the
punishment of

7 life?" And you've stated: "If a life has been taken,
they do

8 not deserve to live." Is that correct the way you
stated it,

9 and that was your view at the time --

10 A. Yes.

11 Q. -- not knowing what the circumstances would be once
you got

12 to court, but this was your deeply held belief at that
time?

13 Okay.

14 In a case where a person has been convicted of
an

15 intentional and premeditated murder, what would be
important to

16 you in deciding if the punishment should be life or
death?

17 MR. MACKEY: Judge, objection without
reference to

18 mitigating.

19 THE COURT: Overruled.

20 BY MR. WOODS:

21 Q. Do you want me to repeat?

22 A. Yes.

23 Q. In a case where a person has been convicted of an
24 intentional and premeditated murder, what would be
important to
25 you in deciding if the punishment should be life or
death?

2611

Juror No. 452 - Voir Dire

1 A. In the case of where someone has been convicted of?

2 Q. Yes, ma'am. Now, make it clear, as the Court has
explained

3 to you: We're never going to get to this hearing
unless a jury

4 has found a defendant guilty of intentional,
premeditated,

5 deliberate murder, taking another person's life, or
lives.

6 We'll never be there. So this issue will never come up
unless

7 the jury has already made that decision, they found a
person

8 has been convicted beyond a reasonable doubt, and the
jury is

9 now considering what the punishment would be. And my
question

10 is: In a case like that where a person has been
convicted of
11 an intentional and premeditated murder, what would be
important
12 to you in deciding if the punishment should be life or
death?

13 A. I'm not really sure. Information about the
individual. I

14 don't know.

15 Q. Okay. Do you feel -- do you feel that the death
penalty is

16 the only appropriate sentence for a person found guilty
of a

17 crime that resulted in many people being killed and
injured?

18 MR. MACKEY: Objection.

19 THE COURT: Overruled.

20 JUROR: No.

21 BY MR. WOODS:

22 Q. When the Judge was talking about mitigation
evidence

23 presented by the defendant, what did you understand the
Judge

24 to mean?

25 A. I'm sorry. I've probably spaced it out already. I
don't

2612

Juror No. 452 - Voir Dire

1 remember.

2 THE COURT: Well, I didn't suggest any
particular
3 circumstances, so you haven't spaced out any particular
thing.

4 JUROR: Okay.

5 THE COURT: I think I just described the
nature of the
6 process and the opportunity to bring in these things
about the
7 individual's background.

8 JUROR: Yes, I remember that.

9 THE COURT: And who that person is, what his
life has
10 been.

11 BY MR. WOODS:

12 Q. Can you think of a situation where a person has
been found
13 guilty of an intentional, deliberate murder where that
person
14 should receive the punishment of life?

15 MR. MACKEY: Objection.

16 THE COURT: Yes. I'm not sure I understand
the
17 question. Are you asking her to speculate what kinds
of things
18 she might hear?

19 MR. WOODS: No, I'm asking her if she can
think of a
20 situation, your Honor, where a jury has found someone
guilty of

21 premeditated, deliberate murder, can she think of a
situation

22 where life imprisonment would be the appropriate
verdict.

23 JUROR: If I'm aware of a particular case
where this

24 has happened?

25 BY MR. WOODS:

2613

Juror No. 452 - Voir Dire

1 Q. No, ma'am.

2 A. Did I agree?

3 Q. Can you think of a situation where the jury has
found

4 someone guilty of deliberate, premeditated murder --
can you

5 think of a situation there where life imprisonment
would be the

6 appropriate verdict?

7 A. No.

8 Q. Would it be correct, then -- am I hearing you to
say that

9 if you're on a jury and that jury has found someone
guilty of

10 deliberate, premeditated, intentional murder, the
taking of

11 another person's life or lives, that you do not feel
that the

12 appropriate verdict would be life in prison but that

you feel

13 the appropriate verdict would be the death penalty?

14 MR. MACKEY: Objection.

15 THE COURT: Sustained as to that question. I think

16 this is getting a bit confusing for her.

17 MR. WOODS: Okay.

18 BY MR. WOODS:

19 Q. Let me go back to the prior question and answer, where you

20 said you couldn't think of a situation where life would be the

21 appropriate verdict for someone that's been found guilty of

22 taking another person's life.

23 MR. MACKEY: Objection.

24 BY MR. WOODS:

25 Q. Was that your answer?

2614

Juror No. 452 - Voir Dire

1 THE COURT: Sustain the objection.

2 MR. WOODS: Well, may I go back over her answer to

3 that question, your Honor?

4 THE COURT: Yeah. I think you can pursue the answer,

5 if you wish, with respect to her --

6 As I understood you to say, when put directly,
the
7 question about if there were a premeditated murder is
the only
8 penalty death; and you said no.

9 Now, if you wish to pursue that further, you
may.

10 MR. WOODS: Well, I didn't understand that to
be her
11 answer, your Honor.

12 THE COURT: Was that your answer?

13 JUROR: Yes, that was my answer.

14 THE COURT: I thought there may be some
confusion.

15 MR. WOODS: All right.

16 BY MR. WOODS:

17 Q. So am I hearing you, then, that if you're on a jury
and the
18 jury has found someone guilty of premeditated murder
for taking
19 someone's life that you are not going to automatically
say that
20 person should receive the death penalty?

21 A. That's right.

22 Q. Okay. And again, can you tell me what kind of
factors that
23 you would consider in making that decision as to
bringing a
24 decision of life-or-death penalty?

25 MR. MACKEY: Objection.

2615

1 THE COURT: Well, yes, I sustain the
objection.

2 MR. WOODS: Thank you very much for your
answers,

3 ma'am.

4 JUROR: Thank you.

5 THE COURT: Now, we know that if you could ask
us a

6 question, it would be: When will I know whether I'm on
this

7 jury. But I can't answer that question -- we can't.
This is a

8 process that involves human beings, has its own
dynamics, which

9 you can appreciate; and we can't tell you when we'll be
done.

10 So we ask -- you're done for the day, and we
must --

11 you know, we'll get in touch with you when we know. If

12 something should come up where you have to leave town
or if

13 there should be a change in your circumstances at all
or a

14 change in your phone number or something like that,
please let

15 us know right away, because we want to stay in touch
with you

16 and be able to. We'll get back to you as soon as we
can.

17 JUROR: Okay.

18 THE COURT: Please know in the meantime that
what we

19 expect of you is to continue to assume that you will
serve and

20 therefore you will be asked to come in and serve on
this jury.

21 JUROR: Okay.

22 THE COURT: And therefore be careful how you
talk

23 about anything with people and how you watch or listen
to news

24 and read things, so that you can come in with the same
state of

25 mind that you're in now, not be influenced by something
that

2616

1 happens outside of here. Will you do that?

2 JUROR: Yes, sir.

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

4 coming in and answering all these questions.

5 JUROR: Thank you.

6 667. Yeah, 667.

7 Will you raise your right hand, take the oath
from the

8 clerk, please.

9 (Juror No. 667 affirmed.)

10 THE COURTROOM DEPUTY: Thank you.

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

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. You understand the case now on trial is referring
to the

15 United States against Terry Lynn Nichols.

16 A. Yes, sir.

17 Q. You don't need to worry about that microphone; it
will pick

18 you up, if you're in the neighborhood. You don't have
to talk

19 right into it, okay?

20 A. Okay.

21 Q. You've been waiting a while to come in, and we
appreciate,

22 I hope, your patience.

23 And you recall a time back, several weeks, you
got a

24 jury summons in the mail that said you -- your name has
come up

25 through a chance process as a person called in for jury
service

Juror No. 667 – Voir Dire

1 in this particular case. And you filled out a
questionnaire

2 and sent it back in, and then you heard from us again,
saying

3 come on out to the Jefferson County Fairgrounds and
meet with

4 us.

5 A. Yes, I do.

6 Q. And you did meet there, you and other jurors; and I
was

7 there and introduced myself to you and the others and
also

8 introduced lawyers and the defendant in the case. I
want to do

9 that again, because I want you to know who's here with
us this

10 afternoon.

11 A. Okay.

12 Q. And right here at this table immediately in front
of you

13 are Mr. Lawrence Mackey and Miss Beth Wilkinson. They
were

14 with us. And, also, now they're joined by Mr. Patrick
Ryan and

15 Mr. James Orenstein, who are -- the four of them here
are

16 attorneys for the Government who are the prosecutors in
this

17 case.

18 Defense counsel in the case, you met also:

19 Mr. Michael Tigar, Mr. Ronald Woods. And, of course,
you met
20 Terry Nichols, the defendant in the case.

21 And then I gave you a considerable -- well,
sort of
22 summary of why we were there, including the background
of the
23 case, the fact that on April the 19th of 1995, an
office
24 building, federal office building, in Oklahoma City was
and
25 destroyed by an explosion, people in it were injured

2618

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1 killed; that thereafter, charges were filed in the
Federal
2 Court, Oklahoma City, charges filed by the Government's
3 counsel, and that those charges were essentially -- I
mean just
4 to summarize them -- that the Government claims that a
man
5 named Timothy James McVeigh along with Terry Lynn
Nichols and
6 other persons not named in the indictment were together
in a
7 conspiracy to bomb that building and to kill and injure
people
8 in it; that they carried out that plan and that they
are guilty
9 of the murder of eight law enforcement agents who were

in the

10 building, federal law enforcement agents; that both the
named

11 defendants entered pleas of not guilty, thereby
disputing all

12 of those allegations and causing the Government to
prove them

13 at trial; that then the case got moved from Oklahoma
City here

14 to Denver.

15 Now, it was moved out of a concern that it
would be

16 difficult for people in Oklahoma City to judge the case
because

17 of what happened there and the community's involvement
in it

18 and interest in it.

19 Then, after the case got moved here to Denver,
I

20 separated the trials. I mean I said essentially that
these two

21 defendants -- it would not be fair to either one of
them to be

22 tried together because of differences in the evidence
with

23 respect to each of them and that a jury should not be
asked to

24 decide as to both of them in the same trial. So we
separated

25 the trials. And there has been a trial of Timothy
McVeigh.

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evidence 1 The jury found him guilty. They found that the
further 2 supported the charge against him. And then there was a
3 hearing, and that resulted in the jury's recommending a
4 sentence of death for him.

5 And then I explained that none of that can be
6 considered by a jury in connection with this case
against

7 Mr. Nichols, because what happened in Mr. McVeigh's
case has no

8 bearing on this case and to consider it in any way
would really

9 violate the whole reason for the order for separate
trials.

10 You remember all that?

11 A. Yes, I do.

12 Q. And then I explained that to assist us in the
selection of

13 a jury for the trial of Mr. Nichols, we wanted to get
14 information from you; and we gave you a lengthy
questionnaire,

15 a lot of questions for you to answer, and you did it
for us.

16 And we appreciate that. And you have your answers here
now

17 with you.

18 A. Yes.

19 Q. And I also explained that, in advance -- that we
knew that
20 a number of the things that we asked of you and the
others were
21 private and personal in nature, and you wouldn't expect
to be
22 asked these questions ordinarily; but I explained the
23 importance of it and also that we would be protective
of your
24 privacy by not using your name and also not giving your
answers
25 to anybody except those persons immediately involved.
And

2620

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1 that's who we are here. And so we haven't, any of us,
provided
2 any of your answers to anybody else; and we'll use them
only
3 for this purpose.
4 And indeed, also, in court here, your name's
not used.
5 We arrange for you to come to and from the courthouse
without
6 being photographed or anything like that, all in the
interests
7 of your privacy, you understand.
8 A. Yes.
9 Q. But here we are in open court, and questions and

answers

10 here are public. You also understand that.

11 A. Yes, I do.

12 Q. And we will attempt, of course, to try to balance
these two
13 things and won't be asking you again to identify
yourself.

14 Now, you also recall that when I explained
about the

15 case out there with you and the others at the
auditorium

16 building, I gave you some fundamentals about the
criminal

17 justice system and the rules of law that apply under
the

18 Constitution of the United States.

19 A. Yes.

20 Q. Now, you've never been on a jury, have you?

21 A. No.

22 Q. And so that's why we want to go over them again,
just to

23 make sure that we start with a common understanding
about what

24 is involved in the jury trial.

25 And I started with the rather fundamental
statement

2621

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1 that any person who's charged in the United States in
any court
2 with any kind of crime is presumed to be innocent of
the crime,
3 and that that presumption carries throughout the trial
and
4 entitles that person to acquittal, a not guilty
verdict, unless
5 the jury is satisfied by evidence received at the trial
and
6 following the law that governs, you know, what has to
be
7 proved -- that the jury is satisfied that the evidence
proves
8 guilt beyond a reasonable doubt. You understood that,
I'm
9 sure.

10 A. Yes, I do.

11 Q. And no person who is charged in a criminal case has
any
12 burden or duty of proving himself not guilty or indeed
proving
13 anything; doesn't have to call witnesses or offer
exhibits.
14 Certainly no accused person has to take the witness
stand and
15 answer any questions nor make any statement of
explanation or
16 otherwise; he can simply remain silent and challenge
the
17 evidence brought in against him. You know about that
18 generally --

19 A. Yes.

20 Q. -- do you? So it's up to these lawyers for the
Government

21 to produce the witnesses and the evidence that they
rely on to

22 support these charges.

23 And this matter of a defendant not testifying
or

24 offering any evidence cannot be considered by the jury.
I

25 mean, certainly if that happens at a trial, you can't
assume

2622

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1 that the defendant is hiding something or hold it
against him

2 because you didn't hear from him. What we tell juries
in these

3 circumstances is: Don't even talk about that; it
doesn't have

4 anything to do with the case. And what the jury has to
focus

5 on is what they did hear, not in terms of what they
didn't

6 hear, in terms of what they heard from the defense, but
of the

7 evidence, what they heard; and any questions that
remain in

8 their minds after hearing it all, and then after
hearing what

9 has been presented, decide: Well, does this amount to
proof?
10 And the court gives instructions at the end of
the
11 trial as to just what has to be proved. I mean, I've
gone over
12 these allegations of the crime charged in a very
general way.
13 In trial, that would be made specific, just what has to
be
14 proved for each crime charged.
15 And then the jury's asked: Did these things
get
16 proved beyond a reasonable doubt? And then the jury,
after
17 talking it over, all the jurors -- if after talking it
over
18 decide that, well, there is a reasonable doubt here,
they have
19 to come in and find the defendant not guilty. They can
only
20 come in and find the defendant guilty if they're
convinced
21 beyond a reasonable doubt. Do you understand that?
22 A. Yes.
23 Q. Accept that?
24 A. Yes.
25 Q. Ready, willing, to follow that if you're on this
jury?

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1 A. Yes, I am.

innocent 2 Q. Ready to look at Mr. Nichols and presume him to be
3 of the charges made against him?

4 A. Yes.

this 5 Q. Now, we asked you a lot of information about you in

And your 6 questionnaire, and you've got it in front of you now.

little bit 7 answers -- I just want to ask you a few questions, a

not going 8 of an explanation of some of the things here. We're

asking you 9 to go over every question. And then when I'm done

some more 10 questions, I'll ask lawyers on each side if they have

11 questions. So bear with us.

and lived 12 To start with, you were born in Pennsylvania

13 on a farm in your early years; is that right?

14 A. Correct.

15 Q. And you gave us the name of a city or a town in
16 Pennsylvania. What part of the state is that?

State 17 A. It's kind -- if anyone's familiar, like around the

it's 18 College -- it's kind of, I guess, for Williamsport --

19 central, I guess.

is? 20 Q. And State College is where Penn State University

think, east 21 A. Correct. It's about an hour and 45 minutes, I

22 of there.

Valley, 23 Q. Yeah, well, there's an area there called Happy

24 something like that?

25 A. I'm not familiar with where that's at.

2624

Juror No. 667 - Voir Dire

11? 1 Q. So you were on the farm till, what, you were 10 or

2 A. 13.

3 Q. 13. Then your family came to Colorado?

4 A. Right.

5 Q. And what kind of a farm was it?

6 A. Just a dairy farm.

work. 7 Q. Well, "just a dairy farm" usually requires a lot of

8 A. There was a lot of work.

assume, like 9 Q. And you went to work there at an early age, I

10 most farm kids do?

the 11 A. Yes. I used to get up -- have to get up at five in

12 morning before I went to school and help milk cows.

no days 13 Q. And milking cows is a seven-days-a-week job there,
14 off?
15 A. It sure is.
16 Q. How long had that farm been in the family?
17 A. I would say probably as long as I can remember
back, which
18 is to 1967.
19 Q. Well, were your parents --
20 A. It was from my parents, my grandparents; right.
21 Q. Grandparents had the farm?
22 A. Correct.
23 Q. On your father's side?
24 A. Yes.
25 Q. And so he took over the business, the farm
business, and

2625

Juror No. 667 - Voir Dire

1 carried it on. What happened to that farm?
2 A. Times are tough and just kind of -- my dad wanted a
change
3 of employment; and we left 'cause the economy back in
4 Pennsylvania really wasn't anything that he could do,
and he
5 was getting tired of it. And we just moved out to
Colorado.

6 Q. And you were kind of -- you were pretty young to
know about
7 financial things then. Do you know if he -- if your
parents
8 sold the place, or a bank took it over, or something
like that?

9 A. As far as I know, I think it was sold.

10 Q. Okay. So it was sort of a quitting-business sale
and move
11 on west --

12 A. Correct.

13 Q. -- to Colorado?

14 A. Yes.

15 Q. And then you finished your high school education
here in
16 Colorado?

17 A. Yes, I did.

18 Q. And you've been here ever since, as I understand?

19 A. Yes.

20 Q. And you married?

21 A. Yes.

22 Q. And you have a couple of small children now.

23 A. A boy and girl.

24 Q. Yeah. And you work for a home builder, a
developer.

25 A. Correct.

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1 Q. And you've been -- actually, you're a
superintendent of

2 construction crews responsible for getting houses done
on time?

3 A. Yes, I am.

4 Q. And I'm sure there's a pretty tight schedule as to
how you

5 have to do that.

6 A. Every day.

7 Q. Yeah. And you missed some time coming down here.

8 A. There's people that they can cover it, and it's
fine.

9 Q. Okay. Now, I wanted to move ahead to what happens
if you

10 are to serve on the jury, because, you know, we can't
project

11 the amount of time that it would take to try the case,
but it

12 could be several months. You know that?

13 A. Yes.

14 Q. And when you got your summons here, or at least
after you

15 left the fairgrounds and knew more about it, did you
talk to

16 whoever you report to at the company you work for about
jury

17 service?

18 A. Nothing except for where I went and took care of
that day;

from 19 and then if I get called back, I would let them know

20 there.

called in 21 Q. Did you tell them what case it was that you were

22 on?

23 A. No, I did not.

going to 24 Q. Did you tell them -- you know, if you served, it's

25 take a while?

2627

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to six 1 A. I said it could be anywhere from two to four weeks

2 months.

Nichols 3 Q. Okay. Did anybody, say, Well, that must be the

4 trial, or something like that?

5 A. No.

wrong 6 Q. You know, I don't want to suggest to you anything

course, I 7 about that. It would be a natural thing; and, of

getting 8 told you don't talk about it in terms of, you know,

to at 9 people's opinions and the like. But we did expect you

because 10 least let your employer know about it and your wife,

nothing 11 their lives are and work is affected by it. So there's
it and 12 wrong with your having talked about the generality of
13 what it would mean to the family.

time 14 And your wife, as I understand it, has a part-
15 job?

16 A. Yes, she does.

17 Q. Now, does she do that out of the home?

18 A. No, she just works evenings.

19 Q. After you get home normally?

a 20 A. Right, but it's only a -- what is it -- a Saturday,

morning, four 21 Saturday night. She starts like at four in the

Sundays 22 in the morning to 12 in the afternoon and then works on

23 from 4:30 p.m. to 1 a.m.

Saturday and 24 Q. When you say -- you're just talking about the

25 Sunday schedule?

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1 A. Correct. She only has 20 hours a week.

2 Q. And is that mostly calling people?

3 A. No. She is more a customer service representative

for

4 Diner's Club, and it's just where they call in if they
have
5 problems with their bills.

6 Q. She handles some pretty irate calls?

7 A. So, yes, there's some ornery ones, especially when
their
8 cards have been turned down.

9 Q. How long has she done that kind of work?

10 A. This October, just a little over a year.

11 Q. So again, the reason that I ask you principally is
to see
12 whether the little ones are going to be cared for all
right if

13 you were down here with us on the jury nine to five.

14 A. Well, as far as I understood to what you said about
not
15 being sequestered and home on the weekends, it wouldn't
be a
16 problem.

17 Q. Right.

18 A. Just, you know, Saturday and Sundays is when she
goes.

19 Q. Well, that's what we expect, it wouldn't. There's
no plan
20 here to keep the jury separate and apart overnight or
weekends.

21 So it's a day job, as we plan it.

22 Now -- and there was a time, I guess, when she
drove a

23 school bus.

24 A. Yes.

25 Q. Was that before you had children?

2629

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1 A. We had one at the time, my oldest one.

involved
2 Q. All right. Now, you understand generally what's

in and
3 in serving on a jury, as I have described it: You come

course of the
4 listen to the evidence that gets presented in the

side
5 trial. And, of course, it's disputed; lawyers on each

permit the
6 will be having disagreements about what the rules

7 jury to hear and consider and all that goes on.

8 Have you ever watched trials on television?

watched
9 A. Not really. I mean, the only thing I've really

"People's
10 would be maybe "People's Court." Judge Wapner,

11 Court" once in a while.

12 Q. No juries involved in those things.

13 A. No.

sides to the
14 Q. And I just wanted to emphasize: There are two

15 case. Each side is represented by lawyers, and it's

their

16 responsibility to represent their side. And we get
into, and

17 it's expected, disagreements about what's admissible
evidence

18 and so forth, even as we could have some disagreements
right

19 here about what's an appropriate question. So that's
part of

20 the process, you understand?

21 A. Yes, I do.

22 Q. Okay. And in the cases that don't involve
punishment of

23 life in prison without release or death, the sentencing

24 decision is not a matter that affects the jury. The
jury comes

25 in, hears the case, hears the evidence, decides guilty
or not

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1 guilty, depending on what they say as to whether the
evidence

2 proves the crime charged beyond a reasonable doubt. In
either

3 event, the jury's done with its duty and goes home.

4 And then in the event of a guilty verdict,
it's up to

5 the judge to decide the punishment, what the sentence
should

6 be. And before judges make that decision, in the
federal
7 system it's necessary to get a lot more information
than was
8 ever presented at the trial; not only some additional
things
9 about the crime itself, circumstances of the crime, but
also a
10 lot of information about the defendant, the particular
person
11 who has just been found guilty.

12 And that information gets collected, and with
respect
13 to the defendant, it's all, you know, personal to him;
that is,
14 what his background is: born and raised, family
relationships,
15 early in life and on through marriage relationships,
work
16 history, whether there's previous involvement with the
criminal
17 system -- criminal justice system, all kinds of things;
the
18 person's health, the person's outlook on life, what he
may have
19 contributed in his life to the welfare of society; all
these
20 kind of things -- you know, everything that makes each
one of
21 us a human being, different from the others, individual
aspects
22 of our lives.

23 And the judge then has a hearing, listens to

both

24 sides, lawyers on both sides, and make a decision --
makes a
25 decision specific to that individual person, regardless
of what

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1 the crime was. It's not a question of you commit this
crime,

2 you get this sentence. You understand?

3 A. Yes.

4 Q. And the jury does not consider the possible
sentence or

5 punishment in any way in arriving at its guilty or not
guilty

6 verdict. You understand that?

7 A. Yes.

8 Q. They really have -- the jury really has no role to
play in

9 such a case. But it is different when the crimes
charged are

10 such that the possible punishments include life and
death

11 because we don't have judges -- in the federal system
now -- it

12 differs between some of the states and the federal
system. I

13 don't want to confuse you about that. But under the
federal

14 system, which we are here under federal law, we say
that judges
15 don't make life-or-death decisions. We rely on jurors
to do
16 that. And so the law is that the jury decides after
the first
17 trial, then decides on the punishment.

18 Now, it's because of the possibility that
jurors would
19 be involved in a sentencing decision in this case,
making a
20 life-or-death decision, that we asked you questions
here about
21 your opinions or attitudes about such sentences. And
you
22 remember reading those -- that part of the
questionnaire and
23 answering those questions.

24 A. Yes.

25 Q. I want you to turn to that, now, and your answers
are found

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1 on pages 28 and 29. 27 had an explanation about it,
again
2 emphasizing that the fact that you're being asked these
3 questions shouldn't be considered a suggestion that
there ever
4 will be a sentencing hearing or decision.

5 But take time to read that.

6 Did you read over what you wrote?

7 A. Yes, I did.

8 Q. And let me ask you first if this matter of death
penalty --

9 you know, there are a lot of different views about the
death

10 penalty. It's a disputed issue in our society. And
the law is

11 changed from time to time, and it's being discussed a
lot in

12 Colorado now because of the Colorado case and a
Colorado court

13 sentence of a man who's scheduled to be put to death
next week.

14 You're aware of that?

15 A. Yes, I am.

16 Q. Okay. So every time something like that happens,
obviously

17 it's a matter for public discussion, and that's going
on. And

18 people are saying some -- well, courts should not have
such

19 sentences; and some people are saying, well, you know,
you kill

20 somebody, you deserve to die. And then there's a lot
in

21 between.

22 And I just want to ask you, first of all,
whether this

23 whole issue of whether the death sentence should be a
part of

you had 24 the law is something you've thought about much before
25 to answer these questions?

2633

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1 A. No, I have not. Or, no, it wasn't.
2 Q. So you pretty much started -- had to focus and
think about
3 it and had to say something when we hit you with this
on the
4 17th of September; right?

5 A. Yes.
6 Q. Have you given it much thought since then?
7 A. No. I still feel about the same way that I do.
8 Q. Okay. You anticipated what I was going to ask,
which is:

9 If we put the same questions to you today, would you
give us
10 the same answers?

11 A. Yes, I would.
12 Q. Now, I want to now put this into a focus here about
what
13 happens in the event that a jury is involved in
sentencing

14 because there isn't -- you know, we don't just
categorize the
15 crime and then say death is the sentence or life is the

here, 16 sentence, which is sort of the approach that you took
17 "Depends on the crime"; right?
18 A. Correct.
all 19 Q. Now, what the law says is: It depends on the crime
here's 20 right, but it also depends on some other things. And
21 the way it works and would be the situation here if
there were 22 to be a guilty verdict. But we can't talk about this
case in 23 terms of the circumstances of the crime or anything
about the 24 matters that would be presented in sentence hearing
because we 25 don't know. So, you know, you have to -- and we --
have to

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the 1 think about it and we have to talk about it sort of in
2 dark, not knowing what may be presented in court. You
3 understand?
4 A. Yes.
or 5 Q. Just like in thinking about the question of guilt
and not 6 non-guilt. You have to wait till you hear the evidence

7 come in with a preconception about it. You agree?

8 A. I agree.

9 Q. Okay. Well, so is it true on this matter of
sentence,
complete
trial
terms like
decisions.
does the
at the
works is
you know,
hearing you
witnesses and
the
would put on
contrary,
that death is not deserved for this particular person.
24 Understood?

25 A. Yes.

2635

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1 Q. Now, the way these things -- the kinds of things
that we

2 would be talking about would be, you know, in the
circumstances

3 of the offense, more than just who did it and how it
was done,

4 but what effects it had on people, what it meant to the
5 community, things like that.

6 And then on the other side, the matters to be
7 presented include all of the things about the defendant
himself

8 as a person and the value of his life, the kinds of
things that

9 I've already mentioned that a judge would consider:
The

10 personal history, attitudes, outlook, role in the
offense. You

11 can have the same -- you can have two or more people
guilty of

12 the same conduct but the sentences be different. One
could be

13 sentenced to death and one get a different sentence
because of

14 the individual characteristics. Do you follow me on
this?

15 A. Yes, I do.

16 Q. And at the end of that trial, that second trial,
the court
17 then gives sort of an outline of based on the
information
18 that's been presented, what the jury can consider, on
the one
19 hand, as aggravating factors, the things that suggest a
death
20 sentence, and on the other hand, mitigating factors,
the things
21 that suggest, no, death is not for this person,
regardless of
22 his crime. Do you understand?
23 A. Yes.
24 Q. And then in that set of instructions, there are
some
25 questions that the jury is asked to answer, and those
questions

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1 are simply put to kind of help focus on these
aggravating and
2 mitigating factors as the information shows. But it
doesn't
3 come down to any formula for the jury to decide on this
issue,
4 and what the jury is deciding on is should the
defendant be put
5 in prison for the rest of his life without ever any
chance of

6 getting out, should he put to death, or should there be
some
7 other punishment and turn it back to the judge to
decide.

8 Those are the choices. Life or death depends on the
jury's
9 decision. Understood?

10 A. Yes.

11 Q. Now, what we have to ask you is: Now that you've
heard

12 these -- this explanation about what is required -- and
if you
13 have any question about it, you know, ask it. Do you?

14 A. No, I don't. Nope.

15 Q. Okay. So you think you understand what I've said.

16 A. To the best of my knowledge.

17 Q. All right. Well, with this explanation in mind,
then, tell

18 us: Do you think that you would be able to make a
decision

19 about the -- whether the defendant should live or die
and base

20 that decision not only on the circumstances of the
crime but

21 also making it on the basis of his personal background
and his

22 individual characteristics and these things that I've
talked

23 about that would be presented?

24 A. Yes, I do.

25 Q. And in making that, you would be open to all of the

2637

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you're 1 possibilities depending on what you heard; is that what
2 telling us?

3 A. Yes.

4 Q. Okay.

before we 5 THE COURT: I'd like to take a little break
6 go on with questions. I've asked you the questions.

Lawyers

7 on each side can ask you some more, so if you will bear
with 8 us; but we'd like to take a little rest stop right now.

You'd

9 like to get done with this.

10 JUROR: That's all right.

11 THE COURT: But if you'll bear with us, we're
going to

12 take a 20-minute break, and then we're going to come
back and 13 finish with you. You can step out now.

14 JUROR: Here?

15 THE COURT: Yeah, uh-huh.

16 Okay. 20 minutes.

17 (Recess at 3:08 p.m.)

18 (Reconvened at 3:27 p.m.)

19 THE COURT: Please be seated.

20 All right. We're back together again; and

21 Ms. Wilkinson, you have some questions?

22 MS. WILKINSON: Yes, your Honor, thank you.

23 THE COURT: Please.

24 VOIR DIRE EXAMINATION

25 BY MS. WILKINSON:

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1 Q. Good afternoon, sir. How are you?

2 A. I'm doing all right.

3 Q. Good. I take it from reading your questionnaire
that even
4 though you've left the East, you're still a Steelers
fan?

5 A. Yes, I am.

6 Q. Is that right?

7 A. Yes.

8 Q. And how much of a Steelers fan are you after you
saw the
9 Broncos game on Monday night?

10 A. Die-hard Steelers fan. I can't wait till December
12.

11 Q. Well, how do you feel about Kordell Stewart?

12 A. As -- what aspect?

for the 13 Q. Are you happy he left Colorado and went on to play
14 Steelers?
15 A. Yes.
16 Q. Think he's doing well?
17 A. He can do better.
came 18 Q. Did you watch him in the game last week where they
19 from behind?
20 A. Yes.
also for 21 Q. I ask you that obviously a little bit in jest but
22 a more serious reason: You heard his Honor explain
about what 23 this trial would be like if you were on the jury; that
is, that 24 there would basically be two phases -- right -- that
you might 25 participate in?

2639

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1 A. Yes.
2 Q. One would be you would decide whether the
Government had 3 proved beyond a reasonable doubt that Terry Nichols is
guilty; 4 right?
5 A. Yes.

and I 6 Q. And you'd have to come into that with an open mind,
that. Is 7 heard you tell his Honor you'd have no problem doing
8 that right?

9 A. Yes.

like you 10 Q. In fact, I read your questionnaire, and it looks
right? 11 don't have any opinions as to Terry Nichols. Is that

12 A. No, I don't.

13 Q. You don't know much about him?

14 A. No.

15 Q. Do you know anything about him?

think 16 A. Basically I know -- like in the questionnaire, I

Really 17 he's -- I don't know if he's married or had children?

18 didn't follow up. I really don't know a lot about him.

19 Q. You really didn't follow the McVeigh case, did you?

TV. 20 A. Not really. I don't watch a whole lot of the news,

21 I'm kind of like -- I do the sports thing --

22 Q. I saw your two --

for me 23 A. And my kids and the cartoons, and that's about it

24 for TV.

Fourth 25 Q. Are your magazines like your interests, Hot Rod and

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1 and Goal?

2 A. That's about it right there.

3 Q. I take you it might be surprised to hear this:
I've never

4 heard of Fourth and Goal. Is it a football magazine?

5 A. Yeah, something you get from Direct TV.

6 Q. As I was explaining, there is two phases -- or as
his Honor

7 explained, there is a first phase, and if you and your
fellow

8 jurors found that the defendant were guilty, you'd have
to go

9 into the next phase with an open mind about what the
penalty

10 would be. And you understand that; right?

11 A. Yes.

12 Q. Do you understand that that doesn't matter what the
crime

13 is? No matter how horrible the crime is, no matter how
many

14 people were killed, you still have to agree that you
would go

15 into that second phase with an open mind?

16 A. I think you'd have to.

17 Q. I take it you say that because you understand this
is

18 probably one of the most important decisions you could
ever
19 make; right?
20 A. Besides getting married, yes, I think it is.
21 Q. And you would want all the information you could
have
22 before you determined whether someone should live or
die;
23 right?
24 A. Yes.
25 Q. Not that this is anything -- I don't want to
minimize how

2641

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1 important that decision is, but I thought of an analogy
-- or
2 some of my teammates were telling me about an analogy
from the
3 game last week, where I guess the Steelers were pretty
far
4 behind at halftime; right?
5 A. 21 to nothing.
6 Q. And if you had turned off our TV set at that time,
you
7 might have been pretty disappointed in your team;
right?
8 A. If I would have turned it off, yes.
9 Q. I guess what I'm trying to say is you realize that
you

10 can't make a decision when you've only gotten half the
11 information. If you had stopped right there, you would
have
12 thought your team was going to lose?

13 A. Right.

14 Q. And you would have been wrong?

15 A. Yes.

16 Q. And that's the same thing in this kind of case. In
a
17 capital case, even if you decide someone is guilty, you
have to
18 go on and listen to the entire next phase of the case
and

19 listen to everything about the person's background and
about
20 the crime and all those things before you can make a
decision.

21 A. Yes.

22 Q. And you don't have any problem with that, do you?

23 A. No, I do not.

24 Q. You also told his Honor that you grew up on a farm
back
25 East?

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1 A. Uh-huh.

2 Q. Did you plant any crops, or was it just a dairy

farm?

3 A. No, we -- just basically corn.

4 Q. And were you involved with that at all?

5 A. Riding on a tractor.

6 Q. Do you know anything about any kind of fertilizer
that your

7 dad used on the farm?

8 A. No.

9 Q. Do you know anything about what type of bomb was
allegedly

10 used in this -- in the Oklahoma City bombing case?

11 A. The only thing I know I guess -- something to do
with

12 fertilizer.

13 Q. Did you hear what kind of fertilizer that was?

14 A. No.

15 Q. Or was supposed to be?

16 A. I might have heard, but I don't have a clue --

17 Q. You don't have any special knowledge about
fertilizer, do

18 you?

19 A. No.

20 Q. You told us in your questionnaire that you watch
only one

21 channel on TV when you watch the news. Can you tell me
which

22 channel that is?

23 A. 9.

24 Q. Do you watch the local and the national news?

25 A. Just the local.

2643

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1 Q. And you said you watch that normally at 5:00. Is
that
2 right?

3 A. No. It's usually 6:00 -- well, since they've
changed the
4 format, they went to a half hour at 5, then at 6.

5 Q. Now, since you've received your jury summons and
you came
6 and filled out this questionnaire, have you seen
anything on
7 the news about this case, about the Nichols case?

8 A. No.

9 Q. Have you tried to avoid encountering any of the
news about
10 the case, or has there just not been any that you've
even
11 noticed?

12 A. Not really. I've tried to avoid it. I really
don't --
13 it's hard with my job -- I really don't have time to
sit
14 down -- I don't plan to sit down and watch the news
every day

15 or read the newspaper. I haven't looked at a newspaper
in

16 probably about two, three weeks.

17 Q. So you haven't seen any publicity about this case
since you

18 received instructions from his Honor to avoid that
publicity;

19 is that correct?

20 A. Yes.

21 Q. Has your wife tried to talk to you about the case
or give

22 you any information?

23 A. No. She started just asking what kind of questions
or

24 what -- what was asked.

25 Q. Does she understand and do you understand that if
you're

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1 picked for this jury, you can't discuss with her what
you hear

2 in the courtroom every day?

3 A. Yes. I haven't discussed with her what went on
before.

4 Q. She's just a little curious about what was going
on?

5 A. Uh-huh.

6 Q. Could you turn to page 37 of your questionnaire and
look at

7 Question 163 for me. These are those questions we were

talking

8 about where you said you didn't have any opinion of
9 Mr. Nichols.

10 A. Uh-huh.

11 Q. And see Question 163 down there?

12 A. Yes.

13 Q. It says, you know, "Have your views changed at
all?"

14 And you said, "None." And they were talking
about the

15 McVeigh trial. And you said, "McVeigh was by himself."

16 What did you mean by that?

17 A. As far as I know, my recollection that he was just
-- was

18 there by himself; that he delivered the truck and set
it off.

19 Q. You were talking about in Oklahoma City the day of
the

20 bombing?

21 A. Yes.

22 Q. That he was there delivering a bomb himself?

23 A. Yes.

24 Q. Do you know how he got arrested? Do you recall any
news

25 about that?

2645

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1 A. I think he got pulled over for speeding or
something.

2 Q. Okay. Do you know anything about how Mr. Nichols
got

3 arrested?

4 A. No.

5 Q. Or came into custody?

6 A. No.

7 Q. Nothing?

8 A. Nothing.

9 Q. Now, there is another question I wanted to follow
up with

10 you on, and it's on page 22, if you could turn to that.

11 A. Okay.

12 Q. There, you're asked -- it's Question 100. You see
that,

13 the second one on there?

14 A. Yes.

15 Q. It asked about what you think of the criminal
justice

16 system; and you said, "In cases I've watched, it seems
to be

17 very effective, depending on the case."

18 Can you tell me, did you have any cases in
mind when

19 you were thinking about "depending on the case"?

20 A. No. I guess what I was -- it was kind of a hard
question.

21 I mean, one -- I guess cases that I have heard of or

watched,

22 it just seemed like there was enough evidence where
things were

23 pointing in that direction.

24 Q. Would that have been maybe the O. J. Simpson case?

25 A. No. I didn't really follow the O. J. too much.

2646

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1 Q. You don't have any opinion about that case?

2 A. I --

3 Q. Or do you?

4 A. What kind of opinion would you like?

5 Q. Well, your opinion, but -- no, whether -- did you
think

6 that was a fair trial? Did you think he -- the jury
made the

7 right decision by acquitting him?

8 A. No, I do not.

9 Q. Okay. But you understand you weren't there.

10 A. Right.

11 Q. Is that why you were hesitating? You didn't see
all the

12 evidence?

13 A. Correct.

14 Q. You didn't watch it on Court TV?

15 A. Right. Going on hearsay from what I heard and the

tapes

16 and the evidence that they had against him for, I
guess, abuse

17 against her. I don't, you know -- I don't know how
anybody can

18 hang some -- get up there and say he never struck his
wife or

19 hurt her when you see the pictures of her when she's
beat up on

20 TV.

21 Q. Were there any other cases that you had in mind
that you

22 thought it depends on the case?

23 A. No, I mean just some locally things around town
here I

24 guess that's happened over the last 10, 12 -- you know.

25 Q. All right. Even though you didn't follow the
McVeigh case,

2647

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1 did you have an opinion about whether that was the
right

2 verdict; that is, that he was guilty?

3 A. No.

4 Q. Okay. And what about when the jury announced that
they

5 recommended a sentence of death? Did you have any
opinion

6 about that?

7 A. I guess my opinion is if they found him guilty of
that
8 crime, my opinion, I think they made the right
decision.

9 Q. Okay. Now, you say that, but you understand that
we don't
10 have an automatic death penalty; right? You're not
just
11 convicted of a crime and you get the death penalty.

12 A. Right.

13 Q. So maybe you can explain to me a little bit more
what you
14 mean. Were you saying about what you heard basically
from the
15 news that you thought that could be a just punishment?

16 A. Yeah, that or the fact that if it was all planned
six
17 months, a year ahead time -- I mean, obviously they
planned to
18 do some damage when they went down there. It's not
like it was
19 going to be something that really wasn't going to be
20 devastating. I mean, they knew it was going to be
devastating
21 from Day 1, my opinion.

22 Q. You thought that it was premeditated was an
important
23 factor in deciding what the sentence was?

24 A. Yes.

25 Q. Do you remember hearing any of the information that
was

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1 presented by Mr. McVeigh's background or all those
other things

2 that his Honor told you could be mitigation?

3 A. No. The only thing I remember about his background
is he

4 was in the Army.

5 Q. So you didn't know what was presented during that
second

6 phase that we've talked about?

7 A. No.

8 Q. The Court also asked you in the questionnaire about
what

9 you thought about following the Court's instructions,
and I'll

10 get that reference for you. And you said something
about how

11 you thought it was very important whether you believed
it or

12 not -- it's on page 30 -- Question 129, not whether you
13 believed it. I'm sorry. You said if you take the
oath, you

14 feel like you must obey the rules even whether you like
them or

15 not. Is that still your opinion today?

16 A. Yes.

17 Q. So if the Judge told you that it was the law that

you had

18 to consider all these facts and circumstances about a
defendant

19 and the crime before you made a decision on the death
penalty,

20 would you swear to do so?

21 A. Yes, I feel it's my obligation.

22 Q. So you wouldn't have any problem doing that during
that

23 second phase?

24 A. No.

25 MS. WILKINSON: Thank you very much for
answering my

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1 questions.

2 THE COURT: Mr. Tigar?

3 VOIR DIRE EXAMINATION

4 BY MR. TIGAR:

5 Q. Good afternoon.

6 A. How are you doing?

7 Q. Pretty good. How are you?

8 A. Ready to fight rush-hour traffic.

9 Q. Well, we'll try to get you into it --

10 A. No hurry.

11 Q. -- as quick as we can.

12 My name is Michael Tigar; and along with Ron
Woods --
13 Ron and I were appointed by the court in Oklahoma to
help Terry
14 Nichols, so that's our job. We have a few questions.
I think
15 most of them have been asked.
16 The -- there was a lot of talk back and forth
about
17 the presumption of innocence; and you know that as Mr.
Nichols
18 sits here today, he's presumed to be innocent?
19 A. Yes, I do.
20 Q. Okay. And these prosecutors are going to present
evidence
21 in support of their theory of the case; and then we
22 cross-examine every single witness that they bring up.
And
23 then when it comes our turn, we present evidence that
they get
24 to cross-examine. And so they get first ups; right?
25 A. Yes.

2650

Juror No. 667 - Voir Dire

1 Q. Okay. And I hear you say that you're willing to
wait until
2 you've heard everything before you start thinking about
what

3 the result would be.

4 A. Correct.

5 Q. Okay. And let me ask you a little more about some
of these

6 things. You have two kids; right?

7 A. Yes, I do.

8 Q. And you take a hand obviously in raising them; and
you

9 spend a lot of time with them, I guess, on weekends
when your

10 wife is working?

11 A. Yes.

12 Q. And on the farm you raised -- you said you raised
corn. Is

13 that feed corn?

14 A. Yes.

15 Q. And then ensilage?

16 A. Yes.

17 Q. You put it in a trench?

18 A. Silo.

19 Q. Silo. You had a silo?

20 A. Uh-huh.

21 Q. Among your vehicles, it says a motorcycle. Is that
22 recreation, transportation, or --

23 A. Pleasure.

24 Q. Pleasure?

25 A. That's recreation.

Juror No. 667 - Voir Dire

1 Q. What kind of motorcycle do you have?

2 A. I have a Honda V65 Magnum.

3 Q. Okay. And you ride that on weekends?

4 A. I ride every chance I get.

at page 5 Q. I noticed in talking to the prosecutor over here,

6 22, Question 100 --

7 A. Uh-huh.

cases 8 Q. -- you said about the criminal justice system, "In

on the 9 I've watched, it seems to be very effective. Depends

10 case."

up 11 Watching your response, were you pretty worked

have a 12 about the result of the O. J. Simpson case? Did you

13 strong opinion about that?

14 A. Yeah, I guess you could say that.

here. 15 Q. Sure. I mean, there is no right or wrong answers

And your 16 We're just trying to find out what you think. Yeah.

17 opinion was he was guilty?

18 A. From what I heard.

19 Q. I understand.

20 A. Yes.

21 Q. Now, did you think that -- that the jurors were
somehow

22 biased in that case or that -- I mean, how did it
happen, did

23 you see it, that the system didn't work the way you
thought it

24 should?

25 A. Well, just all the evidence. I mean, they get to
the point

2652

Juror No. 667 - Voir Dire

1 where, I don't know, in my opinion, he is a liar. And
you

2 can't -- how can you sit there and you can tell
somebody that

3 you've never, you know, hit your wife, you've never
done this

4 and that, and they have, you know, 911 calls? I guess
it just

5 got to me, I think, the evidence like I've heard with
the 911

6 calls and when -- her calling the police to the house
saying

7 that he was beating her and that. To me, there -- I
mean

8 that's evidence there that obviously he had some
violence and

9 they had problems before.

10 Q. Now, in that case, in a criminal case where he was
tried --

11 remember they had that civil case later about damages?

12 A. Right.

13 Q. In the criminal case, he didn't take the stand and
testify.

14 You think he should have?

15 A. Yes.

16 Q. And in a criminal case where you were sitting as a
juror,

17 would you -- you'd expect the defendant, if allegations
were

18 made, to take the stand and deny them?

19 A. I would think -- personally myself, I would want to
take

20 the stand.

21 Q. Okay. And how about as a juror? Would you be
troubled by

22 a fact that the defendant decided he wasn't going to
take the

23 stand?

24 A. No. I mean -- I guess it would depend on the
situation. I

25 mean, we're looking back on that situation.

2653

Juror No. 667 - Voir Dire

1 Q. Right.

could have
probably
before.

2 A. And after what I've heard now, I don't know, he
3 got up on the stand; and I guess my opinion is he
4 could have lied -- told the same thing as what he told

5 Q. Okay.

6 A. I mean, I don't think he's an honest man.

innocent

7 Q. And, well, can you think of any reason why an
8 person would not want to take the witness stand?

tough

9 A. No, not really. I mean -- I guess -- that's a
10 question.

11 Q. Well, I mean --

depends,
your

12 A. I guess you should be up there -- I guess it all
13 but maybe you'd want to get up there and just put out
14 point of view of it, of the case.

15 Q. All right.

16 A. That was kind of tough.

else
you

17 Q. No, I understand. Well, let me turn to something
18 here. You did say that in looking at the McVeigh case,
19 know, the death penalty there --

20 A. Uh-huh.

had been

21 Q. -- you considered the fact that you thought that

22 planned a long time; right?

23 A. Right.

24 Q. Do you have any sense or view as you sit there
today who he

25 planned it with?

2654

Juror No. 667 - Voir Dire

1 A. No.

2 Q. Do you think --

3 A. As far as I know, he was by himself.

4 Q. In Oklahoma City, you mean?

5 A. Yes.

6 Q. And did you talk over the McVeigh verdict with
other people

7 where you work or out on the job site?

8 A. No. I can't -- I don't recall really talking it
over.

9 Q. Well, did people react to it?

10 A. Sure.

11 Q. Okay.

12 A. The whole country reacted to it.

13 Q. Right. And did you talk to anybody who disagreed
with that

14 verdict?

15 A. No. I really don't -- discuss a whole lot of it.
I'm not

that 16 the kind of person that's up on it. I don't stay up on

17 kind of stuff.

You've 18 Q. I understand. You've got a lot to do out there.

19 got crews and people doing stuff, and so on.

had a 20 The -- did you ever have a situation where you

21 worker out on a job and you looked at him and you
thought, gee,

22 you know, that's probably not going to be a very good
worker

23 and it turns out they just really do a great job?

24 A. Yes.

25 Q. You know, the situation somebody kind of doesn't
look like

2655

Juror No. 667 - Voir Dire

you 1 they're too coordinated and you put them in a house and

2 tell them, "Go take and float that drywall," and you
come back

3 and, whew, they've got a lot of square feet done?

4 A. Uh-huh.

5 Q. So in your life, you -- you know, you have been
able to

6 withhold judgment until you've seen how it worked out?

7 A. Sure. As the old saying goes, you can't judge a
book by

8 the cover. I don't know how anybody can judge from the
outside

9 what's on the inside.

10 Q. I understand. Well, the Judge -- as the Judge
said, there

11 are a lot of different views on this question of the
death

12 penalty. And I want to start by saying that we do not
concede

13 that you'll ever -- the jurors will ever have to decide
that;

14 that is, we are going to -- Mr. Nichols pleaded not
guilty, and

15 we're going to challenge every single witness they put
up and

16 put on a case of our own. But this is the only chance
anybody

17 will ever have to talk to prospective jurors about it;
that is

18 to say, if for some reason there is a guilty verdict,
we can't

19 call everybody back in and say, Now, what do you think?
We've

20 got to do it now.

21 As you were thinking about it, how would you
describe

22 your views on the death penalty?

23 A. Probably about the same as what I wrote in my

24 questionnaire. I mean, if the crime fits -- it's like
what I

25 wrote in there: If somebody just goes out and goes
crazy and

2656

Juror No. 667 - Voir Dire

just, 1 starts killing people for no absolute reason, you know,
know -- 2 you know -- and it's happened, I think they should, you
3 should have the death penalty.

4 Q. That that's the just punishment.

28, 5 In your questionnaire -- let's turn to page

6 because I don't want to be asking without your having
the

7 chance to look at that. You said in A, "It depends on
the

8 crime. I think if you murder someone, they should be
put to

9 death. If it's an accident --" "if it's an accident,
life in

10 prison seems fair." Right?

11 A. Right.

12 Q. Then on B, you say, "If you take a lot of lives, it
should

13 be imposed." Right? Now, did you have any particular
case in

14 mind when you wrote that?

15 A. No. I just was kind of like, I don't know where
that

16 question was at -- just kind of like I just meant if
you go on

17 like a rampage or people just go out and start doing
it, that's

18 what I meant by that.

19 Q. Now, would Tim McVeigh be somebody that would fall
into

20 that category, take a lot of lives?

21 A. Yes.

22 Q. Okay. And then in C, you say, "life without
parole:

23 manslaughter, accidental, repeat offender, drunk
driver,

24 burglary"; right?

25 A. Uh-huh.

2657

Juror No. 667 - Voir Dire

1 Q. And then D is "It depends on the crime. If someone
goes

2 out and just starts killing people for no reason, I
think it

3 should be imposed."

4 Now, have you ever -- have you ever had a
different

5 opinion about the question of the death penalty than
the one

6 that you put on the questionnaire and that we're
talking about

7 now?

8 A. No.

9 Q. Okay. And when is the first time you can remember
thinking
10 about or talking about with somebody what you thought
about
11 capital punishment?
12 A. I really don't know when -- you mean when I've
discussed it
13 with --
14 Q. Yeah. I mean, for example, if someone were to ask
me that
15 question, I would say, "Well, when I was in high
school, I
16 remember somebody gave me a book and I read it and then
I
17 started talking about it at home." And I just wondered
if
18 there is sometime back in your life when you could
think that
19 there was a time when you started thinking about this.
20 A. No. There is not.
21 Q. Now, can you think of any circumstances where a
person
22 that's convicted of an intentional and deliberate
murder should
23 receive life in prison?
24 A. Could you repeat that, please.
25 Q. Sure. Can you think of any circumstances where a
person

Juror No. 667 - Voir Dire

1 convicted of an intentional, deliberate murder should
receive
2 life in prison?

3 I'm sorry?

4 A. No.

5 Q. Now, can you -- do you think that the death penalty
is the
6 only appropriate sentence for somebody that's convicted
of a
7 terrorist act that involved killing a lot of people?

8 MR. MACKEY: Objection.

9 THE COURT: Overruled.

10 JUROR: What are you going on, I mean, for a
terrorist
11 act?

12 BY MR. TIGAR:

13 Q. Well, how would you define a terrorist act, or is
that a
14 concept that you use? I don't want to --

15 A. No. I would say, you know, what's happened -- I
guess with
16 those people out there that, you know, if they're
bombing an
17 airplane or something like that, I'd go that as
terrorist act.

18 Q. All right. Can you think of any circumstance --
You think
19 that the death penalty is the only appropriate
punishment for

people? 20 somebody that did that, bomb an airplane, killed

21 A. Yes.

crime 22 Q. And so those -- those are -- that's an example of a

death 23 which, if the choice were yours, you would vote for the

24 penalty; is that right?

25 MR. MACKEY: Judge, objection.

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Juror No. 667 - Voir Dire

1 THE COURT: Sustained.

2 BY MR. TIGAR:

could 3 Q. Can you think of any circumstances or factors that

terrorist 4 lead you to say that somebody that committed this

life 5 act, bombed an airplane where people died, should get a

6 sentence?

7 MR. MACKEY: Objection, Judge.

8 THE COURT: Overruled.

you're 9 JUROR: If it's planned out -- I mean if

sky or 10 planning to come out and blow an airplane out of the

if it's 11 blow up a building or anything with somebody -- I mean

12 planned, yeah, they should have the death penalty.
It's all
13 premeditated that they're planning to do that. I mean,
you go
14 out in an accident, if you get -- it's the same way if
you're
15 drinking and driving. If you're drunk and you go ahead
and
16 kill somebody, you're the one that got drunk, you
planned it.
17 I mean, you know -- what I'm trying to get at, if
they're
18 thinking about what they're doing -- Obviously it's not
19 something that we wake up today and say, hey, let's go
do this,
20 my opinion. I mean, I think it's something planned
out. It's
21 not something that comes up overnight.

22 MR. TIGAR: Will your Honor indulge me for a
moment?

23 THE COURT: Yes.

24 MR. TIGAR: Thank you very much for sharing
your
25 thoughts with us.

2660

Juror No. 667 - Voir Dire

1 JUROR: Thank you.

2 MR. TIGAR: Thank you, your Honor.

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q. Let me just follow it up a little bit, because
they've been
6 coming at you in a lot of different directions with
questions.

7 And I'm not trying to force you into any kind of an
answer; but

8 I'm confused about your position with respect to your
being
9 open to consider things other than the crime.

10 Take the question -- I mean the exchange you
had with

11 Mr. Tigar about somebody planned to blow up an airplane
and

12 kill the people in it. Okay. As I understand your
answers,

13 you know, that's the kind of a crime that's pretty hard
to

14 understand anything other than death as a deserved
punishment.

15 A. Well, yes. Why would anybody want to do that?

16 Q. Well, that's the point of a sentencing hearing;
and, you

17 know, even -- let's take somebody blowing up an
airplane. Even

18 in such a case, there would be a hearing, because if
that were

19 in federal court and we were following these same laws
that

20 we're talking about here, there would be a hearing.
And at

21 that hearing there would be the information about that
person.

22 That could include a "why."

23 And you've been asked, you know, what
circumstances

24 could you think of where there could be any mitigation.
That

25 kind of puts you on the spot in dreaming up some
circumstances.

2661

Juror No. 667 - Voir Dire

1 But if some -- at a penalty hearing, things were
brought in

2 concerning the defendant himself and his life, would
you be

3 open to considering those before making a decision
about life

4 or death? That's the point of all this.

5 A. Well, yes, I would.

6 Q. Now, you know, it sounds inconsistent to us,
because it

7 sounds like you're saying, well, if you blow up an
airplane,

8 you ought to be put to death; that's that.

9 A. No --

10 Q. Then when I ask this question, you're saying, Well,
yeah,

11 I'd consider it. So I'm confused.

12 A. I guess -- I guess my views are -- I mean if

someone is

13 planning to go out and take another life and it's
planned out
14 and they know -- they know what the results are going
to be, I
15 think it should be the death penalty; but I mean what
you're
16 saying, these guys -- we have to prove or -- we have to
prove
17 their involvement of it.

18 Q. We're not talking about that. We're talking it's
already
19 been proved. There is no doubt now in the minds of the
jury
20 that the defendant did the crime. Let's stay with it;
blow up
21 the airplane. There is no doubt he did it. There is
no doubt
22 he planned it. The question is are you open to
consider
23 whatever is offered in mitigation to suggest that
despite that
24 crime, the person may deserve to live and not die?
25 A. No.

2662

1 THE COURT: All right. You've made your
position
2 clear, and we appreciate --

couple 3 JUROR: Maybe I got a little turned with a
4 questions there.

asked you 5 THE COURT: I understood that. That's why I
6 some more, because it's hard to think about it ahead of
time;
7 but we kind of press it because it's difficult in a
vacuum
8 without the evidence to answer these questions.

9 JUROR: Yes, it is.

10 THE COURT: Okay. So we understood, and
that's why we
11 asked it from a lot of different angles. We appreciate
your
12 time with us --

13 Yes.

14 MR. MACKEY: Your Honor, I wonder -- I'll be
honest
15 with the Court: I'm not sure he understood the Court's
last
16 question.

17 THE COURT: I think he understood, yes.

18 MR. MACKEY: All right.

19 THE COURT: And so you're done with the
questions now.
20 We're not going to ask you any more; but I can't tell
you what
21 your status is here because we're not selecting the
jury one by
22 one as we go along. So you'll have to continue to do

what

23 you've been doing; and I guess it isn't hard, because
you don't

24 spend a lot of time watching news. But also avoid
discussion

25 of what's happened here with anybody else, and we'll be
in

2663

1 touch with you and let you know your status as to
whether

2 you'll be called in to serve.

3 JUROR: Okay.

4 THE COURT: You're excused for now. Thanks
very much

5 for your cooperation and your time.

6 JUROR: All right.

7 THE COURT: You're excused.

8 JUROR: Thank you.

9 (Juror out at 3:55 p.m.)

10 THE COURT: Well, we're going to do the
motions to

11 excuse for cause. Let's take 10 minutes and we'll set
up for

12 that.

13 (Reconvened at 4:05 p.m.)

14 THE COURT: Be seated, please.

on the 15 Now, I have a list here submitted by counsel
it you 16 motions for each side listing the numbers; and I take
17 have the same lists.

18 MR. TIGAR: Yes, your Honor.

19 MR. MACKEY: Yes.

some 20 THE COURT: Okay. And in addition, we had
21 letters. What happened to them?

your 22 MR. MANSPEAKER: They should be right with
23 stacks.

24 THE COURT: Yeah.

25 MR. MANSPEAKER: I'll get them.

2664

from 1 THE COURT: We made copies of the letters here
2 two persons. Well, we'll come back to that.

I'll take 3 Let's talk about the motions to excuse. And
take 4 the Government's first and then the defense, and we'll
5 them in the order that they're listed here.

your Honor 6 MR. TIGAR: There is one agreed motion, as
7 saw.

8 THE COURT: Yes, I have that.

9 MR. TIGAR: All right.

10 THE COURT: So I'm ready to hear from
Government's
on
11 counsel on the first one listed under -- on this list
12 Government's motions.

13 ARGUMENTS AND RULINGS ON MOTIONS TO EXCLUDE
JURORS

14 MR. ORENSTEIN: Thank you, your Honor.

15 The Government moves to excuse Juror 945. In
both the
16 questionnaire and his voir dire in court, he made very
clear --

17 THE COURT: Just a moment.

18 MR. TIGAR: Defense concedes, your Honor, that
this
19 juror raises the same issue as that upon which the
Court has
20 previously ruled. We maintain our objection and our
position.

21 THE COURT: All right. So I'm excusing that
person.

22 The next one -- we do have a letter from that
person,

23 too, that was received subsequent to his appearance
here and

24 the unfortunate things that occurred after his
appearance. I

25 take it counsel have this letter.

1 MR. TIGAR: Yes, your Honor, we have that
letter.
2 With respect to that, also, your Honor, we agree that
that
3 juror presents the same issues as that upon which the
Court has
4 previously ruled. If the Government has additional
grounds,
5 they may wish to place them of record, but -- we
recognize
6 that.

7 THE COURT: No, I have that; plus, you know,
the
8 additional individual circumstance for that person, I
think we
9 should not expect him to serve. So the third one on
the list
10 is --

11 MR. TIGAR: Same concession, your Honor, with
respect
12 to the third one.

13 THE COURT: All right. We'll excuse that
person, too;
14 and the defendant's position is preserved, of course.

15 And now we have one where there is, I think, a
16 difference in viewpoint; and I have the transcript from
this
17 person, and the Government also filed a brief on this.

18 MR. MACKEY: We did, your Honor.

19 THE COURT: And I reviewed that. And it, I
think,
20 comes down to an interpretation of really the last
exchange
21 between me and the juror, potential juror.

22 MR. MACKEY: Exactly. When we gave
consideration to
23 those motions that we wanted to present to the Court,
we did so
24 with all factors in mind; and I tell you that the
factor that
25 took me over the top on this one was the juror. The
Court

2666

1 recalls she is a bright, articulate woman in a very
responsible
2 position in a large corporation and a woman who has
over time
3 developed and maintained a strong view about the death
penalty,
4 precisely the anti-death penalty.

5 Getting to the bottom line, as the Court did
in the
6 exchange with that particular juror, you drew the
distinction
7 between "consideration" and "decide." And that's
exactly what

strong 8 this process is about: Could this woman, given her
death 9 views about the death penalty, possibly decide on the
enormous; 10 penalty. And her answer was it would take something
be." I 11 and she went on to say, "I don't know what that would
manner in 12 think it was a combination of the word she chose, the
placed even 13 which she delivered it and the conditions that she
that this 14 on that answer that led us to the firmly held belief
would her 15 is a woman that satisfies the Witt standard; namely,
capital 16 ability to find death be substantially impaired in a
17 case. That's the grounds for the motion, your Honor.

18 THE COURT: Well, I'm going to deny the
motion.
I 19 Mr. Tigar, you don't have to argue this one. You know,
highlighted 20 reread the transcript, or those portions that you
judging that 21 in the brief; and it does come down to a matter of
22 person's frame of mind. And this person was examined
answer 23 extensively. I don't think that that last question and
an 24 was -- you're not suggesting it was a trick question or
25 improper one. But I reviewed her answer, and I believe

that

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1 she is open to consideration of what may be presented;
so the 2 motion is denied on her.

3 MR. MACKEY: Thank you.

4 THE COURT: Now, we have some from the
defense, and I 5 have that list.

6 MR. TIGAR: Yes, your Honor. The first is
Juror

7 No. 484. Transcript references there are, "I think I
would 8 believe law enforcement witnesses more than most
witnesses,"

9 very trusting of law enforcement; hesitates when --
with her

10 answer "I think so" about following instructions on law
11 enforcement credibility. I'm reading at pages 1148 and
1149 of 12 the transcript.

13 THE COURT: Yeah, I know. She also -- or this
person 14 also talked about needing some evidence from the
defense.

15 MR. TIGAR: That's right, your Honor. At page
1146, 16 there was the metaphor suggested about the prosecution

starting

17 at the bottom of the hill. "I think so. Here again, I
say

18 think. You know, I can't guarantee it."

19 Those are the things that caused problems for
us; and

20 although the examination with respect to the potential
penalty

21 did not, you know -- didn't yield a clear-cut ground,
she at

22 least did say the degree of participation might make a

23 difference to her. There was some hesitancy about
that.

24 That's at transcript pages 115, lines 5 through 14.

25 Those are the grounds, your Honor, and those
are the

2668

1 transcript pages.

2 THE COURT: Okay. Does the Government have a
response

3 to this?

4 MS. WILKINSON: Just briefly, your Honor.

5 THE COURT: Okay.

6 MS. WILKINSON: I believe if you look over her
entire

7 transcript, she was hesitant almost all the way along,
which

8 causes some difficulty in interpreting what she really
thinks.

9 THE COURT: That's right.

10 MS. WILKINSON: She didn't seem to have a full
11 understanding of the process until you explained it to
her; and

12 clearly she said she would follow your instructions;
but I

13 think she hesitated all the way along. And so when I
look at

14 the question that Mr. Tigar asked her about would it
take some

15 evidence -- and that's on transcript page 1163 -- she
says,

16 "Yes -- well, yes," and I really think she didn't quite
17 understand the question. And if we had gone back to
her and

18 said, you know -- you reminded her that there was a
presumption

19 which she had agreed to earlier.

20 THE COURT: Well, I think that's the very
problem

21 here, as to whether she would be able to understand at
trial

22 the instructions. I'm not suggesting a bias or
something in

23 this case. But as you well know, we're looking at the
24 possibility that a person is unable to render service;

and I

25 think that's true in her case.

1 MS. WILKINSON: Okay.

2 THE COURT: I'm going to excuse her not for
any of
I hope
3 these grounds but on sort of a general impression. And
4 it's clear that we're not accusing her of anything;
that it's
5 just a concern about her ability to serve.

6 All right.

7 MR. TIGAR: Your Honor, with respect to Juror
907,
8 there is only one concern; and that was that in
questioning by
9 both prosecution and defense, the juror -- and on her
10 questionnaire -- the juror said that she had read that
11 Mr. Nichols had a cell adjoining his own cell where he
could
12 put his materials. Your Honor, that information was --
first
13 appeared in the Denver area on Monday, the 15th of
September,
14 1997, in the Rocky Mountain News. And I have the
article
15 here --

16 THE COURT: 15th?

17 MR. TIGAR: Yes, your Honor, the 15th.

18 THE COURT: May I see it? I'm not aware of
it.

19
Government.

MR. TIGAR: I'm handing a copy to the

20
that they,

The Government's questions made me believe

21
moment;

too, were aware of this because they dwelt on it for a

having

22 and that simply raised a question about why the juror,

exposed

23 received the summons, would have caused herself to be

mind.

24 to this publicity and why it would have stuck in her

25 THE COURT: I see.

2670

1
Honor. And

MR. TIGAR: That's the sole concern, your

2
because our

you saw the juror, and we just wanted to raise that

3 research did reveal this situation.

haven't

4 THE COURT: Well, I think my recollection -- I

You

5 looked at that particular portion of the transcript.

improper

6 followed up to ask her if she saw, you know, anything

7 about that.

8 MR. TIGAR: This is true, your Honor.

9 THE COURT: She was okay on that. So your

point is

10 simply that why was she reading this?

at the

11 MR. TIGAR: Yes, your Honor. Is this -- do we

which

12 end of the day feel that this is a juror who will

13 conscientiously follow the instructions in this case in

14 the jury is not to be sequestered.

her. I

15 THE COURT: Okay. Well, I have confidence in

this

16 appreciate your raising the point, but I believe that

17 woman will do as she says; so the motion is denied.

motion is

18 MR. TIGAR: Your Honor, the next defense

open to

19 Juror No. 473, and this is a juror who, after -- in the

20 questionnaire said, "Feel he is guilty, would not be

the

21 giving fair decision," and signed that under penalty of

22 perjury; then after the oath at Jefferson County and in

lot, had

23 questionnaire said that he had seen, read, and heard a

Nichols was a

24 read too much about Mr. Nichols. "I believe Mr.

person," and

25 part of the bombing case. I believe he was a key

at 1 then that he was "involved beyond doubt." He affirms
that 2 transcript page 1401 that this is what he believed in
3 day -- on that day.

said at 4 It also was difficult for him to believe, he
said, 5 1397, that this wouldn't be a conspiracy case. He
was done 6 "Coming up on the McVeigh case, the media blitz that
that is 7 on it, that's probably when I got my pre-conviction";
8 to say that Mr. Nichols is guilty. Page 1397.

9 Now, it's true that the juror was extensively
that he 10 questioned and did talk about the decisional process
yes, 11 faces in his daily life and in his daily work and said
both 12 he'll follow the instructions and he does want to hear
13 sides. However, given the fact that on two separate
reminded 14 occasions -- and on the second one, after he had been
of 15 by your Honor at Jefferson County about the presumption
remarkably 16 innocence, he expressed his deep conviction in terms
those 17 similar to those used -- i.e. "beyond doubt" -- some of
18 used in instructions.

19 Finally, your Honor, with respect to the death
20 penalty, he says, "I hope so. I believe I will. I
just hope
21 so," in answer to the prosecution's question about
considering
22 all the evidence in a penalty phase. And he repeatedly
used
23 the phrase, "You need to look at that. When you take
lots of
24 life, you need to look at that."

25 So here's a juror also as to which one comes
away

2672

1 without the impression that he's not able to perform
the
2 function required by the statute and the Eighth
Amendment. So
3 those are our grounds.

4 THE COURT: Let me take a moment to review
some things
5 here.

6 All right.

7 MR. MEARNS: Your Honor, we recognize that the
juror's
8 questionnaire indicates the possibility of having
formed some
9 opinions prior to coming to court; but as Mr. Tigar
indicated

10 during the course of questioning, he indicated that in
11 recognition of the social responsibilities that he
would
12 undertake as a potential juror, he began to realize
that he
13 must have an open mind.

14 And finally, I believe it's at -- when Mr.
Tigar
15 pursued the issue with him, his bottom-line answer is
on page
16 1399, when Mr. Tigar asked you (sic), "Would you have
any
17 difficulty putting out of your mind this conclusion?"
And he
18 said, "I hope I could do it."

19 "Do you think you would have any difficulty
doing
20 that?"

21 "No, I don't. I do this every day. I do it
every day
22 at work."

23 With respect to concerns about the juror's --
the
24 potential juror's ability to consider possible
punishment, he
25 described the death penalty as really an evil and that
it would

1 bother him to have to be put in the position to take a
-- to
2 take a human life. He said he -- he analogized himself
and
3 volunteered that it would make him feel as if he were
somebody
4 having to put his finger on the trigger. And I think
with
5 respect to both factors, the juror indicated that he
could be
6 open and follow the law.

7 THE COURT: Well, this man also has prior jury
8 service, and I think has a full appreciation of what is
9 involved; and I was struck by when he did answer on the
with his
10 questionnaire about pre-judgment that it was coupled
trial and
11 realization that the defendant is entitled to a fair
12 an impartial verdict.

13 I'm satisfied from all of the responses that
this
14 juror should be able to be trusted to do that and set
aside
15 those views, so I'm denying the motion on him.

16 MR. TIGAR: If your Honor please, the next
juror as to
17 whom there is a motion is Juror No. 84. On the
question of
18 burden of proof, he said, "It would be better if the
defendant
19 testified. It would be better for both people to
present their

defense 20 sides. It might be better for their own behalf of the
he'd 21 to present a case." If the defense rested immediately,
22 want a little more information.

respect 23 But the main concern here, your Honor, is with
24 to punishment.

25 THE COURT: Yes.

2674

kill 1 MR. TIGAR: Transcript, 1745: "Anytime you
2 somebody, you ought to be killed?"

3 "Answer: I think so, yes."

means 4 "Mitigating circumstances" to the juror, 1765,
5 everything that went on, who all had a part in it.

went on 6 And then later in that line, everything that
7 means how the crime came to be committed; could not
think of a

should 8 case where a person commits an intentional murder and
9 receive a sentence of life in prison.

and 10 And at page 1769 and '70, your Honor went back
11 talked to him some more; and he said that the

differences

12 between two individuals convicted of the same crime are
not

13 important to him. I'm paraphrasing, but it's at lines
14

14 through 25; and then at 1770, lines 1 through 4: "You
think

15 they both ought to be treated the same?"

16 "Yes."

17 "Question: Because of the crime?"

18 "Answer: Yeah."

19 The "yeah" at the end is perhaps one of the
more

20 telling of the responses there.

21 THE COURT: I don't need to hear argument.
I'm

22 satisfied this person has a penalty bias; so I'm
granting the

23 motion on 84.

24 All right.

25 MR. TIGAR: Yes, your Honor. With this --
Juror 348,

2675

1 your Honor. This is the juror who, when asked by Mr.
Ryan

2 about photos of children or evidence of children, began
to cry.

3 And she also has a view about lawyers' being in it for
the
4 money. This is a juror who, with respect to her
answers
5 concerning punishment, said that the death penalty
should be
6 used on those who plan or follow through with murders,
7 especially those who perform brutal slayings.

8 At transcript 1660, she said that she had this
case in
9 mind when she answered that question. And the
interesting
10 thing here, your Honor, is that in Question 124(b),
death
11 penalty for those who plan or follow through with
murder, and
12 then Question 145 with respect to publicity -- excuse
me --
13 158: "McVeigh and Nichols organized and followed
through with
14 the bombing."

15 So that this connect -- in conjunction with
the
16 feeling of overwhelming grief and sadness that she
recounted
17 quite tearfully in response to her first question --

18 THE COURT: Wait a minute. Are we on the same
person?

19 MR. TIGAR: Yes, I'm -- I hope so, your Honor.

I have
20 Juror 348.

21 THE COURT: I was on 315. I'm sorry.

22 MR. TIGAR: Pardon me?
23 THE COURT: 315?
24 MR. TIGAR: Is that 315?
25 THE COURT: No, you were talking about 348, I
think.

2676

1 MR. TIGAR: Yes, I am talking about 348.
2 THE COURT: I was looking at 315. That's why
I got
3 off.

4 MR. TIGAR: Your Honor, the reason I have it
-- all
5 right. We can -- I'm sorry, your Honor. I skipped
over one on
6 my list.

7 THE COURT: Yeah.

8 MR. TIGAR: I apologize to the Court for that.

9 THE COURT: That's all right.

10 MR. TIGAR: Shall I -- how do I dig myself out
of this
11 hole, your Honor?

12 THE COURT: Let's go back and do 315 and then

--

13 MR. TIGAR: Get my ups on this one again?

14 THE COURT: Yes, because I was looking at the
wrong

it 15 file and trying to understand what you were saying, and
16 didn't match; so let's back up and take the -- what I
have on 17 the list as next in order, which was 315.

18 MR. TIGAR: Yes. Will your Honor give me a
moment?
19 I'm having trouble finding my file.

20 THE COURT: Yes. I sometimes have the same
problem.

21 MR. TIGAR: I caused my -- the other team
members
22 great consternation, your Honor, because I put it in
the wrong
23 place. I'm sorry.

24 THE COURT: Now we're together.

25 MR. TIGAR: All right.

2677

1 THE COURT: 315.

2 MR. TIGAR: Excuse me, your Honor.

3 This -- your Honor will recall this juror, and
this is
4 a juror who was exposed to and had remembered extensive
5 publicity; that is to say, his evident appetite for
publicity
6 was such that he really searched out and remembered
even quite

7 small details. And ordinarily, that would not be a
problem
8 except that then when asked by Mr. Ryan if he could set
aside
9 publicity said, "I would certainly try." And that is
not
10 exactly an unequivocal answer.

11 This difficulty is compounded by the fact that
the
12 juror, as we observed him, your Honor -- and I don't
want to
13 call him out on this -- appeared to have difficulty
hearing
14 some of the questions.

15 THE COURT: Yeah.

16 MR. TIGAR: And that caused us concern.

17 There is a third matter that I'd like to bring
to the
18 Court's attention at the bench, if I may.

19 THE COURT: All right.

20 (At the bench:)

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

23

24

25

1 (In open court:)

2 THE COURT: I'm granting the motion on 315.

3 Now we have 348.

4 MR. TIGAR: Now we have 348, your Honor. I
will not
5 repeat what I said.

6 THE COURT: Maybe you better, because I wasn't
7 focusing on it. I was focusing on the other file.

8 MR. TIGAR: I appreciate that, your Honor.

9 This juror began to cry when asked about
Oklahoma City
10 and her memory of the devastation on the very first
question.

11 It is a juror who said that she had this case in mind
--
12 transcript 1660 -- when she answered Question 124 and
at 124B
13 had said the death penalty should be, quote, "used on
those who
14 plan or follow through with murder, especially those
who
15 perform brutal slayings."

16 Then at Question 158, "McVeigh and Nichols
organized
17 and followed through with the bombing."

18 Now, this is something she said, at 1659, she
believed

19 strongly when she wrote it. So the follow-through
language on
20 these two questions appeared to us to raise this issue;
and
21 that, of course, was enhanced by the fact that she had
a
22 co-worker who visited the Murrah Building site and
answered
23 unguided, "She's very adamant about her feelings
towards it."

24 "Towards what?"

25 "Towards the bombing."

2682

1 Then she had conversations with some 15 co-
workers,
2 all of whom believe that Mr. McVeigh was guilty; and
she said
3 that her guilty opinion about Mr. Nichols was formed,
quote,
4 "based mostly on media and friends." That's Answer No.
160.

5 The Court repeatedly then talked to her about
the
6 presumption of innocence; and here the transcript gets
a little
7 difficult because one could make the argument she
doesn't
8 understand what she was being asked. But she did say
clearly,

9 "Like I say, if there was overwhelming evidence to show
10 different than what I had believed in before, yes, I
could."

11 And then later, "I mean, if he comes in and
I'm
12 looking at him as not guilty and to erase all that in
my own
13 mind -- I don't know. I'm so confused."

14 At the end, she does say, "I could set it
aside."

15 But it seems to us after that colloquy and
after those
16 answers that that's not the response that one ought to
credit.

17 She also, other than lawyers who take --
you'll recall
18 that this is a claims adjuster.

19 THE COURT: Yes.

20 MR. TIGAR: The lawyers that take those kinds
of
21 cases -- i.e. represent injured workers -- they're in
it for
22 the money basically.

23 Now, that was the second day, as I recall; and
the
24 first day there had been this discussion about whether
her
25 function representing her company is the same sort of
thing as

1 someone in an impartial position; and --

2 THE COURT: You filed papers.

3 MR. TIGAR: We filed papers. I'm not going to
repeat

4 that argument, your Honor.

5 "Question: Now moving to penalty: I know
it's hard

6 to answer it hypothetically. I'm just asking you if
you would

7 start out thinking that it" -- that is, the death
penalty --

8 "is the appropriate punishment?"

9 "Answer: Yes."

10 THE COURT: What page is that?

11 MR. TIGAR: Your Honor, that is page 1663, and
it

12 follows over from 1662.

13 THE COURT: Yeah. All right.

14 MR. TIGAR: I started out at 1662, line 15,
and then

15 we went down through an objection and that question.

16 It -- the --

17 THE COURT: Okay. I have it.

18 MR. TIGAR: The final thing I'd like to note,
your

19 Honor, is that I understand that people have strong
views about

20 the process; but not only does she believe that lawyers

are in

officers 21 it for the money, but she has seen a lot of judicial

It's 22 grant relief where somebody just got up and told a lie.

but her 23 a -- I would suggest maybe it's an institutional bias,

has 24 view about the justice system is not one in which she

which she 25 confidence in results, at least the part of it with

2684

loaded 1 works on a day-to-day basis. You know, she thinks it's

2 in favor of her opponents.

opinion 3 THE COURT: Well, I'm not going to express an

trust this 4 about that or her opinion about the lawyers, but I

5 woman. I'm going to deny the motion.

the 6 Okay. We have the next one. This was also

7 subject of a memorandum.

with 8 MR. TIGAR: Yes, your Honor. A memorandum

permitted to 9 respect to the questions that the defense would be

10 ask.

11 THE COURT: Uh-huh.

12 MR. TIGAR: And there, as we pointed out in
our
13 memorandum, the juror did seem to say that life for
life was
14 the appropriate sanction; and therefore, we're moving
to
15 disqualify based on our belief that he's impaired under
the
16 standard.

17 THE COURT: All right. I don't think so in
view of
18 all of the questions and answers, so I'm denying the
motion.

19 MR. TIGAR: Your Honor, the next juror is
Juror
20 No. 876. Is that the same one your Honor is looking
at?

21 THE COURT: Yes.

22 MR. TIGAR: Thank you, your Honor.

23 Now, this is a juror who used the concept of
24 triangulation; and I made the mistake of trying to talk
to your
25 Honor about it, and your Honor made it clear that your
Honor

2685

1 knows far more about it than I do, so I won't do that
anymore.

would 2 This juror, in the process of triangulating,
witnesses. He 3 believe law enforcement witnesses more than most
this case 4 understands that there will be a lot of testimony in
have more 5 from the FBI. The federal law enforcement officers
who see 6 credibility, they're closer to the scene, they're ones
themselves, it 7 the most. By virtue of, quote, "their position
8 gives them more authority and such."
although he 9 One of his neighbors is an officer. And
asked him 10 said he could set aside his inclination -- your Honor
ended form. 11 that question in a fairly, with all respect, close-
this is 12 That gave us a great deal of pause, your Honor, because
at the 13 a case in which, make no mistake about it, we are aimed
Denno-type 14 FBI. And in part, that's because of the Jackson vs.
with 15 circumstances that are bound to come in when we deal
part 16 this -- Mr. Nichols' visit with the FBI agents and in
forensic 17 because of our planned view of or attack on the
this 18 evidence. So this gives us particular difficulty for

19 witness (sic) and, as I say, especially because some of
these
20 FBI agents he's inclined to look to more are, what,
scientists
21 or trained people who he may have some affinity to
because of
22 his occupation.

23 With respect to the question of punishment,
this is a
24 juror who has no -- the consensus is that the
punishment fits
25 the crime; and he understands that Mr. Nichols stands
accused

2686

1 of the same charges or crimes that Mr. McVeigh was
found guilty
2 of; that the death penalty is the appropriate sentence
on a
3 planned and premeditated murder. And in a curious
remark at
4 transcript 2016, everyone he talked to at work was glad
about
5 the McVeigh verdict. That and his questionnaire --
murder,
6 heinous crimes for the death penalty -- suggests to us
that
7 there is an inclination there that is inconsistent with
what
8 the Eighth Amendment requires of jurors; so under both
Sixth

9 and Eighth Amendment grounds, we challenge, your Honor.
10 THE COURT: All right. I'm going to deny --
deny that
11 one. I have great confidence in the skill and energy
of the
12 advocates in the case; and I'm sure whatever
preconception he
13 has about credibility will be addressed in the
presentation of
14 the case.

15 MR. TIGAR: Your Honor, our -- excuse me --
16 THE COURT: The record will show they fell,
you don't
17 throw them.

18 MR. TIGAR: Yes. Yes, your Honor. And the
Rocky
19 Mountain News probably will, too.

20 The Juror No. 80, your Honor, is our next
challenge.
21 This is a person who does care for children and has an
22 emotional tie to infants. Her answers -- she was asked
whether
23 she could set aside her impressions and emotions and
used words
24 like "I think I could. I mean, I would certainly try.
I think
25 I could." And that has to be taken together, your
Honor, with

1 her views on the penalty phase: She cannot
realistically think
2 of a single circumstance where life in prison would be
the
3 appropriate penalty for someone who was found guilty of
4 intentional, premeditated murder of more than one
person.
5 That's transcript 2086. And that follows on with the
more
6 heinous the crime, the more she's entitled -- or
inclined,
7 rather, to look towards death penalty; and what she's
heard and
8 read about Oklahoma City says that it's a heinous crime
9 situation; the death penalty is the only appropriate
punishment
10 for a person found guilty of premeditated, intentional
murder
11 of multiple people.
12 Now, the difficulty is that even in her
initial
13 answers, "I think the more heinous the crime -- and I
just
14 think if there is a lot of premeditation and a real
heinous
15 crime and a planned-out thing and murder, yes, the
death
16 penalty should be considered." And she won't do it at
the drop
17 of a hat, but it's that that leads up to these.

excuse 18 And the difficulty we have here, your Honor --
exactly what 19 me -- is that we can predict with some assurance
word for 20 the Government's theory is going to be, not perhaps
arguments in 21 word; but the Court will recall that in closing
used the 22 the McVeigh case, the Government -- Government counsel
occasions. And 23 words "enormous" and "enormity" on at least two
issue 24 thus, this juror's predisposition with respect to this
25 and her lack of an unequivocal commitment to the Eighth

2688

is any 1 Amendment's command dovetails with what, if experience
2 guide, would be the Government's approach.

her. 3 For that reason, your Honor, we move to excuse

I heard 4 THE COURT: Excuse me. I'm looking at the --

Let me 5 what you said, but I'm reading from the transcript.

6 just finish that.

7 MR. TIGAR: Yes, your Honor.

8 THE COURT: And then I'll hear from Government

9 counsel.

10 Okay. You have, Ms. Wilkinson, some -- this
is a
11 troubling one.

12 MS. WILKINSON: Your Honor, I think it's
troubling
13 because when the questions were asked by defense
counsel, they
14 were loaded up with aggravating factors; and I think
what's
15 happening. And I think it's why you've been sustaining
some
16 objections and overruling others -- is it really
depends each
17 time on how the juror responds --

18 THE COURT: That's right.

19 MS. WILKINSON: -- and how each party asks the
20 question.

21 But the problem with that sometimes is these
questions
22 are loaded up with the aggravating factors. The juror
isn't
23 told that they can consider the mitigating factors, and
so when
24 they're put in the position like this juror was on page
2087
25 about, you know, describing this heinous crime, which
the

1 counsel was allowed to describe on page 2086, which
said
2 "guilty of intentional, premeditated murder of more
than one
3 person, do you think you could realistically say there
is any
4 circumstance where life, you know -- life sentence
would be
5 appropriate?" And she said, "I don't know. I can't
think of
6 any circumstances. There may be one. I just can't
think of
7 any right now."

8 I think for a civilian who is not, you know,
familiar
9 with the law in this area, it's very understandable
that
10 someone would have difficulty in a vacuum like that,
when
11 you're loaded up with those aggravating factors, of
thinking of
12 mitigating circumstances.

13 But when you went back to her and presented
the
14 questions to her on page 2090 about could she consider
other
15 things, she said, "Well, I would. I feel I would hear
16 everything, all information. I'm not one to make rash
17 decisions." And she said, "Well, that's what I would
do. I
18 would give -- I would think of everything and give it

weight.

19 I feel I could do it. I did it before, you know, as
long as I

20 had instructions; and that kind of helped guide me."

21 And I think this was someone who just was on
the spot.

22 She could not come up with the factors that we would
list as

23 mitigating factors and said if she was told to listen
to

24 everything and if the Court gave her instructions, she
could do

25 that.

2690

1 THE COURT: Mr. Tigar, do you want to address
this

2 further?

3 MR. TIGAR: Yes, your Honor.

4 Your Honor, I utterly reject the suggestion
that I

5 loaded up factors for the juror. 2088, line 3: "But
my

6 bottom-line question is this: If you as a juror feel
that a

7 defendant is guilty of premeditated, intentional murder
of

8 multiple people -- right?

9 "Answer: Uh-huh.

penalty 10 "Question: Would you say, I think the death
11 is the only appropriate punishment for that person?
12 "Answer: Yes."
13 Now, it's true that your Honor then went back
and
14 talked about instructions; but that question I asked
her, your
15 Honor, came after your Honor had told her about the
two-stage
16 process, after the Government had a chance to talk
about her
17 commitment to it, and all the rest of it. So we
weren't
18 dealing, you know, with a blank page here. That's the
answer,
19 your Honor, that gives me trouble, because
premeditated,
20 intentional murder of multiple people is a pretty
simple,
21 direct question; and we've got eight murder counts in
this
22 indictment, your Honor, plus intent to kill 168, at
least in
23 Count 1.
24 THE COURT: I'm going to deny the motion. I
believe
25 that there was some confusion here and that she did
answer in a

death 1 way that eliminates the view that she's biased on the
2 penalty, which is the issue, really, in all of these.

3 I am troubled by the question of "can you
think of any 4 circumstances," because it seems to me that's asking
jurors to 5 come up with mitigating circumstances that they conjure
up; and 6 that does seem to me to put them on the spot.

7 MR. TIGAR: Your Honor, it is, of course, not
our 8 intention to put people on the spot.

9 THE COURT: Yeah.

10 MR. TIGAR: Let's be clear that there is a lot
of 11 closed-ended, directed questions that are being asked
of these 12 jurors on both sides of the courtroom.

13 THE COURT: That's right.

14 MR. TIGAR: We have not objected to them when
they're 15 asked, "You can do that, can't you? You can do that,
can't 16 you," accompanied with a nod of the head, which is what
we're 17 seeing here. We don't object to it. We understand it
goes on. 18 That's what lawyers are doing.

I asked 19 I respectfully suggest that the question that
a lot 20 of this juror is a proper one. It's not loaded up with
21 of facts.

about 22 THE COURT: No, I'm just -- I'm just talking
think 23 asking people in this situation to tell us what they
I'm not 24 would be mitigating circumstances. It troubles me.
25 ruling it out, but I'm bothered about it.

2692

doesn't 1 MR. TIGAR: The "can you imagine" question
about no 2 come until after your Honor has talked to the jurors
to them 3 automatic death penalty and the other side has talked
penalty. 4 about there is no such thing as an automatic death
5 All I'm trying to do is -- when I ask the question, or
6 Mr. Woods is trying to do is to get at what "How do you
'Listen to 7 understand what the Judge told you when he said,
did it 8 these factors, listen to these circumstances'? What
9 mean to you when the Judge said that?"

think 10 THE COURT: Well, that, I don't object to. I
11 that's a fair question.

mean, 12 MR. TIGAR: Well, I would be quite happy -- I
I'm glad 13 your Honor, I think that's a great question also, and
14 the Court approves it. We're happy to ask it in that
form. It 15 may lead us, then, after they say, "Well, it means, did
he 16 really do it, or is the evidence strong or something."

follow-up 17 THE COURT: Obviously, there would be a
18 question there, too.

19 MR. TIGAR: Then we can follow up.

circumstances 20 THE COURT: But to say, "What mitigating
21 do you have in mind," I don't think that's a fair
question. I 22 don't mean you are putting it in a way to cause an
unfair 23 answer, but I think -- you know, as I've reflected on
that and 24 watched these people struggle with that, it's pretty
hard for 25 them because they don't know what the law is about
mitigating

1 circumstances.

2 MR. TIGAR: Your Honor, the reason we have to
get at

3 this -- and I reread the summations in the McVeigh
trial. The

4 defense evidence about Mr. McVeigh's individual
circumstances

5 was ridiculed by the prosecution and their evidence.
Their

6 pitch to that jury consisted of a litany of the horror
of the

7 crime itself. And of course, there was a lot behind
that.

8 I've got to be able to approach these jurors and ask
them, you

9 know, "You saw those pictures. You're going to see
those

10 things."

11 THE COURT: I'm not objecting to that. No. I
12 understand that. That's still a different point; and,
you

13 know, I'm not assuming from -- just like I'm telling
the

14 juries -- jurors. I'm not assuming anything from the
McVeigh

15 case as to what's going to happen here.

16 MR. TIGAR: I understand that. I understand
your

17 Honor is not assuming it. I'm just saying that we all

18 understand a little bit about what the evidence is
going to be,

19 or at least, you know, we think we do; and we have to
take care
20 of possible options of which that's one. If the Court
--

21 THE COURT: We don't know what the mitigating
22 circumstances might be. That's really the point.

23 MR. TIGAR: I understand that, your Honor. We
have
24 something of an idea, but we're not required to come
forward at
25 this point.

2694

1 THE COURT: And I'm not asking you to or to
suggest
2 them; but -- well, let's think about that question.

3 MR. TIGAR: Your Honor, I will say this: That
we'd be
4 quite, you know -- I accept -- I understand your
Honor's view,
5 putting to the juror the question, Well, what did you
6 understand the Judge to be talking about -- if that,
your Honor
7 doesn't regard as a mark of disrespect that we're
asking the
8 jurors to interpret what your Honor has told them about
that.

9 THE COURT: No.

10 MR. TIGAR: Then we'd be happy to start off

down that

11 line with them.

12 THE COURT: Let's see where we go that way.

13 MR. TIGAR: Thank you.

14 THE COURT: Now, I have two of these jurors
who have

15 written us. They're down the line in terms of the
order to be

16 called up, but I'd like to find out what you think
about these

17 letters, 180 and 189. Have you looked at those? I
don't know

18 when you got them.

19 MR. MACKEY: I have, your Honor; and on behalf
of the

20 Government, we have no objection to them being excused.

21 THE COURT: Have you looked at them?

22 MR. TIGAR: Your Honor, I do not recall having
looked

23 at those. As -- your Honor has seen my filing system,
and

24 perhaps you could understand why.

25 If I could refresh my recollection.

2695

1 THE COURT: Sure.

2 MR. TIGAR: Excuse me.

3 Oh, yes.

4 THE COURT: It isn't -- these aren't Nos. 180
and 189.

5 That's the number of the order, but you see the
letters.

6 I think the numbers are 132 and 565, the juror
7 numbers.

8 MR. MANSPEAKER: That's correct.

9 MR. TIGAR: Your Honor, would we be able to
phone that
10 in on Monday morning?

11 THE COURT: Well, you'll be able to tell us
right here

12 on Monday morning.

13 MR. TIGAR: Well, I was thinking before court,
we

14 could let Mr. Manspeaker know, your Honor.

15 THE COURT: All right. Sure. Yeah.

16 MR. TIGAR: We have a small question about one
of the

17 letters, your Honor.

18 THE COURT: All right. The one sounds like a
pretty

19 desperate situation, so the earlier we can address
that, I

20 think the better. I'm speaking to the one that has the
printed

21 letterhead.

22 MR. TIGAR: Yes, your Honor.

23 THE COURT: I'd kind of like to --

one. 24 MR. TIGAR: Your Honor, we consent on that

person 25 THE COURT: All right. Then we can let this

2696

where 1 know right away, because it does sound like a situation

2 there may need to be some action now.

3 MR. TIGAR: Yes, your Honor.

4 THE COURT: Mr. Mackey?

5 MR. MACKEY: May I approach the bench, please.

6 THE COURT: Yes.

7 (At the bench:)

court 8 (Bench Conference 22B2 is not herein transcribed by

transcript.) 9 order. It is transcribed as a separate sealed

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1 (In open court:)

2 THE COURT: Well, we're going to resume at
9:00 Monday

3 morning, so we'll be in recess at till 9:00.

4 MR. MACKEY: 8:45?

5 THE COURT: Excuse me. 8:45. Thank you. I'm
so used

6 to saying 9 that I forgot we changed the hours. 8:45.

7 (Recess at 4:55 p.m.)

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2702

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15 REPORTERS' CERTIFICATE

16 We certify that the foregoing is a correct
transcript from
Dated 17 the record of proceedings in the above-entitled matter.
18 at Denver, Colorado, this 10th day of October, 1997.

19

20

Paul Zuckerman

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22

Kara Spitler

23

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