

21
22
23
24
Transcription
Street,
629-9285

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

2704

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

13 for Defendant Nichols.

14 * * * * *

15 PROCEEDINGS

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

17 THE COURT: Be seated, please.

18 Good morning. As I understand it from Mr.
Manspeaker,

19 there's an agreement to excuse No. 530 and 565.

20 MR. TIGAR: That's correct, your Honor.

21 MR. MACKEY: Yes, your Honor.

22 THE COURT: All right. So -- and we have to
begin

23 this week No. 874.

24 Good morning, sir. If you will raise your
right hand

25 and take the oath from the clerk, please.

2705

1 (Juror No. 874 affirmed.)

2 THE COURTROOM DEPUTY: Thank you.

3 THE COURT: Please be seated in that chair by
the

4 microphone, if you will.

5 And you can make yourself comfortable by
swiveling

6 that chair however you want to. You don't have to talk

right

7 into the mike. It will pick you up.

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q. Well, we kept you waiting all day Friday and we
apologize

11 for that, but I hope you understand that it is a little

12 difficult to estimate just exactly how long we'll be
taking

13 with each person. So I hope that didn't inconvenience
you too

14 much.

15 You remember taking an oath just like this one
back on

16 September the 17th when you and other potential jurors
in this

17 matter, being the case of United States against Terry
Lynn

18 Nichols, came to the Jefferson County Airport --
airport --

19 Fairgrounds and auditorium building to -- in response
to a jury

20 summons. And at that time, I introduced myself, gave
some

21 background about this case, and also introduced
participants in

22 the case. And I want to do that again so you know
who's here

23 this morning.

24 First of all, here at the Government's table,
this

25 first table, are Mr. Lawrence Mackey, Ms. Beth
Wilkinson. They

2706

Juror No. 874 – Voir Dire

Ryan 1 were there with us. Now they are joined by Mr. Patrick
2 and Mr. Jamie Orenstein.

Woods, 3 You also met Mr. Michael Tigar and Mr. Ronald
4 attorneys for Terry Nichols, and Mr. Nichols, who is
here, as 5 well.

6 There are a few other people here right in
front of 7 you, but they are assisting in the matter.

8 Now, at the time that we were together, you
were given

9 a lengthy questionnaire and you cooperated with us --
and we

10 appreciate that -- in filling out all of those answers
and

11 providing them to us. And you should have that in
front of you

12 now, that questionnaire. Do you?

13 A. Yes.

14 Q. And we have, as I told you that we would, taken the
answers

15 you gave to us, made copies and provided them to the
people you

not
16 see here, but to no one else. And of course, we will
17 provide these answers to anyone else, respecting your
privacy
18 insofar as we can do so and yet accommodate the public
interest
19 in this proceeding. And as we go through this, of
course,
20 we're not going to use your name, and try to avoid
things which
21 would identify you publicly. And also, as you well
know, we
22 provide a way for you to come in and out of the
courthouse so
23 you're not viewed by others or photographed or anything
of that
24 nature.

25 When you left, also, I asked you and the
others to be

2707

Juror No. 874 – Voir Dire

1 careful about avoiding things in newspapers, magazines,
2 publications, television, radio that may relate to the
case and
3 may influence your ability to decide fairly on the
evidence.

4 And we know that there has been some out there. And
have you
5 been able to avoid things in the press or media?

6 A. Pretty much so.

7 Q. Well, have you seen anything? I understand it can
happen
8 because, inadvertently, you can come across a headline
or
9 something happens on the car radio, and we don't want
you to
10 drive into the ditch turning it off, but anything like
that
11 happen?

12 A. Well, my car radio quit working, surprisingly
enough.

13 Q. I didn't do it.

14 A. And I don't read the paper. And anything that I
had a
15 question about, something like how long it might take
for the
16 selection to be done --

17 Q. Yes.

18 A. -- or where it might be in the process --

19 Q. Right.

20 A. -- I had -- had my wife who was abreast of things,
and
21 she -- she told me that, which really wasn't much. It
was
22 pretty much what I've told you.

23 Q. All right. All right. And I, of course, explained
to you
24 and the others the background of this case so we had a
25 foundation or an explanation for you so that you knew
at least

Juror No. 874 - Voir Dire

1 some -- had some idea of why we asked you all these
questions.

2 But you recall, of course, that this case, as I
explained,

3 arises out of an explosion that took place in Oklahoma
City,

4 Oklahoma, on the 19th of April, 1995, when a federal
office

5 building blew up and people in it were injured and
killed. And

6 then thereafter, lawyers for the Government filed
charges in

7 Oklahoma City in the way of what is called an
indictment, being

8 the charging paper, the document that explains the
charges, and

9 I explained that the charges made were that a man named
Timothy

10 James McVeigh and Terry Lynn Nichols -- and then the
indictment

11 says "persons not named in the indictment" -- conspired
or

12 agreed or joined together in a plan to bomb that office
building and kill and injure the people in it; that

13 acts were

14 taken to carry out and accomplish that objective; and
that the

15 charges include eight counts of murder of the -- of
eight law

16 enforcement agents who were in the building and died in
the
17 explosion; that to these charges, both of the named
defendants
18 pleaded not guilty.

19 The trial was then moved from Oklahoma City to
here in
20 Denver because of a concern about getting a jury there
where
21 the impact was right there on the community. Then I
ordered
22 separate trials in the case, requiring that the
evidence be
23 considered separately as it related to Mr. McVeigh and
as it
24 may relate to Mr. Nichols. And Mr. McVeigh's case came
on for
25 trial here, a jury heard it, decided that the evidence

2709

Juror No. 874 - Voir Dire

1 persuaded them that he was guilty of these charges made
against
2 him, and then there was a second trial on the issue of
3 punishment, penalty, and the jury recommended death.

4 You understood all that, first of all,
probably before
5 I explained it to you, but you recall my explaining it?
6 A. Uh-huh.

7 Q. And then, of course, I told you and the others
present
8 about some fundamentals that apply in our criminal
justice
9 system in the United States. These are the principles
that are
10 applicable really across the board and apply in all
cases with
11 all defendants no matter what they're charged with or,
of
12 course, who they are, and this because under the
Constitution
13 of the United States, these are fundamental principles
of what
14 we call due process of law which begin with at the
beginning,
15 the defendant, the accused person, is presumed to be
innocent
16 of the charges, and that presumption carries throughout
the
17 trial and entitles that person to an acquittal, a
verdict of
18 not guilty, unless twelve fair-minded persons hearing
the
19 evidence at the trial determine the evidence shows
guilt beyond
20 a reasonable doubt.

21 You've heard of that concept before, I take
it?

22 A. (Juror nods head.)

23 Q. You have to answer out loud --

24 A. Yes. I'm sorry.

right. 25 Q. -- so that we can record your answers. That's all

2710

Juror No. 874 - Voir Dire

this 1 And therefore, you understand that Mr. Nichols sits in

of all 2 courtroom with us this morning presumed to be innocent

McVeigh 3 of these charges, and that nothing that occurred in the

in any 4 trial and certainly not the outcome of that trial can

You 5 way be considered against him; that is, Mr. Nichols.

6 understand that?

7 A. Yes.

process of 8 Q. And what we are doing here, of course, is in the

will hear 9 selecting the jury that consists of the persons who

may be 10 and decide this case and decide whatever the evidence

part of 11 with respect to Mr. Nichols. And of course, also a

remind 12 these fundamental concepts of due process, I must again

calling 13 you that Mr. Nichols doesn't have any burden or duty of

is 14 any witnesses or producing any evidence. No person who

15 charged with a crime has any such duty, and no person
charged
16 with a crime has any obligation to take the witness
stand, to
17 answer questions, or to give any explanation. Do you
18 understand that?

19 A. Yes, I do.

20 Q. And the law says that not only, of course, does he
not have
21 to, but the Court must advise the jury and the jury
must accept

22 the advice that they may not consider that in any way.
They

23 can't draw any inference that, well, you know, if he's
24 innocent, why didn't he tell us or anything like that.
The

25 instruction regularly given is, Look, you don't even
talk about

2711

Juror No. 874 - Voir Dire

1 that in your deliberations. Do you follow me on that?

2 A. Yes, I do.

3 Q. Now, do you accept these principles and agree to
abide by
4 them if you were to serve on this jury?

5 A. Yes, sir.

6 Q. Do you have any question about it?

7 A. No.

through 8 Q. As I understand it, you were -- I'm going to go
little more 9 some of these answers, and ask of you to give us a
with you 10 information on some of these subjects. Then I'll talk
lawyer on 11 about a few more things. And then when I'm done, a
further. 12 each side will have an opportunity to question you

13 Understand?

14 A. Yes.

15 Q. Now, you were born and raised in Missouri?

16 A. Yes.

17 Q. In or near Jefferson City?

18 A. Yes.

19 Q. And you came to Colorado about 14, 15 years ago?

20 A. Yes, sir.

21 Q. From Missouri?

22 A. Uh-huh.

understand 23 Q. And you lived on a farm there for a while, as I

24 it?

25 A. Yes, I did.

1 Q. And is that where -- were you born on the farm?

2 A. No. No. I was born in Jefferson City.

3 Q. What were your parents doing during the years you
were in
4 the family growing up, working? I mean, what kind of
work?

5 A. My father -- my father was a physician.

6 Q. Okay.

7 A. And he owned some property.

8 Q. Farm property?

9 A. Yes. And that's how I came to -- to farming once I
went
10 through what college I went through.

11 Q. Yeah. So you did go to college?

12 A. I didn't -- didn't graduate.

13 Q. And what courses of study were -- what courses were
you
14 pursuing? What was your objective at that time?

15 A. It was agriculture.

16 Q. And so you went on this farm that your father
owned?

17 A. Yes.

18 Q. And tried your hand at it for four or five years?

19 A. (Juror nods head.)

20 Q. You have to answer out loud.

21 A. Yes. I'm sorry.

22 Q. What kind of farming were you doing there?

23 A. It was kind of a mixed bag. Hogs, cattle, a little

crop.

24 It wasn't a very large farm. It was about 120 acres.

25 Q. 120 acres. Well, if the acreage is good enough,
you can

2713

Juror No. 874 - Voir Dire

1 still make a living on that acreage in a place like
Missouri

2 that gets rainfall.

3 A. Well, that's true.

4 Q. As compared to out here. So did you give it up
because it

5 wasn't worth the effort? I mean, you weren't making
money off

6 of it or --

7 A. That was pretty much it.

8 Q. And is the farm still in the family?

9 A. No. No. He's -- my father's retired, and he's --
he sold

10 his property, so . . .

11 Q. Okay. So then did you -- you came to Colorado
right after

12 the farming venture?

13 A. Uh-huh. Yes.

14 Q. All right. Now, you -- and you're married?

15 A. Yes.

16 Q. And your wife is at -- at the University of

Colorado?

17 A. Yes.

18 Q. And as I -- would you explain what you understand
her job

19 is there.

20 A. Yes. She's the -- she heads the women in
engineering

21 program, which --

22 Q. Kind of a support program for women following --

23 A. Yes.

24 Q. -- a nontraditional curriculum? Is that the idea?

25 A. There -- in the way I understand it, anyway, kind
of an

2714

Juror No. 874 - Voir Dire

1 affirmative decision of recruiting women to the
engineering

2 program and fundraising and things of that sort. She
doesn't

3 teach.

4 Q. How long has she been with the university?

5 A. Less than a year.

6 Q. And what did she do before that?

7 A. She's been with -- consulting, electrical
engineering.

8 Q. She being an engineer herself?

9 A. Yes.

10 Q. All right. Now, on page 4, if we can go to that,
please.

11 I want to be careful in my questions here. I'm not,
you know,

12 insensitive to what you're talking about here on page
4,

13 Question 18. You have a condition for which you take
14 medication regularly, as I understand it.

15 A. Yes, I do.

16 Q. And for how long have you been under such
medication?

17 A. I would say about two and a half years.

18 Q. When did this condition first become symptomatic
where you

19 became aware of it?

20 A. I really wasn't aware of it until I -- I went in
and -- and

21 had it diagnosed. Apparently, I've had it the majority
of my

22 adult life.

23 Q. Yeah. And you simply didn't recognize that it may
be a

24 treatable condition --

25 A. Well, I didn't --

2715

Juror No. 874 - Voir Dire

1 Q. -- is that right?

2 A. I didn't recognize it as a condition. I was having
3 symptoms in the sense that I was having trouble holding
jobs.

4 Q. Yeah.

5 A. And I couldn't understand why I would be with a job
and the
6 people for five or six months, and then -- it would
generally
7 start out where I would be very upbeat in a sales sense
and go
8 out and whup the world.

9 Q. Right.

10 A. And then after four or five months, then I'd go
into a
11 slump. And what I was doing, I was going into a
depressive
12 cycle.

13 Q. Yeah.

14 A. And then I would quit and then start up someplace
else.

15 Q. What kind of physician has your father been? What
was his
16 practice like?

17 A. He was an orthopedic surgeon.

18 Q. Did he recognize this in you?

19 A. No.

20 Q. And the medication for the last two and a half
years, has
21 that controlled this situation to your satisfaction?

22 A. Yes, it has.

23 Q. What is your work now? You're self-employed.

24 A. Uh-huh.

25 Q. And you described it as the burrito man. What do
you --

2716

Juror No. 874 - Voir Dire

1 what is your business?

2 A. Well, I'm in mobile catering.

3 Q. Street vendors?

4 A. Yes. Yes. Except I go to the people, their
businesses.

5 Q. I see.

6 A. And it's mainly a breakfast fare, more or less.
And I'm

7 licensed as a burrito -- a food peddler is, I guess,
8 technically, what you would call it.

9 Q. So you have a truck with a -- food and food service
10 equipment in the back or --

11 A. Well, with the food that I serve, I -- I can do it
out of

12 my car.

13 Q. All right.

14 A. So I don't need a truck.

15 Q. Okay. So you have containers that keep things warm
and

16 cold and --

17 A. Yeah. Plug them in and they keep warm.

18 Q. You do this alone?

19 A. Yes.

Anyone

20 Q. And what's -- what happened on Friday and today?

21 serving these customers?

22 A. Oh, the world is going hungry.

to carry

23 Q. All right. So you don't have any way for somebody

saying?

24 on the business without you? Is that what you're

25 A. Not -- no, sir.

2717

Juror No. 874 - Voir Dire

of the

1 Q. Do you have a regular route? I mean, do you go to

2 particular places and they expect you at a given time

3 morning?

-- I was

4 A. Yes. But they -- they have other options, too. I

5 a little facetious with my remarks. I apologize.

are

6 Q. We thought you were. Well, you know that what we

-- and

7 speaking about here is a trial, once a jury is selected

it'll

8 we don't know when that will be, don't know how long

could 9 take, just like we didn't know whether we, you know,
once it 10 really get to you Friday or not, and we didn't. But
away 11 starts, it could be several months of trial, taking you
that? 12 from that business. What is your position regarding

13 Would you be able to do that?
going to be 14 A. Right now, I'm at a -- at a juncture where I'm
the 15 expanding the business in a different direction, and
business end of 16 expansion really isn't going to start -- or the

17 it, until the spring of the year anyway.
Is that 18 Q. So this is an interruption that's okay with you?

19 what --
far as 20 A. It -- it doesn't -- it isn't of any significance as
21 my work is concerned.

other 22 Q. Okay. All right. I was looking at page 9 and your
employment 23 work. And you've told us already you had short-time
a 24 positions for a time. But I notice that you worked as
ranch 25 wrangler once. Are we talking about you working on a

Juror No. 874 - Voir Dire

1 somewhere?

2 A. Yeah. It was in Clark, Colorado. It was a guest
ranch.

3 Q. Okay. And is that up by Steamboat?

4 A. Yes, it is.

5 Q. And did you work there more than a season or --

6 A. It was just a winter season.

7 Q. Okay. You took care of the horses that were there
for the
8 guests?

9 A. Basically, yes. There was a lot of -- a lot of
different

10 duties that -- the farm duties, and then we sang to the
guests
11 in the evening, that kind of stuff.

12 Q. Oh, they had this ranch open in the wintertime?

13 A. Yeah. That's -- see, we gave sleigh rides.

14 Q. Oh, okay. You -- we asked you to express some
opinions

15 here and identify your awareness of certain things.
And I want

16 to turn to page 18, please, where we asked you your
awareness

17 of some organizations. Do you have it?

18 A. Yes.

19 Q. And on 84, I want to ask you about two of them, one
of them

about -- 20 being common law courts. Where and what did you hear
21 what did you hear about that name and where?
22 A. I guess it was a year or so ago. On the local talk
radios,
23 there were -- the militia movement was a buzz thing
going on
24 and they were having people on, talking about things
like that.
25 And they were arguing that -- something to the effect
that

2719

Juror No. 874 - Voir Dire

I wasn't 1 common law courts were here before the statutory law.
kind of in 2 really following it real close at the time. It was
3 one ear and out the other.
reference 4 Q. Okay. So it was something you heard in passing
5 on a talk show?
6 A. Most of this is, actually.
7 Q. And that's true, also, of the Posse Comitatus?
8 A. Yeah. Actually.
9 Q. You marked that --
than 10 A. Actually, I don't understand how that works other
that. 11 the -- a sheriff deputizes people or something like

12 Q. Okay. And that was in the same time period when
you were
13 listening to talk shows? I don't mean that you don't
today,
14 but this is the same time frame?
15 A. I would say yeah. Because most of this -- this
type of
16 stuff that I would have heard on -- on the radio would
be when
17 I'm going from site to site on my deliveries. So I'd
get a
18 little snippet here and then be out of my car and into
a
19 building and then when I'd come back out, there might
be
20 something else on -- a commercial or something. You
can't
21 follow the -- the story if you aren't sitting there all
the
22 time.
23 Q. Okay. So would it be accurate to say you listen to
talk
24 radio just like background music?
25 A. I would say so, yes.

2720

Juror No. 874 - Voir Dire

1 Q. Have you ever called in on any of those talk shows?
2 A. No. No, I haven't.

Question 3 Q. Page 22, I want to ask you about an answer there.

4 100.

5 A. Yes.

6 Q. And you say that you think the criminal justice
system is

7 working adequately, but you're concerned about the
separation

8 of power. Then you say, for example, Judicial Branch
does not

9 serve in Congress. What did you mean by that?

10 A. Well, the way I understand it -- and I could be
wrong

11 here -- but a barred attorney would be working within
the

12 Judicial Branch. Am I correct in that?

13 Q. A barred attorney?

14 A. Yes. One that's a member of the bar.

15 Q. Oh, okay. Well -- judges --

16 A. If he were serving on Congress at the same time,
then he'd

17 be serving two masters.

18 Q. Yeah. Well, that doesn't happen.

19 A. That's what I meant by that.

20 Q. Okay. We don't have people -- I mean, you -- as
far as, I

21 think, the relevant courts here are concerned, it's not
true

22 across the board for some types of courts under state
systems,

23 but in the federal system and, generally speaking, in
the state
24 systems, you have to be a lawyer before you become a
judge.
25 And then you become judges under state -- some state
systems by

2721

Juror No. 874 - Voir Dire

1 election, in the federal system by appointment. And no
federal
2 judge can serve in Congress and no sitting member of
Congress
3 can serve on the court. They are separated branches in
the
4 three branches of government, the executive being the
-- the
5 executive agencies starting with the White House. And
these
6 lawyers here for the Government are from that Executive
Branch
7 agency called the Department of Justice, which has
nothing to
8 do with judges except to try cases before courts. And
then the
9 legislative being the Congress, again at the national
level,
10 and the judiciary. And they don't mix in terms of the
same
11 persons being able to hold dual appointments or dual
office.
12 Now, there have been some people who were in

Congress

do have 13 and then became judges after being in Congress, so we
of the 14 some people on the courts who were previously members
who were 15 Congress or in the Executive Branch. And we have some
branches, but 16 judges and quit being judges and went into those
at the 17 not at the same time. You can't hold those positions
18 same time. Does that clarify it for you?

this, I 19 A. Yeah. I think actually, I'm -- thinking back on
between, 20 was thinking more on possibly a conflict of interest
21 say, Trial Lawyers Association and Congress.

22 Q. Well -- yeah.

23 A. In the legislative sense.

First 24 Q. Well, lawyers don't give up their rights under the
Congress or 25 Amendment to petition their government by lobbying

2722

Juror No. 874 - Voir Dire

have 1 those things or to serve in Congress. I mean, we do

or not, 2 lawyers serving in Congress. And whether they practice

Okay? 3 I don't know. I don't know that much about Congress.

4 A. Yes, sir.

5 Q. Now, where did you get the view that maybe there is
a
6 problem with judges being in Congress at the same time
they're
7 judges?

8 A. Oh, I didn't.

9 Q. Okay. Well, that's what I thought you were saying.

10 A. No.

11 Q. And that's why I was -- that's how I got into this
12 conversation with you.

13 A. I'm sorry.

14 Q. Okay. Now, we asked you some questions here that
sort of
15 asked you what you would do if you had the same power
as the
16 Congress, and that is to write the law with respect to
17 punishment and particularly with respect to the
punishment of
18 putting someone in prison for life with no possibility
of ever
19 being released on parole or otherwise and the
punishment of
20 death. And of course, you are well aware, I'm sure,
that
21 that's a subject of some disagreement among our
citizens and
22 the laws have changed from time to time. But we deal
with what

23 the law is now as we're obliged to do.

I want 24 But before talking about the law as it is now,
well, what 25 to turn to where we asked you on the questionnaire,

2723

Juror No. 874 - Voir Dire

anything 1 do you think about it, coming in here before you hear

28. If 2 from me about the law. And you did that for us on page

answer -- 3 you will, please, turn to that one. And also, your

moment to 4 you have an answer on the next page, 29. Just take a

5 read that over.

few 6 Now, I'd like to just discuss with you for a

that this 7 minutes the answers that you gave here, recognizing

This was 8 was not a test to see what you know about the law.

much to 9 simply -- these are simply questions that relate as

the -- by 10 attitudes and opinions as they do to law, and that's

think in 11 design. We wanted to know something about what you

because 12 this area. And I'm asking you to simply explain this

13 it isn't entirely clear to me.

14 You say under A, perhaps life imprisonment
where

15 there's no expectation that the person can be cured. I
take it

16 in the sense that he or she won't go out and do the
same thing.

17 Is that what you're talking about?

18 A. Well, to protect both the innocent from them and
them from

19 having the ability to commit a crime like that until a
cure

20 might be -- might come about for something like that.

21 Q. Okay.

22 A. I'm not clear. I'm sorry.

23 Q. Well, that's fine. We're just asking you to expand
on

24 this. And you, in that area, are thinking particularly
of

25 protecting children from sexual abuse?

2724

Juror No. 874 - Voir Dire

1 A. Well, at least to -- from what I understand -- and
I could

2 be wrong here -- but pedophilia is not something that,
if

3 anything, is -- can be counseled away. And it seems to
be part

of X 4 of a person. Well, I don't think that a -- a sentence
that case 5 number of years and then you're released is proper in
necessarily. 6 because doing the time doesn't cure the problem

death 7 Q. Okay. Now, on the next one, which asks about the
have 8 penalty, you say if it is the law and the requirements
I think 9 been met, it should be enforced, but not selectively.
assume 10 I understand the first part in which you're saying you
certain 11 that before the death penalty can be imposed, there are
12 requirements by statute or law.

13 A. Yes.

have in 14 Q. And then you say "not selectively." What did you
15 mind there?

16 A. I don't recall on that, to tell you the truth.

17 Q. All right. Well, taking you back --

as -- as 18 A. Perhaps it was like on high-profile cases, as well
19 opposed to like a more common street-crime-type deal.

these, 20 Q. Well, we go back almost a month ago when you wrote
sure what 21 so we understand the hesitation here that you're not
that. 22 you thought at the time. So don't be embarrassed about

these
is, the
you

23 But let me ask you this question: As you approached
24 questions and had to think about this subject -- that
25 subject of punishment -- sort of at the extremes, had

2725

Juror No. 874 - Voir Dire

1 thought very much about that before these issues?
2 A. It was a lot easier to be cavalier before now.
3 Q. Like some of the talk show people?
4 A. Not so much that. I think it was just the way I
was.
5 Q. Well, what attitude or what thoughts have you had
that you
6 would now describe as cavalier?
7 A. Well, if it is the law, then -- and then there are
people
8 that aren't getting punished for doing -- doing the
crime.
9 Q. You -- so when you say selectively, do you mean
with some
10 discrimination; that certain kinds of people may be put
to
11 death and other kinds of people not and you see a
12 discrimination there?
13 A. To a degree, yes.
14 Q. Like based on their income or position in life?

that. 15 A. Their ability to defend themselves. Things like
case in 16 Actually, I think that was -- you -- with the Simpson
17 mind. Going back to -- to Point B.
18 Q. Yeah.
you 19 A. Because he had the ability to defend himself, where
20 take a \$20,000-a-year person, and they -- they probably
21 couldn't do nearly as well.
just 22 Q. One other way that could be interpreted -- and I'm
direction -- 23 offering this to see if you were thinking in this
24 that if you're going to have the death penalty, it
ought to be
And 25 across the board, certain crimes and certain penalties?

2726

Juror No. 874 - Voir Dire

not 1 that's what you meant when you said "not selectively,"
something like 2 individually tailored to the case. Did you have
3 that in mind?
would make 4 A. Yes. More to -- to that degree. It would -- it
to 5 things more objective, and then it would leave the jury

6 decide whether the crime happened or not.

7 Q. So you think that --

8 A. And then it would go to the penalty phase from
there. It

9 would make it much easier.

10 Q. And what do you mean about the penalty phase then?

11 A. Well, it would eliminate a lot of gray area in
one's

12 thinking as to spiritual rightness or wrongness.

13 Q. All right. And then if we look at C, I think I
understand

14 C as sort of a follow-up to what you said in A.

15 A. Yes, sir.

16 Q. And then D, you're suggesting premeditated murder
or

17 aggravated murder as being the type of offense
deserving the

18 death penalty. Is that your answer?

19 A. I believe so, yes. Or that is --

20 Q. Well, please --

21 A. No, I don't -- I didn't --

22 Q. I'm not trying to give you answers. I'm just
attempting to

23 give you words and see if they --

24 A. I meant, I can't add anything to that.

25 Q. All right. Well, on the next page, you expand on
that a

Juror No. 874 - Voir Dire

1 little in terms of your own ability to serve on a jury
that has
2 the issue of punishment before it. And I guess I don't
3 understand -- you say you can handle guilt or
innocence. The
4 system of appeals and parole would determine
rehabilitation.

5 What -- what is your thinking there or was your
thinking there?

6 A. Let me see. They were talking about life
imprisonment --

7 Q. Uh-huh.

8 A. -- I believe. Well, if a person has life
imprisonment and

9 they've gotten to a point where they've been
rehabilitated,

10 then that's a step beyond -- or much further than we
are right

11 now in that there are trained people that can
recognize,

12 hopefully, that the person's for real or they are
putting on.

13 And if they're putting on, they are going to keep them
away

14 from society. And if they're safe to release to
society --

15 Q. Okay. I understand, I think, what you're saying.
Well, I

16 want to talk with you a bit about the way the law is --

17 A. Yes.

18 Q. -- as compared to these things that you were
talking about.

19 As I said, the law has changed from time to time, but
we work

20 with the way it is now. Under federal law -- and we
are in a

21 Federal Court, so this is different from the law of a
number of

22 states. And the law to be applied in this case is that
the

23 jury makes a sentencing decision in the event of a
verdict of

24 guilty. Now, the first task of the jury, of course, is
to hear

25 the evidence, the trial in the traditional sense of a
trial,

2728

Juror No. 874 - Voir Dire

1 when, as I've described, we start with the presumption
of

2 innocence, say to the Government lawyers, Bring in your

3 evidence, and then see if that evidence is sufficient.
The

4 defendant may or may not introduce evidence. I've
already

5 talked about that a defendant is not obliged to. But
at the

6 end of the taking of the evidence, then the Court gives

7 instructions on the law as to what it is that the

evidence must

8 show to satisfy the burden of proof as to particular
crimes

9 charged. The elements of the offense: These are the
things

10 that have to be proved -- and then ask the jury to
decide,

11 well, did the evidence prove it. And of course, if the
jury

12 decides no, that there's still a reasonable doubt
remaining,

13 the jury has the sworn duty to give the defendant the
benefit

14 of that doubt and find him not guilty.

15 You understand that concept? We've talked
about it a

16 little earlier.

17 A. Yes.

18 Q. Now, in the event of a not guilty verdict, of
course, that

19 ends it all. If there is a guilty verdict, then in
cases that

20 do not involve the possibility of a sentence to life in
prison

21 with no release or death, the court does the sentencing
so that

22 the matter then goes back to the judge, and the jury is

23 finished with its responsibility in the case. The
judge takes

24 over the sentencing decision, and then there's a
hearing in

25 front of the judge. And before that, a lot of

information is

2729

Juror No. 874 - Voir Dire

1 presented to the court about the crime, some additional
2 circumstances about the crime from -- you know, added
to what
3 was in the evidence at the trial and then, also, a lot
of
4 additional information about the defendant, who that
person is,
5 and that includes things that are unique to that person
and can
6 include the psychological makeup, the character of the
person,
7 his background in life, what his family was like, what
his
8 family relationships are like as an adult, work
history, any
9 prior involvement with the law, attitudes about the
case, and
10 the role in the offense, what did he do in cases where
there
11 are multiple defendants, multiple -- the conduct of
more than
12 one person, you understand. And then the judge, having
all of
13 that additional information, hears the lawyers on both
sides
14 and makes a decision about what is a just sentence, not
only

15 for this crime, but for this person now before the
court who is
16 entitled to individual consideration. That's how it
works.
17 But in the federal courts where the question
is life
18 or death, we do not let the judges decide a question
like that.
19 That goes to the jury. And here we have then 12 jurors
coming
20 out of the community and sort of representing from
their
21 different backgrounds and perspectives the conscience
of the
22 community. But the jury is not to decide the question
of
23 punishment based simply on the crime, not just on what
they
24 heard at the trial. More is required in the same
manner that
25 more is required of a judge doing individual
sentencing. So

2730

Juror No. 874 - Voir Dire

1 this is a very individual process. And we have a
second trial,
2 a penalty phase trial with a jury present. And it is
in that
3 process that additional information is provided, the
Government
4 bringing in some more information about the crime and

the

bringing 5 circumstances and the consequences of it, the defense

unique 6 in this type of information about the defendant as a

7 human being, the same things I've already discussed,

person as a 8 background, you know, what we would use to judge a

then 9 human being and the value of that person's life. And

do with 10 there are instructions given by the court about what to

from the 11 all this in the sense that the instructions identify,

trial, what 12 information that has been presented at the second

factors, 13 may be considered by the jury to be aggravating

person, and 14 suggesting that death is the punishment for this

those 15 mitigating factors, which as the term implies, means

the 16 things the jury should consider in deciding that while

judged 17 crime may justify death, the person before them being

18 does not deserve to be put to death.

19 Do you understand what I've said now?

20 A. Yes, sir.

21 Q. And again, it's very individual so that where two

then 22 defendants may be found guilty of the same offenses,

to
the
the

23 separate juries deciding this punishment issue can come
24 different views of it and different results so it isn't
25 crime that determines it. It is the crime plus all of

2731

Juror No. 874 - Voir Dire

1 information that is received in the sentencing hearing,
2 aggravating and mitigating. Do you follow me on that?
3 A. Yes.
4 Q. Do you have any question about what I've explained?
5 A. No. No, I don't.
6 Q. All right. Now, with this explanation as to what
is
7 required of jurors in making a sentencing decision, a
8 life-or-death decision, I want to ask you whether you
think
9 that you will be able, as a juror, to make a decision
about
10 whether a defendant should be sentenced to life or
death,
11 considering his personal background and individual
12 characteristics in addition to the circumstances of the
crime.
13 A. I -- yes, sir.
14 Q. And you understand what I'm saying? You've got to
consider

15 it all and not be judged by -- or not judge by
categories or --

16 or by the outcome of other cases.

17 A. I think a matter of fairness, if nothing else, from
what

18 you just explained, gives the -- the broad outlook of
the

19 situation. What I was describing before was -- was
more, well,

20 if you meet certain criteria, you fall in this slot,
but --

21 Q. Well --

22 A. It does open things quite a bit from what you've
said, and

23 I agree.

24 Q. See, those criteria are met before the jury gets to
the

25 question of life or death.

2732

Juror No. 874 - Voir Dire

1 A. Right.

2 Q. So it's not a question of whether the defendant has
been

3 proved guilty. This is all after the jury is satisfied
the

4 evidence proves guilt.

5 A. Uh-huh. Yes.

6 THE COURT: Okay. Thank you. Well, we have

some

7 questions from the lawyers, too, so if you'll please
follow
8 along what they ask of you and answer them as you have
me.

9 MR. ORENSTEIN: Thank you, Judge.

10 THE COURT: Okay.

11 VOIR DIRE EXAMINATION

12 BY MR. ORENSTEIN:

13 Q. Good morning, sir.

14 A. Good morning.

15 Q. How are you this morning?

16 A. Fine, I think.

17 Q. A little nervous?

18 A. Yeah. A little edgy.

19 Q. This will be over soon. As the Judge introduced
me, my
20 name is Jamie Orenstein; and together with my fellow
21 prosecutors, it's my responsibility to present the
evidence in
22 this case against Mr. Nichols.

23 I understand from reading your questionnaire
that you
24 grew up in a fairly large family. And it looks like
your
25 brothers and sisters have, all like yourself, scattered
away

Juror No. 874 - Voir Dire

1 from Jefferson City; is that right?

2 A. Pretty much.

3 Q. Do you -- do you keep in touch with any or all of
them

4 fairly regularly?

5 A. We -- we had a family reunion a couple of weeks
ago.

6 Q. Other than sort of special occasion type of
situations like

7 a reunion, do you keep in touch fairly often with any
of your

8 siblings?

9 A. Yes.

10 Q. I'd like to ask you about a subject that his Honor
covered

11 with you, and let me start off by saying I will try and
not

12 intrude on your privacy too much, but I hope you'll
understand

13 why I'm asking you questions about this condition that
you

14 discussed. And if my questions come from ignorance, I
hope

15 you'll forgive that, as well.

16 If I may, let me ask you, before this
condition was

17 diagnosed, how did it affect you in your daily life? I

18 understand you weren't aware of it being a condition at
the

19 time, but were you aware of a problem?

20 A. No. No, I wasn't.

21 Q. How did it come to be diagnosed?

22 A. Well, I -- I thought that there was something -- I
-- let
and
23 me back up. I -- I suspected there was something wrong
24 could be treatable.

25 Q. Uh-huh.

2734

Juror No. 874 - Voir Dire

1 A. However, I never had an insurance plan or the
wherewithal

2 to go down and -- and pay to have it done. And in my
case, it

3 was \$180 an hour for the doctor. And I was in a
position just

4 before I got married. And I thought, well, this would
be a

5 good time to go down and get this taken care of.

6 Q. So at that time, you were aware that there was
something

7 that -- that might be a problem and that you wanted to
-- to

8 find out if there was a medical reason for it?

9 A. Yes. Or -- or a mental reason, for that matter,
whatever

10 it would take. As it turns out, it was a medical

reason, which

11 I would wear like a badge of honor because it's like
diabetes,

12 get your medication and you're home free.

13 Q. Sure. And I imagine it's comforting in a way to
know that

14 there is a medical reason for it.

15 A. You aren't a bad person --

16 Q. Right.

17 A. -- because you have mood swings.

18 Q. And -- but you were aware of these mood swings
before it

19 was diagnosed, I take it? Or were you?

20 A. Oh, it was everyone else's fault.

21 Q. Let me ask you this, sir, does -- does an increase
in

22 stress contribute to the condition? Is that something
you have

23 to monitor?

24 A. What -- basically, what my medication treats is the
manic

25 end of bipolar disorder. And I'm hypomanic.
Hypermanic is a

2735

Juror No. 874 - Voir Dire

1 level above. Hypermanic, if I were upset, I would be
in your

2 face with an argument and you'd be uncomfortable.

Hypomaniac,

two 3 I'm uncomfortable or bouncing off the walls like having
4 pots of coffee in the morning.

couple of 5 Q. And the medication that you've had for the last
6 years, that's been controlling the situation?

7 A. Yeah. It takes the up -- upper end off.

8 Q. Uh-huh.

the party, 9 A. The downside to that is if you're going to -- to

manic 10 you're the life of the party and -- if you're in your

half of 11 state because you're -- you're a fun guy to be around
12 the time.

something that 13 Q. Does -- does it require a sort of fairly constant
14 monitoring of the level of medication or is it

15 you can always take the same amount all the time?

16 A. Pretty much the same amount, but it is monitored.

and you 17 Q. And if you are subjected to a change of routine --
18 can understand why I'm asking these questions, because,
19 obviously, jury service would be a change in routine.

If -- if 20 you are subjected to a change in routine, that may
involve some

at all, 21 stress. Would it be fairly easy to figure out how, if

22 you need to change your medication, or is that
something that

23 you think might take a while to figure out?

24 A. Actually, I don't think it's something that would
be an

25 issue, but the medication could be adjusted.

2736

Juror No. 874 - Voir Dire

1 Q. And that's something --

2 A. I'm not at the end of -- you know, like the highest
level

3 of -- of medication by any means.

4 Q. I -- one more question and I hope -- and then I'll
move off

5 of this subject. One thing that I have heard about
this

6 condition is that sometimes people prefer not to take
their

7 medicine because they are feeling well. And has that
been an

8 issue for you at all?

9 A. No.

10 Q. All right. I want to ask you a couple of questions
about

11 your answers on the questionnaire, and if you'd take a
look,

12 please, at page 13.

13 A. Yes.

14 Q. Question 56 asks you about whether you have any
religious
15 beliefs that might affect your service as a juror. And
you
16 wrote that you're -- your response to that was only
what a
17 Christian upbringing would impart. I was wondering if
you
18 could explain how your Christian upbringing might
affect your
19 jury service.

20 A. Well, I was brought up with the Ten Commandments.
I
21 couldn't recite them to you. But that's the foundation
which I
22 started with. And I had -- I started with Presbyterian
faith
23 when I was a child and -- and then as I grew into
adulthood,
24 for convenience, primarily, I went to other faiths.

25 Q. As his Honor explained to you, service as a juror
requires

2737

Juror No. 874 - Voir Dire

1 someone to be able to say, you know, with complete
honesty, I
2 will decide this case only on the facts and only on the
law as
3 explained to me by his Honor. And one of the things
that we're

any 4 asking about when we ask that question, would it have
religious 5 effect on your service? Is there anything about your
6 views that would prevent you from following that law?
7 A. No.
with 8 Q. Okay. And of course, we have the same question
at 9 respect to your political views, and that's on page 15
views 10 Question 65. And you wrote there about how political
considered a 11 might affect your jury service, "That I might be
12 conservative."
13 A. Yes.
that might 14 Q. Again, do you see that -- could you explain how
15 affect your -- your jury service?
slower 16 A. Well, "conservative," by my definition, is I move
correctness, 17 than the pack. And current, say, political
from 18 political correctness moves on -- in my belief, a year
today, and 19 now, it will be a different standard from what it is
like 20 on down the line. Anyway, by -- by being conservative,
Listening 21 I'm ten years behind the times on a lot of things.
22 to old music on the radio.

23 Q. So it's basically a go-slow kind of attitude?

24 A. Yeah. The tried and true, the proven.

25 Q. I -- I noticed along the same lines that you
mentioned you

2738

Juror No. 874 - Voir Dire

1 listen to Rush Limbaugh on the radio.

2 A. Sometimes.

3 Q. And I know some people would call him a
conservative, as

4 well.

5 A. I would say he's on the far extreme.

6 Q. And you anticipated my question.

7 A. Okay.

8 Q. In relation to him, where would you place yourself
on that

9 spectrum?

10 A. I'm more towards the center.

11 Q. I also want to ask you a couple of questions about
opinions

12 that you mentioned hearing about, and if you'd turn to
page 30,

13 Question 131. There is a question about whether you'd
ever

14 heard a view about currency -- U.S. currency not being
legal

15 tender. And you wrote that you've heard it's not legal

tender

16 because it's not backed by gold. Where did you come
across

17 that view?

18 A. I really don't know.

19 Q. Is it -- is it something you share?

20 A. Actually, I'd been told that the currency is
actually

21 backed by the debt, which would be the trust in the
country and

22 the ability to get up the next morning and be a U.S.
citizen;

23 that it really means nothing, whether there's gold in
Fort Knox

24 or anything.

25 Q. So in your view, is the currency that we use in
this

2739

Juror No. 874 - Voir Dire

1 country -- is that legal tender?

2 A. Yes.

3 Q. You have no problem using it in your business, for
example?

4 A. Well, that's -- yes, sir. No problem.

5 Q. Okay. You also mentioned on the next page, there
is a -- a

6 statement by the President that you heard? On the next
page.

7 A. Which number?

8 Q. I'm sorry. Question 133.

9 A. Okay.

10 Q. First of all, let me ask you, do you recall what
the
11 statement was?

12 A. Not exactly. It was more the -- the tone that it
-- it
13 made it seem like they had -- had found suspects and
they were
14 going to prosecute them and execute them; like in his
mind, it
15 was an open-and-shut case. And no problem. Don't
worry about
16 this. Let's move on with life.

17 Q. And what was your view of that statement?

18 A. Well, I thought it was improper.

19 Q. In what way?

20 A. I'm sorry?

21 Q. In what way? What was your reaction to it?

22 A. Well, if nothing else, everyone's entitled to due
process.
23 And if you get on the -- on the TV and the President of
the
24 United States appears to be taking sides, I don't think
that's
25 appropriate.

Juror No. 874 – Voir Dire

1 Q. Now, obviously, the prosecutors working on this
trial are
2 members of the Executive Branch of government and
within the
3 branch of government headed by the President, in a
sense.
4 Would you hold your view about the President's comments
in any
5 way against the Government in prosecuting this case
before a
6 fair jury?
7 A. No. His speeches are written by someone else
anyway.
8 Q. That's not going to have an effect on your service
here,
9 your view of that statement?
10 A. No.
11 Q. Okay. You also answered several questions on pages
31 and
12 32 about -- about guns and gun ownership. First of
all, I
13 notice on page 31 -- I think it was Question 134 -- you
14 mentioned that you own a number of guns. I'm sorry.
Question
15 136.
16 A. Yes.
17 Q. One of them -- I recognize some, not others. What
is an
18 SKS?

19 A. That is a -- a Chinese military rifle. It's semiautomatic.

20 .30 caliber.

21 Q. And as a -- as I noted, you have a variety of guns.

What

22 do you use them for?

23 A. It's a collection, mainly. I don't fire them too often.

24 Q. Do you go target shooting at all?

25 A. Twice in the last two years.

2741

Juror No. 874 - Voir Dire

1 Q. You also wrote on the next page -- and this is the right
2 continuation of Question 137 -- that you believe it's a

3 and a duty to possess firearms and that you believe in the

4 Second Amendment the way a newspaper publisher believes in the

5 First. I understand, of course, the part about a right to bear

6 arms. In what sense is there a duty to own or -- or bear arms?

7 A. It may just be a romantic feeling, but I believe in Sweden,

8 people are required to own a -- a weapon and go down and get

9 training and report to -- keep up to date, so to speak, with

10 their skills. And to me, that is a deterrent for a
country to
11 come in and overwhelm another country if everyone's
armed, even
12 if it's handguns -- well, not handguns, but more --
more rifles
13 than anything else. Bombs and -- that's not a good
choice of
14 words. I apologize. Airplanes and missiles can take
out
15 strategic targets, but it's still a foot soldier that
has to
16 take the territory and hold it, and it's very difficult
for
17 them to do it if everyone's got something pointed at
them.

18 Q. So is this view that you have a matter of, well, it
just
19 makes good sense or is it somehow your view of the
Constitution
20 that there's a duty to own guns?

21 A. Both.

22 Q. I'd like to ask you finally about another subject
his Honor
23 went over with you, which is your views about
punishment. And
24 of course, you realize that we don't address that
question
25 unless and until a jury decides that Mr. Nichols is
guilty of

Juror No. 874 – Voir Dire

also
at that
back to
Part B,
penalty
selectively. I

1 the crimes charged beyond a reasonable doubt, but you
2 understand that we don't get to ask you these questions
3 point so we have to ask them now. And I'd like to go
4 that question on page 1 -- on page 28, Question 124,
5 where you said that if the requirements for the death
6 have been met, it should be enforced but not

7 want to make sure I understand your answer.
8 Is it your view that there are a number of
cases that
9 we never hear about -- for instance, you know, someone
robs a
10 convenience store, kills somebody, that person gets the
death
11 penalty, but then there are high-profile cases where
it's not
12 enforced because of its publicity?

13 A. Yes.
14 Q. And is it your sense that that's an unfair system?
15 A. "Unbalanced," I think, would be a better choice of
words.

16 Q. And in your view, how could that be corrected, that
17 imbalance?

18 A. I really don't know. We've got a system in place
and it's

19 easy to become embittered if you become in the -- or if
you're
20 on the wrong side at a given time; but I know at least
the
21 older I get, there are no pat answers to anything,
either.
22 Q. And -- and you mentioned that you might have been
thinking
23 of the O. J. case -- the O. J. Simpson case when you
wrote
24 that.
25 A. Yes.

2743

Juror No. 874 - Voir Dire

1 Q. What did you have in mind?
2 A. Well, with multiple millions of dollars being
thrown into
3 the ring there and then with expert witnesses and you
name it,
4 and then if someone were to come in like -- like you
said, that
5 just robbed a convenience store and committed the same
crime,
6 basically, you know, a death occurred --
7 Q. Right.
8 A. -- with similar evidence, might not even get a
chance to
9 present that evidence because he couldn't afford to
have a DNA

10 expert come in and testify for him, for instance.
Maybe that's

11 true, maybe that's not.

12 Q. So you -- so the Simpson case is one where you feel
that

13 the defendant there got the benefit of being in the
public

14 spotlight?

15 A. I think he had the benefit of -- yeah, of being a
16 high-profile person.

17 Q. Did -- did you have an opinion as to whether the
jury's

18 verdict was correct?

19 A. No. Because as -- I was privy to information which
I

20 understand was excluded from the jury, so I wasn't
there and I

21 don't know what information that they had to deal with.
And

22 they had to deal with what they had.

23 Q. So you may have your own view about what the result
should

24 have been, but you respect the verdict?

25 A. Yes.

2744

Juror No. 874 - Voir Dire

1 Q. What is your view of what the result should have
been?

2 A. That's -- that's really tough because it's a --
it's fairly
3 complex. I'm -- my concern in the case was whether
there was
4 any tampering by the -- the police department, if there
was or
5 if there wasn't. It looks like there was an
opportunity for
6 it, which could lead to some, oh -- not -- what's the
-- I'm --
7 I'm blocking up here. I'm sorry. The reverse of
presumption
8 of innocence or the --
9 Q. Are you having trouble just thinking of the right
--
10 A. I just came to a mental block. Say something and
it'll
11 come back or repeat the question.
12 Q. Was the -- the only question was whether you had a
view of
13 what the proper result there was, and it sounds like
you're
14 saying you just have trouble coming up with an answer
for that.
15 A. Yeah. I don't think I have -- have the -- the
information
16 there to make a judgment.
17 Q. Right. I just have one last question again about
this
18 question of punishment, Part D of Question 124. You
wrote that
19 the kinds of cases in which you think the death penalty

might

20 be applied in cases of premeditated murder or
aggravated

21 murder. Now, obviously, as a lawyer, you know, I have
some

22 views about what the term "aggravated" might mean, but
I'm

23 wondering what you had in mind when you said aggravated
murder.

24 A. Like if someone was tortured to death, for
instance.

25 Q. All right. And that's -- that's one of the cases
where you

2745

Juror No. 874 - Voir Dire

1 think it would be appropriate to consider the death
penalty?

2 A. Yes.

3 MR. ORENSTEIN: Well, sir, thank you, very
much for

4 answering my questions. I'm sure there are a few more
now.

5 And thank you for participating in this process.

6 Thank you, your Honor.

7 THE COURT: Mr. Woods.

8 MR. WOODS: Thank you, your Honor.

9 VOIR DIRE EXAMINATION

10 BY MR. WOODS:

11 Q. Good morning.
12 A. Good morning.
13 Q. As the Judge introduced me, my name is Ron Woods.
I'm one
14 of the two lawyers that was asked to help Terry
Nichols. The
15 Oklahoma City judge, shortly after the charges were
filed,
16 asked Mike Tigar and myself to help Terry Nichols in
these
17 charges that have been filed.
18 Is Terry Nichols going to be at a disadvantage
with
19 you because he couldn't afford to hire the very best
and he has
20 to rely on court-appointed lawyers?
21 A. I suspect you -- you all are very competent
attorneys
22 with -- with this case.
23 Q. So he will not be starting off at a disadvantage
with you
24 because he couldn't afford a lawyer?
25 A. No. No, I don't think so. Or not a -- a sizable
one at

2746

Juror No. 874 - Voir Dire

1 that.
2 Q. Okay. When you talked about the O. J. case and the
amount

3 of money thrown into that case, I just wanted to
address that

4 issue with you.

5 A. Yes, sir.

6 Q. And I assume it's not going to be a factor that
would

7 affect your decision either way; is that correct?

8 A. Shouldn't.

9 Q. Okay. Then following up on the questions that the
10 prosecutor asked you, it's my assumption that you can
serve on

11 the jury given the medication that you take; is that
correct?

12 It's not affecting your deliberative ability
whatsoever?

13 A. No, sir. Or yes, I can.

14 Q. You can serve on the jury?

15 A. Yes.

16 Q. Okay. Now, it looks like all your family went into
being

17 doctors and you've got two brothers that were doctors
and your

18 sister became a CPA, but you went into agriculture.
What

19 was -- why was that?

20 A. Oh, I was probably thinking I could do a lot better
than I

21 did. The -- the farm was there and I -- I had this
dream of --

22 of being a farmer.

23 Q. Okay. And you went two years to Missouri
University,
24 studying agriculture. Was that at the same time you
were
25 living on the farm and working on the farm, or did you
do that

2747

Juror No. 874 - Voir Dire

1 after you left college?
2 A. The last year of college, I was working on the farm
and

3 commuting to school.
4 Q. Okay. And then you stayed on the farm for four
years; is
5 that correct?

6 A. Thereabouts. I -- I'd have to look at my records
to find
7 out exactly how long I was there. If that was an
issue.

8 Q. Okay. Okay. You stated that on the farm, you
raised hogs
9 and cattle and some crops. What type of crops were you
10 raising?

11 A. Corn, milo, alfalfa. It was 40 acres of crop land.

12 Q. Okay.

13 A. A little diversity.

14 Q. Did you use fertilizer on the crops?

15 A. Uh-huh.

16 Q. And where did you obtain the fertilizer?

17 A. MFA or the co-op.

18 Q. Okay. What kind of fertilizer did you use?

19 A. That was all determined by soil test analysis, and
it was
20 applied by the -- the company.

21 Q. So you just had them do it commercially? They came
out and
22 tested and determined what needed to be done and they
brought
23 it out?

24 A. In a sense. I did the testing myself.

25 Q. Okay.

2748

Juror No. 874 - Voir Dire

1 A. Starter fertilizer, I would get the bag fertilizer
to put
2 into the spreader -- not spreader, but the planter.

3 Q. Okay. And you used the dry rather than liquid
fertilizer,

4 I take it?

5 A. Yes. Yes.

6 Q. Okay. On the farm, how close were you to town, to
stores,
7 hardware stores, etc.?

8 A. Jefferson City was 13 miles away. The closest town

was

9 about 3, 4 miles away, but we were talking about 200
people

10 there.

11 Q. Okay. On the farm, did you become used to
utilizing what

12 was available to make repairs and to take care of
functions

13 inasmuch as you don't have a hardware store that you
can walk

14 to?

15 A. Yes, sir.

16 Q. And you're aware that there are many things that
can be

17 used for multiple purposes; is that correct?

18 A. Yes, sir.

19 Q. Okay. Now, you mentioned that you had gone to gun
shows.

20 Is that something you do frequently or infrequently?

21 A. Infrequently.

22 Q. Okay. When's the last time you've been to a gun
show?

23 A. I would say six months to a year ago.

24 Q. Okay. Here in Colorado?

25 A. Yes.

2749

Juror No. 874 - Voir Dire

1 Q. What did you notice being sold at the gun show?

2 A. Well, it was like an indoor flea market, basically,
with
3 the focus being on -- on guns and reloading equipment,
that
4 type of -- of thing. Camping goods.

5 Q. Did you notice any Army surplus items for sale?

6 A. Yes.

7 Q. All right. Did you notice any literature that was
being
8 sold by any of the tables?

9 A. Yes.

10 Q. Did you ever examine any type of literature that's
11 available at these gun shows?

12 A. I think I understand which table you're talking
about.
13 Q. I'm not sure that I was at the same gun show, but
--
14 which --

15 A. It's the same one that's in a lot of them.

16 Q. Are you speaking of just one table or -- were there
several
17 tables?

18 A. There was one outfit out of Boulder. I won't
mention any
19 names. But they had quite a library of -- of things
that
20 someone who was a -- an anarchist or something like
that could
21 probably find a lot of information which might or might

not

22 help them along their way.

not only 23 Q. And so you're aware that these items are available

company 24 at gun shows, but commercially available? The printing

25 in Boulder that you're speaking of --

2750

Juror No. 874 - Voir Dire

1 A. Yeah.

2 Q. -- have you seen their catalogs?

3 A. No.

anybody 4 Q. Are you aware that it's commercially available for

publications? 5 who wants to call in or write in and buy those

6 A. I figured as much.

and I 7 Q. Okay. Now, you're speaking of one table with --

noticed 8 assume you're speaking of those publications. Have you

the full 9 other tables with other types of publications covering

10 spectrum of the political views?

seems -- 11 A. The -- the political end of the deal, it -- it

struck 12 most of them were people handing out literature, and it

but 13 me more as people that would sure like things to change

inclination 14 didn't have the wherewithal of doing it and had no

15 to do it through normal channels.

16 Q. Okay. Did you ever see any tapes on the Waco --
the Branch

-- video 17 Davidians available, the video cassette tapes, a video

18 cassette tapes available for sale?

19 A. No.

20 Q. Okay. Have you ever seen or heard of the Waco
videotapes?

21 A. No.

22 Q. Okay.

23 A. Not the tapes.

24 Q. Okay. You had mentioned in your questionnaire that
you

Branch 25 felt that the government could have outwaited the

2751

Juror No. 874 - Voir Dire

view of 1 Davidians at the Waco situation in '93. Is that your

2 that?

3 A. Yes.

was 4 Q. Okay. Was that something that you followed when it

5 happening back from February to April the 19th of '93?

6 A. I didn't follow it. I remember when I went into
one of my

7 stops, they had the TV on and the -- the tank or
whatever it

8 was that put the gas in there had just done it at that
point

9 and the fire was starting.

10 Q. Okay.

11 A. And that's basically --

12 Q. Had you -- had you follow -- had you seen any TV
images

13 back in February when the original ATF raid on the
Branch

14 Davidian compound occurred?

15 A. No.

16 Q. Okay. Did you have any understanding about why
they were

17 raiding this religious compound?

18 A. I didn't have the whole story on it. I understand
that

19 they had some weapons violations, things that they
weren't

20 supposed to have that, in many cases, I think, most
people can

21 have if they get the proper permits.

22 Q. Okay. And you've indicated in here that you feel
the Brady

23 law should be abolished; is that correct?

24 A. Yes. Yes. Pretty much. I -- I think it's
ineffective.

Second 25 Q. And then you also state that it's -- under the

2752

Juror No. 874 - Voir Dire

arms; is 1 Amendment, it's everyone's right to have -- to bear
2 that correct?

a 3 A. Unless there's a cause. I -- I don't know whether
4 convicted felon is allowed to have a weapon. I assume
not.

5 Q. And that's something that you --

6 A. I --

7 Q. -- agree with, I take it, from what you're saying?

8 A. I would agree that, yeah -- that a felon should not
9 have a
10 weapon.

11 Q. Okay. When you've attended the gun shows, did you
notice

12 people that were there, doing the sales that were
taking part
13 in selling items?

14 A. In what regard?

15 Q. Well, that was a very poorly phrased question.

16 Mr. Nichols earned a living by attending gun
shows and

17 just selling --

17 MR. MACKEY: Objection.

18 THE COURT: Sustained.

19 MR. WOODS: Yes, your Honor.

20 THE COURT: I should explain for this man
we're not

21 going to get into the evidence. And I think Mr. Woods
was

22 trying to be helpful to give you a context, but I
sustained an

23 objection. And we have these from time to time, but we
don't

24 want to get into what may be in evidence.

25 MR. WOODS: Yes, your Honor, and I apologize
for

2753

Juror No. 874 - Voir Dire

1 pointing out one particular point.

2 BY MR. WOODS:

3 Q. My question would be if someone earned their living
by

4 attending gun shows and selling items at gun shows,
would that

5 be something you would hold against them?

6 A. No.

7 Q. Now, if you would, turn to page 27, Question No.
122 in

8 your questionnaire. You stated on -- in the question
-- "The

own 9 Constitution says that everyone is entitled to their

10 political and religious opinions no matter how
unpopular those

11 opinions may be. How do you feel about this?"

12 You stated, "I agree. However, a person's
right to

13 swing one's arm ends at another's nose." Can you give
me a

14 little further explanation what you mean there?

15 A. It's -- in -- not my viewpoint that a person --
it's my

16 viewpoint that should you believe a certain way
religiously or

17 politically, you have a right to -- to that opinion,
but you

18 can't force that opinion down my throat. I have a
right to

19 mine, too. And it's at the point where you start
pushing your

20 belief on mine that you've -- you've crossed that line.

21 Q. Okay. And 121: "Do you have any feelings or
opinions

22 about a case in which a witness has pleaded guilty and
agreed

23 to testify as a witness for the prosecution in the hope
that he

24 will receive a reduced sentence? If yes, what are
they?"

25 "I think the testimony might be more easily
questioned

1 and might not --" would you finish that sentence there
for me?

2 A. ". . . might not get the same weight . . ."

3 Q. Okay.

4 A. "Weighting," possibly.

5 Q. Okay.

6 A. ". . . as freely given testimony might."

7 Q. Okay. All right. Are you familiar with any
situations

8 where people have pled guilty and testified for the
9 prosecution?

10 A. I'm actually thinking more in a case of immunity.
I don't

11 know if the two of them are very close. But I don't
understand

12 if -- on the plea bargaining case or immunity if it's
locked

13 in, what will be -- what the testimony will be or if
the

14 testimony can change after the deal's been cut. If the
15 testimony can change, then I -- I believe it -- it
wouldn't

16 mean nearly as much.

17 Q. Okay. I take it it's something that if you were on
a jury

18 if that situation arose that you would look at it
carefully

was
19 if -- if it were immunized testimony or testimony that
20 brought about through a plea of guilty and a lesser
sentence?

21 A. Yes.

22 Q. Do you have any experience with ever having seen
someone
23 that was a methamphetamine abuser?

24 A. No. Not knowingly.

25 Q. Okay. Are you familiar with methamphetamine or its
street

2755

Juror No. 874 - Voir Dire

1 name of speed?

2 A. I -- to that point, yes.

3 Q. Okay. But you've never seen anybody under its
influence?

4 Have no idea how it affects a person?

5 A. Not really.

6 Q. Okay. Now, you've indicated on your questionnaire
that you
7 really haven't followed this case that closely, as I
take it;

8 is that correct?

9 A. Yes.

10 Q. All right. And the only thing you indicated about
your
11 knowledge of Mr. Nichols is that he may have bought

fertilizer

12 for Tim McVeigh?

13 A. I actually am not aware of that. I -- what my

14 understanding was is it was on the farm, or he may have
been

15 involved to that degree; but the specifics of it, I
don't know.

16 Q. All right. And I believe you stated as to the
public

17 statements of the President that he jumped to a
conclusion,

18 rushed to judgment?

19 A. That was my take on -- on his words that day. And
like

20 I -- I said, it's also my understanding that the
President and

21 his handlers -- his handlers put together most of his
speeches

22 and -- and news conferences.

23 Q. Okay. Do you recall about when that statement was
made in

24 relation to the day of the bombing of April 19?

25 A. It seems like it was almost immediate. I don't
know if

2756

Juror No. 874 - Voir Dire

1 they had arrested anyone at the time. I don't recall
that.

2 But if not, then it was immediately after the arrest.

your
President
these
that if
death
penalty
already
if you
would
prison,
sir. I
part of
for you

3 Q. Okay. And I take it that's not going to affect
4 deliberation were you on a jury, the fact that the
5 came out the day of arrest or shortly after and said
6 people are guilty and we're going to execute them?
7 A. No. He has no way of knowing that.
8 Q. Okay. And I take it from your answers to the Judge
9 you were on a jury that got to the penalty stage of a
10 penalty case -- and you understand that in a death
11 case, when you get to the penalty stage, the jury has
12 found the person guilty of premeditated murder -- that
13 were on a jury and had got to the penalty stage, you
14 consider the full range of punishment, not only life in
15 but the death penalty; is that correct?
16 A. All the options.
17 MR. WOODS: All right. Thank you, very much,
18 appreciate your answering the questions.
19 THE COURT: Well, you've finished with this
20 your responsibility in coming in, and the wait is over

21 now. And you're excused, although it isn't really over
in a

22 way, because we can't tell you whether you'll be
serving on the

23 jury. So we ask you to go from here now on the
assumption that

24 you will serve and that you will have the
responsibilities

25 we've talked about here in deciding the case. So
please

2757

1 continue to be careful now and avoid anything in
newspapers,

2 magazines, books, news on television, radio, whatever,
so

3 that -- and in discussion with others, including your
wife and

4 close friends, so that you can come back to us here and
serve

5 on the jury and do the things that you've told us you
can do.

6 So please be careful.

7 I'd like to be able to say to you, Well, you
know,

8 you'll know on this or that day. Unfortunately, I
can't.

9 There will be continued uncertainty for a while. So
bear with

10 us, please, recognizing it's a very human process.

with 11 You're excused for now, and we'll get in touch
12 you. If you should have a change of address or
telephone, let 13 us know immediately. If you were to be called out of
town for 14 some family emergency or something like that, you will
let us 15 know immediately.

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay. You're excused. Thank you,
very 18 much.

19 Well, let's take the recess before we start
the next 20 one. We'll take a 20-minute recess.

21 (Recess at 10:10 a.m.)

22 (Reconvened at 10:29 a.m.)

23 THE COURT: Please be seated.

24 874 -- excuse me. 4.

25 Good morning. If you'll raise your right hand
and

2758

1 take the oath from the clerk, please.

2 (Juror No. 4 affirmed.)

3 THE COURTROOM DEPUTY: Thank you.

4 THE COURT: Please be seated there in the
chair by the
5 microphone.

6 VOIR DIRE EXAMINATION

7 BY THE COURT:

8 Q. And you understand from this very lengthy and
formal oath,
9 we've asked you to come in to answer some questions?

10 A. Yes.

11 Q. And questions relating to your possible service as
a juror
12 in the trial of the case designated United States
against Terry

13 Lynn Nichols?

14 A. Yes.

15 Q. You got a summons some time back advising that your
name
16 had come up in a chance selection process for possibly
serving
17 on this jury and then you got direction -- and you sent
back a
18 short questionnaire on that. And then after that, you
were
19 notified to go to or come to the Jefferson County
Fairgrounds
20 auditorium building, and you did on September 17.
Right?

21 A. Yes.

22 Q. And at that time, I introduced myself and
introduced also

23 others who would be participating in the trial, and

they are

24 here now as well; and I want to reintroduce these
people to you

25 and the others who are here so you know who is with us.

2759

Juror No. 4 - Voir Dire

1 And here at the first table are the lawyers
for the

2 Government, the prosecutors in the case, Mr. Lawrence
Mackey,

3 Ms. Beth Wilkinson. You met them before. And Mr.
Patrick Ryan

4 joins us this morning along with Mr. Geoffrey Mearns,
who are

5 additional lawyers for the Government.

6 You met Mr. Michael Tigar, Mr. Ronald Woods,
attorneys

7 for Mr. Nichols; and of course, Terry Lynn Nichols was
with us

8 and is again.

9 Now, you have the completed questionnaire
there in

10 front of you, I believe; and rest assured, we're not
going to

11 go through all of these questions with you. But what
we did,

12 as we told you we would be doing, is take the answers
that you

13 gave us, made copies, and gave them to the folks who
are here

14 in front of you. But we have not given these copies
out
15 publicly and will not.

16 And of course, we're also in recognition that
we asked
17 you a number of things that are somewhat personal in
nature.

18 We respect your privacy as much as we possibly can,
recognizing
19 also this is a public trial; so we're not going to call
you by
20 name, and we'll attempt in all ways we can in the
questioning
21 to avoid identification of you and also the process of
going
22 and coming from the courthouse in a way that nobody can
see you
23 do that or take pictures of you.

24 And you were here all day Friday waiting for
us, too;
25 and we apologize for not getting to you on Friday. But
it is

2760

Juror No. 4 - Voir Dire

1 difficult to estimate just how much time it's going to
take
2 with each person. I'm sure you understand each person
is
3 different and the answers are different; and we're not
here in

4 some sort of a test, but rather we're here to get
information

5 from you. And we appreciate very much your
cooperation.

6 Now, you did serve on a jury at one time
before in

7 Texas.

8 A. Yes.

9 Q. Is that right? And I got that from what you said
on page

10 26. If you want to turn to that page, please. And
you're

11 saying that in the late 80's, you were on a jury in a
speeding

12 case, I guess, in Richmond, Texas.

13 A. Yes.

14 Q. Were you living there at that time?

15 A. Yes, I was.

16 Q. And the speeding case was like a traffic court, was
it?

17 A. Yes, I guess it was like a traffic court. Yeah.

18 Q. I mean, was that the only charge, going too fast in
a

19 designated speed zone?

20 A. That is correct.

21 Q. And do you recall the number of people who served
on that

22 jury with you?

23 A. Six.

24 Q. Six altogether. Were there lawyers on both sides?

25 A. Yes.

2761

Juror No. 4 – Voir Dire

1 Q. Sometimes in cases like that, a person represents
himself

2 or herself, and that's why I ask; but you recall there
being

3 lawyers. And I'm sure the process was somewhat similar
to what

4 we expect here, in that you heard from both sides, at
least in

5 the statements and arguments, and the person who was
accused of

6 speeding -- was that a man or woman?

7 A. A man.

8 Q. And did he -- was he a witness and testified in the
case?

9 A. Yes.

10 Q. And what did the jury find?

11 A. That he was guilty.

12 Q. You know, it's a long time ago. Do you remember
the range,

13 how fast or how much over the speed limit or anything?

14 A. No, I do not.

15 Q. Was there any accident?

16 A. No, there was not.

17 Q. So was it the thing that we often see, a police
officer

18 pulls him over, stops him for speeding, gives him a
ticket and

19 goes to trial?

20 A. Yes.

21 Q. And about how long did that trial take? Do you
remember?

22 A. The course of an afternoon.

23 Q. So I'm sure you gave it your full attention,
however, and

24 with the amount of time that it did take.

25 A. Yes.

2762

Juror No. 4 - Voir Dire

1 Q. And the jury selected someone to be the leader of
the jury

2 as foreman or foreperson or something? Do you remember
that

3 process?

4 A. I don't remember the process as to how --

5 Q. How you got --

6 A. How we got to that point.

7 Q. Do you remember how long the jury discussed the
case before

8 arriving at this guilty verdict?

9 A. Oh, perhaps less than an hour.

it's a 10 Q. All right. So from the standpoint of the jury,
11 fairly easy case.
12 A. Yes, it was.
13 Q. Now, the reason that I've gone into the -- your
experience
14 previously on a jury is to review with you a little bit
about
15 jury service and what is involved, what the duty of
being on a
16 jury consists of. And I mentioned these things when I
made a
17 statement to you and the others out there at the
auditorium,
18 you'll recall.
19 A. Yes.
20 Q. First all of, explaining this case: That this case
arises
21 out of the events in Oklahoma City, Oklahoma, on April
19 of
22 1995. On that day, a federal office building was
destroyed by
23 an explosion, people were killed and injured, the
people who
24 were in the building; that there was later a formal
charge
25 filed -- we call it an indictment -- by lawyers for the
Federal

1 Government in Oklahoma City; and in those charges, the
lawyers
2 for the Government allege that a man named Timothy
James
3 McVeigh and Terry Lynn Nichols, the defendant here, and
other
4 persons who were not named in the indictment conspired
or
5 agreed together to bomb that building and that they
carried out
6 that plan and that the charges include charges of
first-degree
7 murder of -- eight charges of first-degree murder for
the
8 killing of law enforcement agents of the government,
national
9 government, who were in the building.

10 You probably knew these things before I told
you, but
11 I reviewed that with you. Do you remember?

12 A. Yes.

13 Q. And I also explained that the case was moved from
Oklahoma
14 City to Denver because of a concern about getting a
jury in
15 Oklahoma City where this happened, this event; and that
also I
16 ordered separate trials in the case so that Mr. McVeigh
and the
17 evidence relating to him would be tried separately from
18 Mr. Nichols, because to put both men on trial with the
same

the 19 jury would not be fair to either one of them because
be quite 20 evidence with respect to each of them was expected to
21 different.

22 And Mr. McVeigh's case was tried; that is, the
23 evidence that the Government had as to Mr. McVeigh did
come to 24 trial here before a jury resulting in a verdict of
guilty as to 25 Mr. McVeigh.

2764

Juror No. 4 - Voir Dire

phase 1 And then there was a second trial or penalty
decision 2 hearing at which the jury was asked to make a sentence
know 3 and recommended that the death penalty be imposed. You
4 those facts?

5 A. Yes, I do.

6 Q. Now, as I explained more, nothing that happened in
that 7 McVeigh trial can be considered now in Mr. Nichols'
case. We 8 start over; so the outcome of that case, none of the
evidence 9 in that case, can be considered with respect to Mr.
Nichols.

10 We start with a clean slate. You understand?

11 A. Yes.

12 Q. And, of course, that also includes the constitutional right

13 that Mr. Nichols shares with any person charged with any kind

14 of crime in the United States, and that is that he's presumed

15 to be innocent of the charges made against him, a presumption

16 which continues and carries throughout the trial and entitles

17 him to an acquittal, a verdict of not guilty unless 12 jurors

18 decide that the evidence they heard and saw showed guilt beyond

19 a reasonable doubt. You understand that?

20 A. Yes.

21 Q. And that -- excuse me -- means, of course, that the Government, the lawyers here for the Government who brought

22 these charges, have the burden and duty of calling in the

23 witnesses and producing the exhibits to present to the jury.

24 Mr. Nichols, just as all other defendants, has no burden or

evidence. 1 duty of calling any witnesses or introducing any
and give 2 There is no requirement that he take the witness stand
in 3 any testimony, in answering questions from lawyers or
silent 4 explaining anything to the jury. He can simply remain
lawyers prove 5 and require of the Government that the Government
6 what they've charged.

7 You understand that principle?

8 A. Yes, I do.

9 Q. And indeed, if it should be the fact that a
defendant does 10 not testify in a case or offer any evidence, that
cannot be 11 considered by the jury. They can't say, well, if he
were 12 innocent, he'd testify, he'd tell us that, or, you
know, he 13 must have something to hide, or whatever, because there
is no 14 requirement to testify. The trial is a test of the
evidence, 15 and it is up to the Government to bring in the
evidence. You 16 understand all those points?

17 A. Yes, I do.

18 Q. So at the end of the trial, the Court gives
instructions to

evidence 19 the jury on the law and explains what it is that the
20 must show beyond a reasonable doubt before there can be
a
elements 21 finding of guilt -- guilty. We talk about it as the
22 of the offense, what has to be proved for each of the
crimes
23 charged and then essentially ask the jury, well, did
the
24 evidence prove it or not? The jury after considering
it -- if
25 the jurors have any reasonable doubt as to whether
guilt has

2766

Juror No. 4 - Voir Dire

1 been proved by that evidence, the plain duty of the
jury is to
2 return a verdict of not guilty.

3 These things you understand, do you?

4 A. Yes.

5 Q. And do you also, in addition to understanding them,
accept

6 them and will be guided by them as fundamental
principles in

7 this case?

8 A. Yes.

9 Q. Now, if I may turn to a few of the questions -- of
the

10 answers that you have given to us, I'd like to talk a
little

11 bit about your background. You were born in New York
State?

12 A. Yes.

13 Q. And you lived for a time there, and I guess you
lived in

14 several different communities in New York.

15 A. Yes, I did.

16 Q. And then in 1977, you moved to Houston, Texas.

17 A. Yes.

18 Q. Lived there for several years and then to Richmond,
Texas,

19 which is where you were when you were on this speeding
jury.

20 A. Yes.

21 Q. Speeding ticket jury. And I guess you then came to
22 Colorado in 1990?

23 A. Yes.

24 Q. Is that true?

25 A. That's true.

2767

Juror No. 4 – Voir Dire

1 Q. Okay. And as I understand it, you are divorced and
2 remarried.

3 A. Yes.

4 Q. And you have two children who are grown. And
that's from

5 your first marriage?

6 A. Yes, it is.

7 Q. And did they -- at what -- how long ago were you
divorced?

8 A. 1977.

9 Q. All right. So were the children at home? Did you
raise

10 them?

11 A. Yes, I did.

12 Q. And then when did you remarry?

13 A. 1982.

14 Q. And is that why you went to Richmond, Texas?

15 A. No. No. I just relocated with my children alone.

16 Q. Oh, all right. Now, what kind -- as I understand
it,

17 you're self-employed now.

18 A. Yes, I am.

19 Q. And we'll be talking about what you do now. But
were you

20 working outside of the home when you lived in Houston
and

21 Richmond?

22 A. Yes.

23 Q. What kind of work did you do in Texas?

24 A. I worked for a construction company. I did
purchasing and

25 estimating.

Juror No. 4 - Voir Dire

1 Q. And are these general contractors?

2 A. Mechanical contractor.

3 Q. For homes, businesses, or condemnation?

4 A. Large commercial.

5 Q. Large commercial. And you've carried on that work
now as a
6 consultant here in Colorado, as I understand it?

7 A. Yes.

8 Q. So how many years were you working for others in
the
9 construction business?

10 A. 17.

11 Q. So you learned a lot about the -- the problems and
12 solutions from that, and now you're offering your
services to

13 contractors to advise them about what kinds of things,
bidding
14 and estimating and --

15 A. My business works -- I strictly work with
construction

16 software, and I instruct people on how to use specific
software
17 to help them in their operation.

18 Q. And this is -- did you have anything to do with the
design

19 of the software you use?

20 A. I worked for the company. I've been involved in
the

21 design; but the original product, no, I was not. I've
been

22 involved in the design since '86.

23 Q. So is this software they can go out and buy?

24 A. Yes.

25 Q. And then you give them advice about how to apply it
and use

2769

Juror No. 4 - Voir Dire

1 it for profit in the business?

2 A. That's correct.

3 Q. And does this do things like the timing of the
4 subcontracting and inventory control and all those
things?

5 A. No. It's primarily to get work. It's estimating
software.

6 Q. It is on the estimating?

7 A. Yes, it is.

8 Q. Okay. And your husband works for a plumbing
contractor?

9 A. Yes.

10 Q. Doing the same kinds of things but for a particular
11 contractor; is that right?

12 A. Yes.

13 Q. And that is a software thing, too, that he does?

14 A. He uses the software that I support in my business.

15 Q. Okay. And then he puts together, helps them out
getting

16 estimates and bids for work?

17 A. Yes.

18 Q. Now, you have told us -- and I'll turn right to
page 3,

19 because we don't ignore these things that you tell us.
You

20 don't want to shirk your duty, but you're afraid of
what

21 service on this jury will do to your business is what
you said.

22 A. Yes.

23 Q. And have you thought more about that since you
answered the

24 questions?

25 A. I feel very strongly that this is a responsibility
that is

2770

Juror No. 4 - Voir Dire

1 foremost. I can weather the storm financially. I am
presently

2 with a software company -- it's a client -- that is
coming to

3 closure on a new piece of software. I'm involved
pretty much

to make 4 full-time right now. It's only a one-shot opportunity

5 this kind of income, but again --

it the 6 Q. What is the timing on that, if you can tell us? Is

7 next couple of weeks, is it the next six months?

would 8 A. It could be the next couple of weeks. Maximum it

year; but 9 be -- at the maximum it would be to the end of the

being able 10 again, it's a couple of weeks. I have the luxury of

11 to work other than the standard workweek.

home? 12 Q. Because some of this -- you do this out of your

client, I 13 A. I work -- yes. I also work on site. For this

14 can go in at any time. I used to work for the company.

15 Q. Okay.

work 16 A. And I can go in at any time and work. I just can't

17 the hours that they could use right now.

contractor? I 18 Q. Now, do you work with the people of this

to do it? 19 mean, do you go in and sort of hands-on show them how

I'm 20 A. Well, in this case, this is the software company.

21 helping them in their development of a new product.

their 22 Q. I see. I misunderstood you. So you can go to

23 workplace and work with, what, their designers?
24 A. And their computer. Right at this point, we're
building;
25 so it's just a lot of work.

2771

Juror No. 4 - Voir Dire

1 Q. Well, coming back to my question, obviously we
don't know
2 when the trial is going to start. It won't start till
we have
3 a jury, and we'll be a few days yet talking with people
as we
4 are with you to get a jury. It's a fairly slow
process, as you
5 learned by sitting here all day Friday. But what is
the
6 answer, then? I mean, we don't expect you to work all
night
7 and be on a jury all day. The jury service time, once
the
8 trial starts, is essentially -- well, we're in court 9
to 5.
9 Obviously, the jury must gather and come in before that
and
10 then leave at 5. And it will go 9 to 5 Monday through
11 Thursday; and then on Friday afternoons, we'll give the
jurors
12 a break, running to about 1:00.
13 Now, you know, if you were called on here to

serve

14 with us for several months of trial, can you do that?

15 A. Yes, I could.

16 Q. Okay. I want to ask you about some other things
that you

17 told us about here. On page 22, if you'll turn to
that,

18 please, we asked you a very broad question: "What do
you think

19 about the effectiveness of the criminal justice
system?" See

20 at Question 100?

21 A. Yes.

22 Q. And you gave an "adequate" grade to the system
there and

23 then went on to say something about the power of money
and

24 fairness but you're not really informed enough to
comment.

25 What is it that you were thinking about when you wrote
this

2772

Juror No. 4 - Voir Dire

1 answer?

2 A. Of the people who are treated differently because
they have

3 money and -- and again, I'm not informed. It's only a
feeling.

4 Q. Well, it came from something, though. Is it from

some

5 report about a certain case or cases --

6 A. Cases. Cases.

7 Q. Can you give us some illustrations of what you
mean?

8 A. Of course, the O. J. trial.

9 Q. Is that the principal one you have in mind?

10 A. No, not really. There was one here locally. I
don't

11 remember the -- I don't remember the name of the party

12 involved, but it was typical of a situation where a
young -- a

13 young family member got into some kind of trouble with
the law

14 and he did not have to experience the same as if --
someone who

15 perhaps from a low-income family. He had family with

16 connections that made his -- it appeared that it made
him have

17 less consequences for his act; and again, it's the
appearance.

18 Q. Because of the way the court handled it or the
lawyers in

19 it, or what?

20 A. Again, this is a feeling, so it's not based on
specific

21 fact.

22 Q. I understand.

23 A. You hear that someone did something and then it
just seems

24 to fall into the woodwork, you know, just seems to
disappear.

25 Q. Okay.

2773

Juror No. 4 - Voir Dire

1 A. And that's what I meant about the money.

2 Q. All right. We asked you some things in this
questionnaire

3 about your views of punishment.

4 A. Yes.

5 Q. And most particularly the possible punishments of
6 imprisonment for life with no release, no possibility
of

7 release and the punishment of the death penalty. And
on page

8 28 is where these answers that you gave us appear and I
would

9 like for you to just review. You recall -- well, let
me ask

10 you: Do you recall coming to this part of the
questionnaire on

11 September 17?

12 A. Oh, yes.

13 Q. Were you expecting to be asked questions about this
14 subject?

15 A. Yes.

16 Q. So had you thought about it a bit before you came
out

17 there?
18 A. Not particularly pertaining to this case. I have
always
19 felt the same way.
20 Q. Okay. And you know that there is this prefatory --
these
21 prefatory paragraphs that say, We're asking you about
this not
22 because there is some expectation that we'll get to
that.
23 Mr. Nichols is presumed to be not guilty. But on the
24 possibility of a guilty verdict, we have to talk about
this
25 because then the jury would have another
responsibility. And

2774

Juror No. 4 - Voir Dire

1 before hearing any explanation from me about the legal
process
2 and what the law is, we just wanted you to tell us what
you
3 think about it and, you know, if you could write the
law, how
4 would you write it. And this is how you've responded
in that
5 vein, is it -- I mean did you understand that's the way
we were
6 asking you?
7 A. Yes. Yes.

8 Q. So take time to read your answers. I don't mean to
block
9 you from that.
10 A. Okay.
11 Q. And your answers carried on. I mean, you have some
more to
12 say on this subject, or these subjects in the back, you
know,
13 page 40.
14 A. Uh-huh.
15 Q. Okay. Now, I want to explore this a little bit
with you,
16 and then I want to talk with you about the actual
process
17 that's involved. So one of the things under here about
the
18 punishment of life in prison under A is you wonder --
actually,
19 you say you strongly take offense that for some, life
in prison
20 is better than life on the outside.
21 A. Yeah.
22 Q. Tell us a little bit about what you are thinking
here.
23 A. I'm thinking of how for some, prison has become a
revolving
24 door that when life gets tough on the outside, they can
go back
25 and it's become a comfort.

Juror No. 4 - Voir Dire

1 Q. Okay. Sort of an institutionalized person? Is
that what
2 you're thinking about? We sometimes refer to some
people just
3 need some external discipline in their lives. Is that
the sort
4 of thing you're saying?

5 A. Yes.

6 Q. Let me explain clearly, I'm not trying to speak for
you.
7 These are your views we want, not -- I'm not trying to
lead you
8 into anything and don't want you to think in those
terms. I'm
9 just trying to help you express what I understand you
to be
10 saying here; and if I'm wrong, why, you don't hesitate
to tell
11 me. All right?

12 A. Okay.

13 Q. Now, on B where you were asked about death as a
punishment,
14 you talk about what you think -- and this is where you
carried
15 on your answer over to 40. You say you do support the
death
16 penalty but the evidence would have to be well beyond
any
17 doubts, risk of a wrong person, and so forth.

18 Now, you understand that the penalty would be
19 something separate from finding the weight of the
evidence and
20 the sufficiency of the evidence. No penalty is
involved -- no
21 penalty determination is involved unless a jury finds a
22 defendant guilty beyond a reasonable doubt. You
understand
23 that?
24 A. Yes, I do.
25 Q. And doubts are to be resolved in favor of the
defendant.

2776

Juror No. 4 - Voir Dire

1 That's part of the trial process.
2 A. Yes.
3 Q. Now, are you thinking that -- and here again, I'm
not
4 trying to speak for you, but are you thinking that,
well,
5 reasonable doubt isn't enough before you impose a death
6 sentence? It has to be something so totally convincing
that
7 there could not be any possible doubt, or not? I mean,
what
8 are you saying here?
9 A. I've never been in the situation of trying to
decide

10 reasonable doubt, so this is a new experience, you
know, so

11 this is just a feeling; but it all -- first of all,
it's based

12 on the instructions of the court --

13 Q. Yes.

14 A. -- on how you perceive things at that time; and --

15 Q. And I believe you said, if I may interrupt, that
you agree

16 that you have to follow the instructions?

17 A. Yes.

18 Q. Okay.

19 A. Definitely.

20 Q. Go ahead.

21 A. Sometimes it's very obvious of the crime that's
been

22 committed; and it's -- I believe -- I believe in the
death

23 sentence because I feel that when one takes another's
life,

24 that should not be something treated lightly; however,
I just

25 want to know that that person really is guilty. You
know --

2777

Juror No. 4 - Voir Dire

1 and again, it's the instructions of the court, so
sometimes

2 it's not as easy as it would be in other cases.

3 Q. Is the death penalty and the punishment of
imprisonment for

4 life without release something you thought much about
before

5 answering this questionnaire?

6 A. I've never thought about life in prison. I never
really

7 have given much thought to being incarcerated for life.

8 Q. You mean in terms of yourself?

9 A. In terms of in general.

10 Q. Okay.

11 A. I've never really given any thought to being
imprisoned for

12 life. I have a real problem with the prison systems,
with some

13 conditions in prisons where -- where people become

14 institutionalized.

15 Q. Well, we don't want any doubt in your mind about
what we're

16 talking about here. This is not revolving door; this
is --

17 A. Life.

18 Q. -- what it says, life in prison and you don't ever
get out.

19 You die in prison at whatever age you reach a natural
death.

20 That's the point of it, isolating a person in a prison

21 environment from the rest of society.

22 A. Yes.

23 Q. Okay. And what about the sentence of death? And
you know,

24 this is a subject on which people have strong views and
a lot

25 of disagreement, and the debate goes on. And
particularly in

2778

Juror No. 4 - Voir Dire

1 states that have the death penalty when somebody comes
up for

2 execution, there is a lot of -- of a death sentence --
there is

3 a lot of discussion, as there is in Colorado today.

4 A. Yes.

5 Q. I'm sure you're aware of that general debate. And
people

6 on one side say the death penalty should never be
imposed, it's

7 not up to courts and juries to decide life or death.
And

8 others say, Well, if you kill somebody, you ought to be
put to

9 death; it's simple. And then, of course, there is a
lot in

10 between where it's not so simple. You understand the
range of

11 views that are often publicly expressed about the death

12 sentence and life in prison?

13 A. Yes.
14 Q. And have you, you know, because of some case that
you've
15 read about or heard about or because of some book or
movie or
16 something before last -- this September, thought about
or
17 discussed your views about death as a punishment?

18 A. Oh, yes. I've thought about -- I think either one
-- life
19 in prison is a sort of a death; it just takes longer.

20 Q. Yeah. Well, let me move to what the law is. We've
been
21 talking with you here in generalities and sort of
abstractions.

22 And you talked about instructions, so I'll instruct you
a
23 little about the law.

24 Now, at trial, the court instructs in detail
about the
25 law; but I can't go into detail here because the
detailed

2779

Juror No. 4 - Voir Dire

1 instructions include the evidence, and we don't have
any
2 evidence. And so we have to talk in generalities on a
what-if
3 basis and not what if this or that comes into evidence
but what

4 if the outcome is a guilty verdict. And, of course,
you know,
5 the first thing is to decide -- the jury's job to
decide
6 whether the evidence proves the charges beyond a
reasonable
7 doubt. If not, the verdict is not guilty and that's
the end of
8 the day. If it's guilty, then we have more to do.

9 Now, let me contrast the situations where --
and we're

10 talking to you about federal law. There are
differences among

11 the various states as to how they approach this matter
of what

12 sentence should be imposed for certain types of crimes.

13 Essentially, we're talking about killing people,
murder. And

14 the law, when it does come to not life or death at
sentencing

15 but some number of years in prison, that type of
sentence, when

16 a jury reaches a guilty verdict, then they're done with
the

17 case and it's up to the judge to decide what to do
about it,

18 the sentence decision.

19 And sentencing decisions made by judges are
done very

20 individually, because it's not just the jury's verdict
that the

21 defendant committed the crime but then it's also, well,

what do

22 we do about it? What punishment should be imposed?
And before

23 judges reach a decision as to the punishment of a
particular

24 defendant who has been found guilty by a jury, the
judge needs

25 a lot more information than that which came out in the
evidence

2780

Juror No. 4 – Voir Dire

1 at the trial. So more information is gathered, both
with

2 respect to the circumstances of the crime and its
effect on

3 people and so forth, and communities, but then a lot of
4 information about the defendant as an individual human
being,

5 things about his entire life, his background, you know,
born

6 and raised, family relationships, occupational history,
7 something about the psychological makeup of the person,

8 character of the person, how he's reacted with others

9 throughout his life, all those things that, you know,
each one

10 of us has that forms us into unique human beings.

11 And then the judge holds a hearing and he
hears from

12 or she hears from both sides and then decides: All

right, this

13 particular sentence is the just and appropriate
sentence for

14 this person and this crime. So it's a combination of
the crime

15 and the person that goes into making the decision.

16 Do you understand that's the process in cases
not

17 involving the punishments we're going to talk about?

18 A. Yes.

19 Q. Now, what the federal law says is that, well, when
it's

20 murder and when it's life or death, we're not going to
have

21 judges making that kind of a decision. Here we turn to
the

22 jury, 12 people coming out of the community who can
represent

23 really the conscience of the community and who judge
fairly.

24 And you know, this only comes up if there is a guilty
verdict

25 first of all. You understand that?

2781

Juror No. 4 – Voir Dire

1 A. Yes.

2 Q. But now, there having been a guilty verdict, we
want the

3 jury to decide the punishment with respect to life or

death.

4 Actually, the jury's decision can be life in
prison
5 with no possibility of ever getting out, death, or some
lesser
6 punishment, in which case it goes back to the judge to
make a
7 decision. But before making the decision among those
three
8 choices, the jury has to hear a lot more than the
evidence it
9 has heard at the trial. You follow me?

10 A. Yes.

11 Q. So there is a second trial, a penalty phase
hearing, if you
12 will; and it is at that time that the -- both sides in
the case
13 come in with more, which is much like in judge
sentencing, in
14 that the prosecutors come in with evidence about
circumstances
15 of the crime and consequences and so forth, things that
16 suggest -- and they offer to suggest -- that the
punishment for
17 the crime and for this person should be death, he
should be put
18 to death.

19 And the defense will bring in all of these
kinds of
20 information that I've mentioned that a judge hears, all
about
21 the defendant's background, character, personality,

family

22 relationships, everything in his life, and then we
generally
23 refer to what the Government brings in as aggravating
factors
24 suggesting death is deserved, and the defense
information,
25 mitigating factors, things that are offered to the jury
to

2782

Juror No. 4 – Voir Dire

1 consider that even though this person participated in
the crime
2 that resulted in death, this person does not deserve to
be put
3 to death. You follow me on these things?
4 A. Yes, I do.
5 Q. And it is a very individual consideration, so that
in cases
6 where there has been more than one person found guilty
of
7 participating in the same crime, the sentence for one
person
8 found guilty does not control the sentence for the
other. It
9 has to be considered individually.
10 And of course, we don't know what the outcome
of this
11 trial would be; but to put it in plain terms, the fact
that a

12 jury said Mr. McVeigh should be put to death can't be
13 considered here. If he were to be found guilty, the
sentence
14 as to Mr. Nichols has to consider everything about Mr.
Nichols.
15 A. Yes.
16 Q. You understand what I'm saying now?
17 A. Yes, I do.
18 Q. And it's a difficult sort of question because in
the end,
19 the court instructs the jury -- we've talked about
20 instructions -- and the court instructs the jury that,
well,
21 here's what you've heard and these are the things that
you can
22 consider as aggravating factors, these are the things
that you
23 can consider as mitigating factors and could even
suggest some
24 questions to the jury to help the analysis here. And
you know,
25 I can't tell you those factors now because we don't
know what

2783

Juror No. 4 - Voir Dire

1 they're going to be. None of us can talk about
particulars
2 here. It's all on a sort of a what-if basis. You
understand?

3 A. Yes.

4 Q. But there is no formula, there is no equation.
It's not
5 like adding up the numbers to make an estimate or a bid
or
6 something, you know. It's not subject to that kind of
7 objective view in a sense. What it really is is coming
to a
8 moral judgment about whether another human being should
live or
9 die. Understand that?

10 A. Yes.

11 Q. Now, what I want to know from you -- what we all
want to
12 know from you is if you were to serve on the jury and
if there
13 were to be a guilty verdict and this sentencing
question came
14 up and full trial on that issue be presented, do you
think that
15 you would be able to make a decision about whether the
16 defendant should live or die based not only on the
17 circumstances of the crime that may be shown but also
giving
18 consideration to the individual's background and his
personal
19 characteristics, what makes him a human being? Can you
do
20 that?

21 A. Yes, I can.

Any 22 Q. And you understand the explanation that I gave?

23 questions about it?

24 A. No.

a few 25 THE COURT: Okay. Then the lawyers will have

2784

Juror No. 4 – Voir Dire

them out 1 questions for you as well, so it's only fair to hear

2 and answer them as you have me.

3 Mr. Ryan?

4 MR. RYAN: Thank you, your Honor.

5 VOIR DIRE EXAMINATION

6 BY MR. RYAN:

7 Q. Good morning.

8 A. Good morning.

9 Q. How are you?

10 A. I'm fine, thank you.

Attorney in 11 Q. My name is Pat Ryan. I'm the United States

present 12 Oklahoma City. I'm here with my fellow prosecutors to

13 the evidence in this case against Mr. Nichols.

questionnaire, 14 Before I ask some questions off of the

15 I want to hear a little bit more about your family.

You have

16 two children?

17 A. Yes.

18 Q. And your son is a tugboat operator?

19 A. He's a deck hand.

20 Q. A deck hand. Where does he work?

21 A. He works the Atlantic seaboard.

22 Q. Do you get to see him often?

23 A. No.

24 Q. Is he married?

25 A. Yes. Last year.

2785

Juror No. 4 - Voir Dire

1 Q. Does he have any children?

2 A. No.

3 Q. And you've got a daughter as well; is that right?

4 A. Yes, I do.

5 Q. Where does she live?

6 A. She just moved to Colorado.

7 Q. Oh. And does she live here in the Denver area?

8 A. Yes. In Arvada.

9 Q. Okay. And does she have children?

10 A. Yes.

11 Q. And these are the three grandchildren you've

identified --

12 A. Two of the grandchildren.

13 Q. Okay. Now, what does -- you said, I think in the
14 questionnaire, that your daughter works at a dentist's
office?

15 A. Yes.

16 Q. What does her husband do?

17 A. He is a diesel mechanic.

18 Q. Okay. Now, does your husband have some children
from a
19 former marriage?

20 A. Yes.

21 Q. How many does he have?

22 A. Two boys.

23 Q. And what do they do?

24 A. The oldest is taking a year off from school. He
just got
25 his undergraduate. And the youngest is in his
sophomore year

2786

Juror No. 4 - Voir Dire

1 of college.

2 Q. Do they live here in the Colorado area?

3 A. No, they live in Texas.

4 Q. Now, if I could, I would like to turn to your
questionnaire

5 and ask you a few follow-up questions to his Honor's.

3. Does 6 If you would turn to Question No. 11 on page
7 this involve you, or someone else?

8 A. A friend.

9 Q. A close friend, or a family member?

10 A. A close friend.

11 Q. Now, you indicated in the questionnaire that your
son was 12 in the military?

13 A. Yes, he was.

14 Q. And what branch of the armed forces was he in?

15 A. The Navy.

16 Q. Kind of makes sense, doesn't it? How many years
was he in 17 the Navy?

18 A. I'm not real sure. I think maybe two.

19 Q. And how did he enjoy his military service?

20 A. He liked it. He seemed to be liking it just fine.

21 Q. And what about your husband? Was he also in the
military?

22 A. He was in the Coast Guard.

23 Q. And how many years did he spend in the Coast Guard?

24 A. Four.

25 Q. Did he also enjoy his service in the Coast Guard?

Juror No. 4 – Voir Dire

1 A. Yeah. Yeah.

his

2 Q. He speaks pleasantly of that subject, that time of
3 life?

4 A. Oh, he loves the training he got.

page 17,

5 Q. Now, if you would turn to Question 80, which is on
6 I believe. What do you mean there when you use the
7 taste"?

word "bad

8 A. Where did I put that?

look

9 Q. I think you may have finished your answer -- let me
10 here.

11 A. Oh.

12 Q. It's on page 4, the continuation of your answer.

everybody

13 A. I think the business of news is big business and
14 needs to be first on the block with the story; and I
15 think

too much

16 sometimes -- my personal feeling sometimes is there is
17 of a rush to get some information out that may be true
18 or not

taste of

19 true. And I think sometimes it's just simply in bad
20 not getting the facts, because I think a reporter has a
21 responsibility to the public.

you're 20 Q. Do you have any specific instance in mind that
21 thinking about?

Cases 22 A. Oh. It seems like cases are tried in the news.

the 23 aren't left for the courts sometimes; they're tried in
24 news.

25 Q. And are you speaking of any particular case?

2788

Juror No. 4 - Voir Dire

and all 1 A. Oh, no -- well, I think about the JonBenet murder

media 2 that's been in the media when I don't know that the

to 3 necessarily needs -- I don't know that the people need

reserved for 4 necessarily know. I think some things should be

5 the court, for the trial.

that 6 Q. Is there any particular aspect of the Ramsey case

7 is -- that you feel has been improperly placed into the
8 media -- into the news by the media?

facts. I 9 A. You know, I don't know because I don't know the

know; and it 10 only know what I can hear or read, so that's all I

11 just seems that there is such a -- this is not

necessarily, but

12 a case in point where one of the news anchors recently
was

13 talking about the death of Princess Diana and in the
course of

14 his reporting he was saying, Suppose they did this or
suppose

15 they did that. I don't think that belongs in the news.

16 Q. You don't like the idea of conjecture --

17 A. No.

18 Q. -- about what the evidence may be?

19 A. Right.

20 Q. Is the case that we're here today on, United States
vs.

21 Nichols -- is this a case that you feel has been tried
in the

22 media?

23 A. I purposely ignored this case. I've been ignoring
most

24 cases. I pretty much don't -- I put the news on for
what I

25 need to hear and then turn it off. I have to say that
since

2789

Juror No. 4 - Voir Dire

1 the whole O. J. thing, I'm a little disgusted with the
trial

2 that's going on in the press.

3 Q. Now, what happened in O. J. that made you -- you're
talking

4 about being on television, Court TV, and all that?

5 A. Of, everything. Everything.

6 Q. What was your impression of the O. J. case? It's
apparent

7 to me it's not very positive; but express it in your
own words,

8 if you will.

9 A. I thought it was a circus. I thought it was a
sham. I

10 thought it was terrible for the American people to
think that

11 this is the judicial system. And that's what -- it
left a lot

12 of people thinking that that's the way things happen.

13 Q. And did you in your own mind feel like this is not
the way

14 trials are conducted in America?

15 A. I didn't think they were conducted that way. I
don't go to

16 trials, so -- it just seemed like it was a circus.

17 Q. Did you have any view on the outcome of the case?

18 A. No, no.

19 Q. Whether the jury's decision was correct or
incorrect?

20 A. I was -- I really thought, you know -- I thought --
I

21 thought he was guilty from just the things that I had
heard;

22 but again, from what I had heard.

23 Q. You weren't there.

without
24 A. That's right. And for me to say anything like that
25 being there is an unfair thing to do.

2790

Juror No. 4 - Voir Dire

that you
1 Q. Let me return to something you said a moment ago
course, I
2 had purposely avoided anything in this case. And of
jury
3 understand you've done that since you received your
4 summons.

5 A. Yes.

the
6 Q. But, you know, more than two years had gone by from
that you
7 date of the bombing in Oklahoma City until the time
that
8 received your jury summons. Did you follow it during
9 two-year time?

bombing
10 A. No. Only to the point of naturally the day the
the
11 happened. I was out of town that day, and I saw it on
this
12 news. And I heard the different, you know, could be
it
13 person or that and, you know, all the conjecture of who

14 might be and as someone was, you know, trying to find
someone
15 responsible for it; but this is just so much
information.
16 Sometimes I -- and I could be really wrong, but
sometimes I
17 think there is disinformation that unless you know the
facts,
18 why bother to get involved in the -- in being the judge
and
19 jury outside of the courtroom?
20 Q. What was your initial reaction on April 19 of '95
when you
21 learned about the Oklahoma City bombing?
22 A. My initial reaction was, you know, that it's in
America and
23 that it's here in our homeland. Naturally, it was
tragic that
24 something like this could happen, a certain amount of
concern
25 as to the heartland being exposed, you know -- just
concerns

2791

Juror No. 4 - Voir Dire

1 about the future and the country.
2 Q. Did you read the stories about the various victims?
3 A. No.
4 Q. That have been publicized in newspapers and
magazines?

5 A. No.

6 Q. What aspect of the case held your interest longest?

7 A. It wasn't that anything held my interest. I really

quite

8 honestly -- you know, the day it happened, I noticed

then and

9 just the tragedy of so many people dying, but I didn't

know

10 anything more about it and I didn't take the time to

learn more

11 about it. I didn't see any reason for it. Again, you

never

12 know if the person the media is saying is the guilty

party --

13 you just don't know.

14 Q. You indicated -- Would you turn to Question 104,

please.

15 It is on page 23. Could you describe that experience?

16 A. A friend, colleague was interviewing for a job

overseas,

17 and for some reason -- and I don't even know -- I don't

18 remember what the job was, but I was on her list and

the FBI

19 just wanted to talk to me about her.

20 Q. Did they come in person?

21 A. No. I went to their office.

22 Q. Did they -- did you initially get a phone call --

23 A. Yes.

24 Q. -- saying this was somebody from the FBI?

25 A. Yes.

2792

Juror No. 4 - Voir Dire

1 Q. What did you think?

2 A. Well, I -- I figured the job she was going for
needed some

3 security clearance.

4 Q. You knew why they were calling?

5 A. Yeah.

6 Q. Before they called?

7 A. Oh, yeah.

8 Q. Did they conduct themselves appropriately?

9 A. Oh --

10 Q. How would you describe that?

11 A. Good old boy, you know, just interview. No
different.

12 Q. Was he professional?

13 A. Oh, yeah.

14 Q. Now, I'd like to talk to you about your answer to
Question

15 159 for a few minutes. You might want to read it
first. And

16 this is one of these that you've also continued on to
page 40.

17 Could you talk to me a little bit more about
what

18 you're saying there?

guilty; 19 A. Well, in this country, we're innocent until proven
innocent 20 and until he's proven guilty in a court of law, he's
think that, 21 and he shouldn't be treated like a criminal. And I
on TV, 22 you know, every time I saw -- every time I saw pictures
cases 23 anytime the news -- it just -- and this is one of those
You 24 where you notice O. J. never had on an orange jumpsuit.
they're 25 know, some people go to court that are shown on TV and

2793

Juror No. 4 - Voir Dire

it. I 1 not dressed as a prisoner. And that was pretty much
person 2 just felt that -- that this -- this is a man, this is a
it's just 3 and, you know, he may be guilty, he may not be; but
similar 4 the connotation on TV I felt was objectionable.
5 Q. Have there been other cases in which you've seen
6 pictures on television --
7 A. Yes.
8 Q. -- that caused you to have the same reaction?
9 A. Yes.

10 Q. Does anything come to mind?

11 A. Kraczynski (sic), same thing, just -- I don't know.

I

12 don't know -- I don't know how the system works; if
someone has

13 the opportunity to say, I don't want to go in public
dressed

14 like this. I really don't know if that's a ludicrous

15 statement, other than you see other people have broken
the law

16 that aren't portrayed as criminals.

17 Q. And do you hold any particular person or
organization

18 accountable for what you consider to be bad taste?

19 A. I don't know who I would hold accountable. I
think, you

20 know, in a lot -- that's a personal feeling. When I
say it's

21 in bad taste, that's my feeling. And who do I hold

22 accountable? I think that to be the first on the block
with

23 the news story is the big issue.

24 Q. So you're talking about --

25 A. To a degree.

2794

Juror No. 4 - Voir Dire

1 Q. -- the television station or whoever it is that's
choosing

2 to show that footage?

3 A. Yeah. I don't want to be the -- the media serves a
very

4 important purpose in keeping us informed; but I think
there is

5 a responsibility that the media carries and I think
that there

6 are some things that equality -- I just believe that
there

7 should be equality.

8 Q. As you can see here, we're in a court of law and
there is

9 no such indignity in this courtroom.

10 A. That's correct.

11 Q. You can see that?

12 A. Yes.

13 Q. Now, if you would, you've answered his Honor's
questions

14 concerning the death penalty; but I'd like for you just
to not

15 look at the questionnaire for a moment and just state
to me

16 your down-deep feelings about how you view the death
penalty

17 and its use.

18 A. That's a hard -- you know, the death penalty --
it's a

19 tough issue for everybody. And sometimes it's very
clear.

20 Someone takes a -- someone does something where there
is

21 witnesses and everybody can see that yes, this person
did pull
22 the trigger, this person did commit the crime, and then
it's
23 easy to say -- to take that consideration that, you
know, when
24 someone commits a crime, what happens to the family,
what
25 happens to the victim? They don't have the same
option.

2795

Juror No. 4 - Voir Dire

1 The death penalty, I believe, should be used.
I don't
2 think it's something you do at the drop of a hat. I
think it's
3 one of the most serious decisions that one would ever
have to
4 come across. I think that I don't -- as I said before,
I think
5 that life in prison is a certain type of death, just a
longer
6 one; so it's -- I -- it comes down to -- it comes down
to the
7 particular case as to how the death penalty would be
viewed or
8 not.

9 Q. The crime and the person?

10 A. The crime and the person, yes.

11 Q. You understood --

12 A. Yes.

13 Q. -- that double edge to the issue.

14 A. Yes.

15 Q. It's not just the crime, it's also the person.

16 A. Yes.

17 Q. If you were a juror in a capital case in which the
death
18 penalty were involved and you'd listened to all the
evidence
19 about the crime and you'd listened to the second-stage
evidence
20 about mitigating factors and aggravating factors and
you
21 determined in your own mind that the death penalty was
22 appropriate, do you think that you are someone who
could make a
23 decision with your fellow jurors and come into court
and
24 announce that you had sentenced someone to die?
25 A. Yes, I could.

2796

Juror No. 4 - Voir Dire

1 MR. RYAN: Thank you for answering my
questions.

2 THE COURT: Mr. Tigar?

3 VOIR DIRE EXAMINATION

4 BY MR. TIGAR:

5 Q. Good morning.

6 A. Good morning.

7 Q. My name is Michael Tigar. I'm, along with Ron
Woods here,
District

8 one of the lawyers appointed by the United States

9 Court in Oklahoma to help out Terry Nichols.

10 A. Yes.

11 Q. And I'm -- I wanted to start by asking you about
your prior

12 jury service. That was out in Richmond, Texas?

13 A. Yes, it was.

14 Q. That's in Fort Bend County?

15 A. Yes.

16 Q. Was that in justice-of-the-peace court, or was that
in a
17 municipal court? Do you remember?

18 A. I believe it was a municipal court, but I don't
travel the
19 court circuits much.

20 Q. A long time ago. Now, in a -- in that case, did
the jurors

21 assess the fine as well as -- or the punishment as well
as

22 decide guilty?

23 A. Yes.

24 Q. Okay. So that's the -- and you understand that is
the --

cases 25 that is the Texas system; that is, jurors in criminal

2797

Juror No. 4 - Voir Dire

1 assess punishment as well as -- if they decide guilt?

2 A. Oh.

3 Q. All in one case.

there is 4 As Judge Matsch said, in federal cases where

one that 5 no issue of a possible death penalty, the judge is the

first thing 6 decides punishment; and in the first phase -- see,

the 7 that's going to happen if you're selected as a juror is

examine 8 Government will present its evidence. We will cross-

rest, the 9 every witness; and then when they're finished, they

our 10 defense gets its ups. We have the chance to present

11 witnesses; and we will, and they'll cross-examine.

legal 12 And then the Judge will instruct on what the

that. And 13 principles are: presumption of innocence and all of

about 14 the jurors deliberate. And at that stage, no question

Is that 15 what the possible punishment is even enters into it.

16 okay with you?

17 A. Yes, I understand.

18 Q. Okay. That's how it works. They go first; and
throughout

19 all of that, they have the burden of proof beyond a
reasonable

20 doubt.

21 Well, I want to come back to that question of
possible

22 penalty; but you understand that we're -- we don't
concede that

23 we'll ever get that far.

24 A. Yes.

25 Q. Because -- but if for some reason there is a guilty
verdict

2798

Juror No. 4 - Voir Dire

1 on any of these charges, we can't call everybody back
in and

2 then start asking them again. This is our only chance
to do

3 it.

4 You said that you had -- you were born in New
York.

5 Is that right?

6 A. Yes.

7 Q. In Westchester County?

8 A. Yes.

9 Q. And then you grew up over in New Paltz. Is that
Ulster
10 County, or Rockland County?

11 A. Ulster.

12 Q. So other side of the river?

13 A. Yes.

14 Q. And then you moved to Texas?

15 A. Uh-huh.

16 Q. Now, in your -- and your husband has two boys who
are your
17 stepsons?

18 A. Yes.

19 Q. They're in school in Texas?

20 A. Yes.

21 Q. Where are they in school?

22 A. What?

23 Q. What school were they -- you said one is in college
and one
24 is kind of taking some time out.

25 A. One just finished. He just got his bachelor's from
Houston

2799

Juror No. 4 - Voir Dire

1 Baptist.

2 Q. All right.

3 A. And the younger one is going to Wharton Community.
4 Q. I see. Okay. Because I have an affiliation with
the
5 University of Texas, and I asked that just in case they
were
6 going to A & M or someplace like that. But nothing
about their
7 educational experience would cause you to hold that
against us;
8 right?
9 A. No.
10 Q. I noticed that you said that you for news -- you
like
11 Newsweek the best, or not the best -- I think you --
you hold
12 them in -- you said that Newsweek is non-offensive and
somewhat
13 interesting.
14 A. Yes.
15 Q. Okay. And is that your principal source of news,
you say,
16 is Newsweek?
17 A. I don't read a newspaper on a daily basis
predominantly --
18 primarily because it takes time that I could be doing
work.
19 Q. Okay.
20 A. I have a tendency to be a tad bit of a workaholic.
21 I find Newsweek -- I find things appear in
Newsweek

Newsweek 22 earlier than other news magazines. I have never taken
23 and thrown it across the room, so I guess it's an okay
24 magazine.
25 Q. Okay. So that's what you mean by "non-offensive"?

2800

Juror No. 4 - Voir Dire

1 A. Yes.
2 Q. Now, in Newsweek, did you read the coverage of the
initial 3 explosion, the pictures and so forth that they had?
4 A. No.
5 Q. No.
6 A. No, I -- it bothered me to think about that.
7 Q. I understand that. Well, let me pause a minute.
8 Obviously, there are pictorial images of that
devastation.
9 A. Yes.
10 Q. And they are likely, many of them, to be in
evidence in 11 this case.
12 A. Yes.
13 Q. There may be people who -- there will be or may be
14 witnesses who experienced that and from it obviously
have a 15 sense of loss, of sorrow, of anger. Would you be able
to

focus on 16 listen to them and see those images and nonetheless
it? 17 the question who did this, what role did people have in
innocent: Can 18 A. Yes.
19 Q. This person, Terry Nichols, who is presumed
20 you still keep looking at that?
21 A. Yes.
any of 22 Q. Now, in Newsweek, I wonder, did you read any or see
McVeigh? 23 the coverage that they did of the trial of Timothy
read 24 A. There was coverage. I didn't read it. I don't
at the 25 everything in there, just what happens to interest me

2801

Juror No. 4 - Voir Dire

1 time.
questions 2 Q. You understand why we would be asking these
3 because this is a -- this is a whole new case.
4 A. Yes.
over the 5 Q. And as Judge Matsch said, even though he presided
be here; 6 McVeigh trial, he doesn't know what the evidence will

7 and indeed, it's fair to say that none of the lawyers
know what

8 the evidence will be here because although the
prosecutors may

9 have a witness to present or we may have a witness to

10 present -- many -- we don't know what the cross-
examination

11 will be, we don't know how it's going to turn out.

12 You also mentioned that you read Reader's
Digest. For

13 how many years have you been a Digest reader?

14 A. 37.

15 Q. All right.

16 A. My dad sends it to me every year.

17 Q. And is there anything that you've read or seen in
Reader's

18 Digest that could have any effect on your being a fair
and

19 impartial juror here? I can't think of anything that I
would

20 have seen. I just want to --

21 A. No.

22 Q. Can you also share with me what is your interest in
23 Prevention magazine?

24 A. It's a gift from my sister.

25 Q. Oh, I see. And you're laughing as you say that.
Is that

Juror No. 4 - Voir Dire

taking 1 something you read for interest but not necessarily
2 everything in there with, you know -- as gospel?
3 A. It's the last thing I pick up to read.
media 4 Q. Okay. Now, you mentioned that among the -- your
name is 5 things are "Imus in the Morning"? Is that how that
listen to the 6 pronounced? And again, I'm -- I'm sorry, I don't
that 7 radio in the morning, so I don't -- but I sort of know
anything 8 name. And so I think I'm supposed to ask if there is
9 on there that has anything to do with this case or --
10 A. No. He's not a serious person.
11 Q. Okay.
to listen 12 A. Oh, maybe he is, but I -- Imus has been -- I used
on in 13 to Imus back in the 70's in New York, and he's -- he's
says 14 the mornings on the radio; and I just listen because he
15 some outrageous things, just humor.
service 16 Q. Oh, I see. Okay. Well, nothing to affect jury
17 here.
18 A. No.
19 Q. Okay. I wonder if you could please turn to page 32

of your

20 questionnaire. At the top there, it's carrying over
your

21 answer from the previous page about individuals'
possession of

22 firearms.

23 A. Yes.

24 Q. And you say that "I don't think they need
semiautomatic

25 weapons." And could you tell me a little bit more
about your

2803

Juror No. 4 - Voir Dire

1 thinking about that.

2 A. Well, I think, you know, the reason a person might
want to

3 own a gun is for protection in their home, hunting, and
I think

4 you can do that with a single-shot weapon.

5 Q. Okay. Now, in -- the reason I pose that is if
there were

6 evidence in this case that someone who was a witness or
a party

7 made their living by going to gun shows and selling
weapons,

8 including semiautomatic weapons, would you be able to
judge

9 that person's believability without any bias because
they're

10 engaged in a business that you don't agree with?

11 A. It's a legal business.

12 Q. Okay. Now, I wanted to now turn to this -- one
more

13 question. Did you see any of the pictures of the
jurors who

14 served in the McVeigh trial on television, the
interviews they

15 gave?

16 A. Oh, I didn't know they did.

17 Q. Oh. All right. Now, I assume that since you got
the jury

18 summons and especially since Jefferson County, you've
thought

19 about what it would mean to be on a jury in this case.

20 A. Oh, yes.

21 Q. What -- how do you see what the jury's role is now
that

22 you've heard all of these questions and filled out this

23 questionnaire? What do you think about yourself doing
it?

24 A. Oh, I think that -- I think that that's something
you have

25 to do, and I think if I was the one who was looking for
a jury,

2804

Juror No. 4 - Voir Dire

1 if I needed a jury, you know -- if I was on trial, I
certainly

2 would want people to give it everything they could and
be as
3 open-minded as they could be; so as far as being on
this, it's
4 a -- it's a very intense thought. But yet I think that
we as
5 Americans have to -- have to do what's right; and
whether you
6 like it or not doesn't come into it. It's a
responsibility.

7 It's a duty as a citizen.

8 Did I answer your question?

9 Q. Absolutely. I was just asking for your views, and
you've
10 given them. The reason I'm pausing is that this is a
case in
11 which the jurors' verdict one way or another will be
the
12 subject of public comment.

13 A. Yes.

14 Q. And if you were, in this case at the end of the
day, to

15 find a reasonable doubt, would you have any problem
going back

16 to people that you work with or people that you know or
your
17 family and saying, Well, that's the way I saw it?

18 A. I don't think I'd have any problem. I don't know
why I
19 would go back and say anything to anybody.

20 Q. Okay. You don't feel that you would have to

justify

21 yourself?

22 A. Not at all.

that if

23 Q. All right. Well, then let me turn to this question

charges,

24 for some reason there is a verdict of guilty of these

Judge

25 then the jury goes on to the second phase -- and the

2805

Juror No. 4 - Voir Dire

really

1 talked about these -- in that second trial, because it

look at

2 would be a second trial that the jury would be asked to

factors.

3 information about aggravating factors and mitigating

Judge

4 Now, what did you understand by mitigating factors, as

5 Matsch was talking about that?

6 A. Well --

7 Q. And again, this is not a test. We're --

8 A. The opposite of aggravating factors --

9 Q. Okay.

10 A. -- is the way I looked at it.

none of us

11 Q. All right. Now, we're not in this case because

12 knows what the evidence will be -- we have to talk a

little bit

13 hypothetically. But let's suppose you were in the
second phase
14 of a trial in which you had convicted someone of
planting a
15 bomb on an airplane killing a lot of people and you
were going
16 to now decide the sentence. Would you, having
concluded that
17 somebody had done that, be able to consider and give
effect to
18 evidence that the defendant didn't have any prior
criminal
19 record?

20 MR. MACKEY: Judge, objection.

21 THE COURT: Sustained as to particulars. I
don't mean
22 the hypothetical case but breaking it down into
particulars,
23 the record part of it.

24 MR. TIGAR: All right. I don't want to
disobey the
25 Court's ruling. Would the same ruling be with respect
to a

2806

Juror No. 4 - Voir Dire

1 question with respect to a family with young children?

2 THE COURT: Yes. I'm asking you not to go
into

3 particularized factors and have her say yes or no.

4 We get questions back and forth here among the
5 lawyers, as indeed we will at trial, as to what
questions
6 should be asked, as is true with questions asked of
witnesses.

7 MR. TIGAR: Okay.

8 THE COURT: And one of my responsibilities is
to
9 intervene and suggest what questions are appropriate
and which
10 are not; so that's what's happened here. It's nothing
against
11 Mr. Tigar or the objecting counsel.

12 BY MR. TIGAR:

13 Q. Let me try to go at this a different way.
Mitigating
14 factors is the opposite of aggravating factors. Would
you be
15 able to look at the individual circumstances of the
defendant
16 that you had found guilty and -- that is going beyond
the
17 particular offense of which that person had been
convicted?

18 A. Would you repeat that, please.

19 Q. Sure. Would you be able to look at the individual
20 circumstances of the particular defendant that you had
found
21 guilty beyond looking at just what the offense is that
you had

22 convicted him of?

23 A. Yes.

24 Q. Okay. And the reason -- the reason I'm asking
this,

25 however inartfully, is if you could turn to page 28,
please --

2807

Juror No. 4 - Voir Dire

1 if you look at 28B, you talk about if the evidence
shows a

2 person to be guilty of a crime where death of another
has

3 occurred, and so on; and then your answer is continued
at some

4 length on page 40. And you say, "I don't think it
correct for

5 a criminal to kill another and be allowed to live in
isolated

6 but current prison conditions."

7 And here's my concern, bottom line: If you
find

8 somebody -- were to find somebody guilty of a horrible
crime,

9 could you nonetheless go into that second phase and
listen to

10 what the Court says; that in addition to the crime,
there is

11 never, never, never an automatic death penalty in this
country

12 no matter what you did, but a jury is still required to

look at

13 that person as an individual human being and all of
their

14 characteristics, their life history and so on, all
their

15 characteristics and only then make a decision? Could
you

16 participate in that process and be open to the full
range of

17 options that the jury would have to consider?

18 A. Yes.

19 Q. Okay. And you understand that no juror is ever
required to

20 vote for death. This is an individual decision for
each

21 person. The prosecutor asked you could you be a part
of 12

22 people to come in and announce some particular verdict.
I

23 don't know if you remember that.

24 Well, I ask the question: If in a
deliberative

25 process, would you think about this under -- based on
your own

2808

Juror No. 4 - Voir Dire

1 individual reasoned moral response and then deliberate
with

2 other jurors, sticking to your guns if you still
thought you

3 were right?

4 Has that got too many variables in it, that
question?

5 A. Would you rephrase that?

6 Q. Sure. The decision -- let me break it up into
parts. The
7 decision of the jury in a penalty phase is a reasoned
moral
8 response, and that calls on each individual juror to
make their
9 own individual evaluation of these aggravating and
mitigating
10 factors. You could do that; right?

11 A. Yes.

12 Q. And could you then deliberate with the other
jurors, talk
13 to them about, you know, what you thought and what it
was based
14 on? And if you thought you were right, would you stick
to your
15 guns?

16 A. Yes.

17 Q. And if they convinced you, are you open to
listening to
18 their views?

19 A. Yes.

20 MR. TIGAR: Excuse me just a minute.

21 BY MR. TIGAR:

22 Q. I did make a note about this: You said there was
someone

23 else you had seen on television other than Mr. Nichols
in some
24 sort of a flak jacket or -- and I didn't understand
which case
25 that was.

2809

Juror No. 4 - Voir Dire

1 A. That was Kraczynski. I think that's his name.
Kraczynski.

2 Q. That is the Houston doctor? Is that the Unabomber
case?

3 A. No, the Unabomber.

4 Q. As you sit there today, can you look Terry Nichols
in the

5 eye and say that you can give him a fair trial?

6 A. You bet.

7 MR. TIGAR: Thank you very much.

8 Thank you, your Honor.

9 THE COURT: Well, we're not making decisions
about who

10 will serve and who will not as we go along, so we are
going to

11 leave you with some uncertainty as to whether you're
going to

12 serve in the case. And I hope you'll be patient with
us,

13 because I can't even tell you when to expect to hear
from us as

14 to whether you will or won't be on this jury; but
you're going

15 to have to go forth from here now assuming that you
will be.

16 JUROR: Yes.

17 THE COURT: And of course, as a part of that
18 responsibility, you must avoid things that could in any
way

19 influence your ability to serve so that if notified,
you can

20 come back in here and judge fairly as you told us you
can do

21 now. So don't change it by reading or discussion or
whatever.

22 You understand what I'm saying?

23 JUROR: Yes, I do.

24 THE COURT: And in the event that some
complication

25 arises, if you have a change of address, if you get
called out

2810

1 of town on some emergency, something like that, you
have the

2 number to call; you'll let us know right away.

3 JUROR: Yes.

4 THE COURT: And we'll let you know as soon as
we can.

5 For now, you're excused; and thank you very

much for

6 not only your long wait but for your participation in
this

7 process. You're excused.

8 We'll go to 110.

9 MR. TIGAR: I'd like to be heard at recess or
very

10 briefly now.

11 THE COURT: Well, let's get started on 110,
and then

12 we'll hear after we break.

13 MR. TIGAR: Thank you, your Honor.

14 THE COURT: Next.

15 Good morning. Will you raise your right hand
and take

16 the oath from the clerk here.

17 (Juror No. 110 affirmed.)

18 THE COURTROOM DEPUTY: Thank you.

19 THE COURT: Please be seated there in the
chair near

20 the microphone.

21 VOIR DIRE EXAMINATION

22 BY THE COURT:

23 Q. We've been a long time getting to you. You were
here all

24 day Friday?

25 A. Yes, sir.

Juror No. 110 - Voir Dire

1 Q. Right? So we apologize for delaying so long; and
we
2 probably won't finish before lunch break, but we will
complete
3 this today. You can be assured of that.

4 A. That's fine.

5 Q. And you understand, of course, that you received a
summons
6 sometime back notifying you that your name had come up
as --
7 through a chance process as one who may serve as a
juror in the
8 trial of the case of the United States against Terry
Lynn

9 Nichols.

10 A. Yes.

11 Q. And as a result of that summons, you sent us back a
short
12 questionnaire, answered some questions for us; and then
you got
13 notified to go out to Jefferson County Fairgrounds'
auditorium
14 on September 17 and you got a much longer
questionnaire.

15 A. Yes, sir.

16 Q. And as you and the others appeared out there, I was
there
17 with some other people who are here now. I introduced
myself

And I 18 and explained the background of the case, and so forth.
19 want you to be aware of who is here with us this
morning, so
20 let me reintroduce persons who were introduced before
and then
21 some additional ones.
22 You may remember Mr. Lawrence Mackey and Ms.
Beth
23 Wilkinson as lawyers for the Government here; and
they're
24 joined this morning by Mr. Patrick Ryan and Mr.
Geoffrey
25 Mearns, who are added to the prosecution table.

2812

Juror No. 110 - Voir Dire

1 Also, you met Mr. Michael Tigar, Mr. Ronald
Woods,
2 attorneys for Terry Nichols; and Mr. Nichols was, of
course,
3 there as well.
4 And then after introducing these people, I
gave you
5 some background information to explain the reason that
we had
6 all these questions to ask of you. Included in that,
of
7 course, I'm sure, are things that you already knew.
And I

8 don't by repeating them now mean to suggest that you've
9 forgotten, but it's kind of important that we lay the
10 background and foundation and make sure that there is a
common
11 understanding of what we're talking about; so you know
that as
12 I explained that on the 19th of April of 1995, there
was an
13 explosion in Oklahoma City, Oklahoma, destroying a
federal
14 office building and resulting in death and injury to
people in
15 it and that after that, charges were filed in the U.S.
District
16 Court in Oklahoma City by federal prosecutors and these
charges
17 in the form of an indictment making allegations that a
man
18 named Timothy James McVeigh and Terry Lynn Nichols here
and
19 other persons not named in the indictment were in some
sort of
20 conspiracy or plan to bomb that building with the
intent to
21 kill and kill people in it and that then the charges
include
22 that they carried out that plan resulting in the
bombing of the
23 building and also charged the defendants with eight
charges of
24 murder of eight law enforcement agents who were in the
building
25 and died as a result of the explosion.

2813

Juror No. 110 - Voir Dire

of not 1 To these charges, each defendant entered pleas
for a 2 guilty, thereby creating the issues for trial, the need
3 trial.

here to 4 The case then got moved from Oklahoma City
community 5 Denver because of a concern about the impact on the
ask people 6 where this event happened. It would be difficult to
so the 7 there to serve on a jury and fairly to decide the case,
8 case was moved here for trial.

for the 9 And then after that, I ordered separate trials
trial 10 two named defendants so that Mr. McVeigh would have a
separate 11 with the evidence as it related to him, Mr. Nichols a
related 12 trial before a separate jury to hear the evidence as it
13 to him, after finding that it would be unfair to both
14 defendants to be on trial at the same time before the
same jury
15 and unfair to the jury, too, to have to judge and
separate out

16 the evidence.

17 Understand?

18 A. Yes, I do.

19 Q. And indeed, as I acknowledged, there has been a
trial of

20 the evidence relating to Timothy McVeigh right here in
this

21 court and that a jury did hear the evidence in that
case and

22 found him to be guilty of the charges made against him
and also

23 there was then a second trial, a penalty stage hearing,
at

24 which the jury was asked about punishment and did come
in with

25 a recommendation of the death sentence to be imposed on

2814

Juror No. 110 - Voir Dire

1 Mr. McVeigh. You're aware of that?

2 A. Yes, sir.

3 Q. You were probably aware of that without my having
to tell

4 you about it.

5 A. Yes, sir.

6 Q. And, of course, to put that into the clearest of
focus for

7 you, the outcome of that case has nothing to do with
this case

8 and may not be considered by anybody in connection with
this
9 case, certainly not by the jury or by me, the judge.
And so
10 it's clear to you, you know, I presided at that trial.
I know
11 all of the evidence that was presented there. I have
to
12 disregard that because I don't know what the evidence
will be
13 in this trial of Mr. Nichols. That's why we have
separate
14 trials.

15 And if a jury were to consider the results of
16 Mr. McVeigh's trial now in Mr. Nichols' case, that
would
17 violate the whole reason for the separate trials.
Understand?

18 A. Yes, sir.

19 Q. You accept that point?

20 A. Yes, I do.

21 Q. Okay. And then I made some comments in
explanation,
22 really, about some fundamental principles of our law
under the
23 Constitution of the United States and of equal
application
24 throughout the courts of the United States regardless
of who
25 the defendant is or what the charges are, and these
include

Juror No. 110 - Voir Dire

1 those things that we talk in terms of fundamental
fairness, the
2 due process. We sometimes refer to it as lawyers and
judges,
3 but fundamental fairness is the point; and the fairness
aspect
4 means that Mr. Nichols, as any defendant, is presumed
to be
5 innocent of the charges made against him.
6 It isn't up to him to come in at his trial and
prove
7 anything. He certainly doesn't have to prove himself
to be not
8 guilty. He doesn't have to call any witnesses. He
doesn't
9 have to produce any evidence; and he is not obliged in
any way
10 to take the witness stand and answer questions from the
lawyers
11 or to give any exchanges to the jury. He can, in
short, remain
12 silent and just call upon the Government to prove what
it's
13 alleged. You understand that?
14 A. Yes, sir.
15 Q. So it is the burden of these lawyers for the
Government to
16 come in and bring in the witnesses and the exhibits and
the

17 things that they rely on; and, of course, that gets
ruled on
18 under rules of evidence as to what can and can't be
heard as
19 evidence at the trial. And then the jury has to hear
and
20 consider that; and when the case is complete, the jury
has to
21 make a decision, well, does this prove the elements of
the
22 crime beyond a reasonable doubt.

23 And the elements of the crime are given in the
Court's
24 instructions to the jury about the law and specify what
has to
25 be proved for each of the charges and then ask the
jury, well,

2816

Juror No. 110 - Voir Dire

1 does the evidence show that? And among the things that
are
2 always included in the instructions in cases in which a
3 defendant does not testify is that you can't talk about
that,
4 even, because he has no obligation to testify. He can
simply
5 remain silent. You understand that?

6 A. Yes, sir.

7 Q. Then the jury can't draw any inferences from that

or think

stand. 8 about, well, you know, if I were innocent I'd take the

You 9 That's not the kind of thing the jury can talk about.

10 understand that?

11 A. Yes, sir.

the 12 Q. And if then at the end of it, considering all of

is a 13 evidence, the jury comes to the conclusion that there

defendant the 14 reasonable doubt remaining, they have to give the

not 15 benefit of that doubt and come back with a verdict of

16 guilty.

17 You agree with those things?

18 A. Yes, sir.

gone over 19 Q. Do you have any question about anything that I've

20 with you?

21 A. No, sir.

22 Q. And are you prepared to accept and conform to those

serve as a 23 principles as a juror if you were to be selected to

24 juror in this case?

25 A. Yes, I am.

Juror No. 110 – Voir Dire

it in 1 Q. Now, you filled out this questionnaire and you have
2 front of you.

3 A. Uh-huh.

4 Q. Your answers -- and as I told you we would, we have
5 taken -- made copies of what you've told us. I've
given them

6 to the people who are here in front, of you but to no
one else;

7 and they're, of course, obliged, as I am, not to share
it with

8 anyone else. We're using your questionnaire only for
this

9 process because we had ask you some things that are
rather

10 personal in nature; and we want to protect your privacy
all

11 that we can, knowing, of course, that we're also
involved in a

12 public trial.

13 A. Uh-huh.

14 Q. So you don't have to worry about these things
having been

15 released. They haven't been and your name is not going
to be

16 referred to.

17 A. Okay.

18 Q. And also, as you know, we sort of haul you in and
out of

19 the building in ways that people can't get a look at
you or
20 take your picture or so forth. It may be a little
21 uncomfortable sometimes doing that, but you understand
the need
22 for it to protect your privacy as much as we can.
23 A. Oh, yes.
24 Q. Okay. As we go through this questioning and your
answers,
25 you recognize that now we're public, so everything
that's said

2818

Juror No. 110 - Voir Dire

1 here, of course, is in the open; but if there is
anything here
2 that you think is particularly private, you can tell
us.
3 A. Okay.
4 Q. And I'm going to ask you some questions about some
of your
5 answers, but we're not going to go over everything
again. And
6 then I'm also going to talk about some other things a
little
7 bit and then lawyers on each side -- one lawyer from
each side,
8 will have a chance to ask you questions, also. So bear
with
9 us, if you will, having answered 166 questions, we've
got some

10 more.

11 A. Okay.

12 Q. Now, a little bit about your background. You were
born in

13 Fargo, North Dakota?

14 A. Yes.

15 Q. And you were there until you were, what, 9 or 10
years old?

16 A. 9.

17 Q. And family came here to Colorado?

18 A. Yes.

19 Q. And then you went to high school here in the
metropolitan

20 area?

21 A. Yes.

22 Q. Do you still have relatives in Fargo, North Dakota?

23 A. I've got a couple. A couple of cousins.

24 Q. Are you in touch with them?

25 A. Oh, I'm sorry. That's Bismarck. That's not Fargo.
I'm

2819

Juror No. 110 - Voir Dire

1 sorry.

2 Q. And you -- you were in the United States Navy?

3 A. Yes.

4 Q. From '88 to '91?

5 A. Yes.

6 Q. Serving, what -- you were based in Okinawa at one
time?

7 A. Yes, on the Marine Corps base.

8 Q. And Japan?

9 A. Yes.

10 Q. Now, were you also -- did you serve on any ships?

11 A. No, sir. I was a Seabee.

12 Q. Then as I understand it, you received a medical
discharge

13 and have a disability rating for something?

14 A. Yes, sir. I had severe stress facts in my lower
legs, so

15 they discharged me on that.

16 Q. Was that from any one trauma or combination?

17 A. No, it was just the combination of over the years.

18 Q. Okay. And what is -- they give you some kind of a
rating

19 as a whole person for these disability ratings, don't
they?

20 A. They give you a percentage, yes.

21 Q. Yes?

22 A. 10 percent.

23 Q. 10 percent. So you get a small payment for the
disability

24 from the Government.

25 A. Yes, sir.

Juror No. 110 - Voir Dire

1 Q. And then you went to work for the Postal Service?

2 A. Yes, sir.

3 Q. And I take it your military duty helped you a
little. I

4 don't know that you needed it, but --

5 A. Yeah. You get the 10 points.

6 Q. And you're working there now?

7 A. Yes.

8 Q. Now, are you on a night shift now?

9 A. Yes. I work the graveyard shift.

10 Q. And have been for some time?

11 A. Approximately two years.

12 Q. Is that a rotating thing, or are you just -- that's
your --

13 A. No. That's my regular job is that shift.

14 Q. Okay. And when we recessed out there and excused
you so

15 you could leave at the Jefferson County Fairgrounds, I

16 mentioned to be careful and not discuss the case with
others

17 and so forth. But -- and I take it you were able to do
that.

18 A. Yes, sir. I don't work with very many people.

19 Q. Okay. But you probably advised whoever your
supervisor is

duty. 20 out there of the possibility of your being on jury

21 A. Yes, sir.

22 Q. To excuse you to come down here now, I take it.

23 A. Yes, sir.

that 24 Q. And then did you also talk with that person about

committed 25 you -- if you were to serve on this jury you might be

2821

Juror No. 110 - Voir Dire

1 for several months to jury duty?

2 A. Yes, sir.

that? 3 Q. And did that person make any response to you about

4 A. No, they haven't had anything to say about it.

ought to 5 Q. No -- didn't give you any advice, about, well, you

6 try to get out of that or something like that?

employee, I 7 A. All he said was that because I was a federal

8 wouldn't be chosen. That was his only comment on it.

9 Q. That was his prediction about it?

10 A. Yes, sir.

disqualifies 11 Q. And you understand there isn't anything that

12 people who work for agencies of the Government; and the

Postal

13 Service is sort of a different type of agency all by
itself

14 anyway, you understand.

15 A. Oh, yes.

16 Q. Okay. Now, as I understand it from your comments
on page 7

17 here regarding your educational background and at
Question 34,

18 you would like to start schooling to get a degree and
become

19 a -- is this a vet tech?

20 A. Veterinary technician.

21 Q. Veterinary. Okay. I didn't know whether you were
talking

22 about veterinary or veterans.

23 A. No, veterinarian.

24 Q. You've cleared it up. That, I take it, means that
you like

25 animals.

2822

Juror No. 110 - Voir Dire

1 A. Yes, I do.

2 Q. Do you have some animals now, some pets?

3 A. Yes. I have two dogs.

4 Q. Okay. You -- you haven't got a time lined up to do
that.

5 You're not scheduled to start school at any given
moment now,

6 are you?

7 A. No. That's just something that I am planning on
doing

8 because I don't want to work for the Postal Service as
a

9 career.

10 Q. Okay. I want to turn for a moment to page 22. And
this is

11 one of these areas where I want to be careful about the

12 questions so as not to unduly prolong it; but as I
understand

13 your writing, this was a situation involving you and
your

14 husband.

15 A. Yes, sir.

16 Q. And you're now separated?

17 A. Yes, sir. We have been since that time.

18 Q. And how long ago was this incident?

19 A. I believe three years.

20 Q. Has the separation gone towards any court
proceedings for

21 the dissolution of the marriage, or --

22 A. No. Actually, we get along very well.

23 Q. Okay. Were you hurt?

24 A. No.

25 Q. Okay. And then there was a charge that was
resolved, I

Juror No. 110 - Voir Dire

1 take it.

2 A. Yes. They just said they had to do this because of
the

3 laws in Colorado.

4 Q. Yeah. A policy that when the police are called,
somebody

5 gets arrested?

6 A. Yes.

7 Q. Was it just your husband who was arrested?

8 A. Yes.

9 Q. And you say you get along now?

10 A. Yes, we do.

11 Q. But you're still separated?

12 A. Yes.

13 Q. You know -- you're not living together now, are
you?

14 A. No.

15 Q. We had to -- oh, about the dogs. You also train
dogs for

16 leisure pastime. Are these the dogs you have?

17 A. Yes. It's my own dog. I just, you know, basic
obedience,

18 stuff like that. I just enjoy working with them.

19 Q. All right. We had to ask you some questions here
regarding

20 your attitudes or opinions regarding certain types of
21 punishment in the criminal justice system. And you
gave us
22 some answers. And I'm referring to page 28 of the
23 questionnaire. Would you please turn to that section?

24 A. Okay.

25 Q. And were you, when you came out to Jefferson
County,

2824

Juror No. 110 - Voir Dire

1 anticipating some questions along this line? Did you
expect to
2 be asked something like this?

3 A. No, not really. I wasn't sure what to expect.

4 Q. All right. And you recognize -- you remember
reading the

5 information from the previous page here under 124, sort
of an

6 explanation about why we were asking you these points.

7 A. Yes.

8 Q. And is the matter of what is an appropriate
punishment for

9 certain kinds of crimes something you have given much
thought

10 to in your life before this?

11 A. I wouldn't say a lot, no.

12 Q. Especially the death sentence. Some people, you

know, have

13 very strong opinions about the death sentence.

14 A. I haven't given it a whole lot of thought, no.

in the

15 Q. Okay. And you do know there is a range of opinion

time

16 public about this, some feeling very strongly every

perpetrator

17 somebody dies as a result of a criminal act, the

courts

18 ought to be put to death. Some people say it's not for

about

19 and it's not for us to make that kind of a judgment

penalty. And

20 another human being; there shouldn't be any death

to this

21 the law indeed varies among the states now with respect

22 matter. You understand that?

23 A. Yes, sir.

states,

24 Q. But here, we're not talking about the law in the

in

25 we're talking about federal law; and there is provision

2825

Juror No. 110 - Voir Dire

in prison

1 federal law for possible punishments of death or life

from you

2 without being released. And so what we wanted to know

3 is what you think about those possible punishments
coming in
4 here and before you hear anything about what the law is
or what
5 the process is. So we asked you in a very broad and
general
6 way; and I think you've answered in that same vein with
what
7 you are -- with what you said here.

8 And you gave us an answer under A of the types
of
9 cases that you would consider that life in prison would
be
10 appropriate.

11 A. Uh-huh.

12 Q. And then you gave an illustration under B as to
what kinds
13 of crimes the penalty of death should be imposed; and
you said
14 Jeffrey Dahmer is such a case.

15 A. Yes.

16 Q. And what is it about that case as you know it that
you --
17 causes you to say I would use it?

18 A. Well, I just feel because of the sickness of the
crime and
19 how many people were involved that it just would have
been
20 better that way.

21 Q. All right. And then you go on to C and you
expanded a

right? 22 little on A, I guess, under C. Is -- am I reading it

23 A. Yes.

impose 24 Q. This, again, are types of things where you would

And 25 life; and then D, I think you used the word now "sick."

2826

Juror No. 110 - Voir Dire

saying 1 that's the word you used there; and you're, I guess,

2 about the same thing as you did up above?

3 A. Yes.

right or 4 Q. Now, please understand it's not a test; it's not

know, we 5 wrong answers. These questions go to things that, you

learn from 6 need to know what people's point of view may be and

serve as a 7 that with respect to the ability of that person to

such a 8 juror in a case that does involve the possibility of

death. 9 sentence; that is, life in prison with no release or

is such a 10 And because of the nature of the crimes charged, this

11 case.

process 12 Now, let me review with you a moment what the

is done 13 is. Generally speaking, in federal courts, sentencing
14 by a judge. And this is when these questions are not
15 presented; so in those cases not involving life-or-
death 16 decisions, the jury hears a case and, you know, the
evidence in 17 the same fashion that we've already reviewed and the
issue then 18 is: Has the evidence shown guilt beyond a reasonable
doubt;
19 yes or no? And the jury responds to that with a
verdict of not
20 guilty or guilty. If the verdict is not guilty,
obviously,
21 that's the end of it. If the verdict is guilty, there
is yet
22 more to be done and that is what sentence should be
imposed.
23 And in these other kinds of cases, that, as I've just
said, is
24 up to a judge to decide.
25 But the judge has to decide that on a very
individual

2827

Juror No. 110 - Voir Dire

1 basis. It is not just the crime, but it is also the
person who
2 has been found guilty of committing the crime.

a 3 So there is more to be done, and it is done in
given to the 4 process by which more information is collected and
effects on 5 court concerning the circumstances of the crime, its
what 6 the community and, you know, not only what happened but
also 7 results from what happened before. And then there is
to the 8 information, a good deal of it, gathered with respect
all 9 defendant. And this is individual to him or her. This
or she 10 involves this person's background in detail: where he
including 11 was born and raised, the family circumstances, and then
work 12 everything that's happened in his life since then,
with the 13 family relationships, marital history, children, the
good 14 history, whether there has been any prior involvement
go, you 15 criminal law, and what this person has done in society,
else, the 16 things that have been done, all kinds of things that
defendant. 17 know, to make each one of us different from everybody
18 individual circumstances and characteristics of the
19 Understand?
20 A. Yes, sir.

21 Q. And then that all is presented to the sentencing
judge, who
22 hears from both sides, the prosecution and the defense,
and
23 then makes a decision that is very individual to the
defendant
24 and to the crime and says, well, for this crime, this
person
25 should do this time, whatever it is.

2828

Juror No. 110 - Voir Dire

1 Now, it isn't that way when the issue is life
or
2 death, because we don't leave a decision like that up
to a
3 judge. That's for a jury in federal law. And the jury
comes
4 in and has to decide that, the 12 people on the jury,
sort of
5 representing the community and the conscience of the
community
6 and hear and judge.

7 Now, I emphasize the "hear and judge" because
the
8 jury, just like the judge in other kinds of cases, is
not
9 permitted to make a decision just on the basis of the
guilty
10 verdict. I mean, you don't talk about sentencing
unless there

found 11 is a guilty verdict; so you start with the jury having
the same 12 that the defendant has committed the crime; and then
stage or 13 jury hears more, and that's where we get the second
14 penalty phase hearing. It's really a second trial.

evidence 15 At this trial, they go way beyond what the
at this 16 was in determining the guilt of the defendant; so it is
that goes 17 time that the Government lawyers bring in information
sentence. 18 to supporting the idea that death is justified as a

evidence 19 And that includes, you know, the things that came into
crime and so 20 but more beyond that in terms of the impact of the
with all of 21 forth. And at the same trial, the defense comes in
the 22 these individual characteristic items, the things about
23 defendant as a unique human being.

hearing, 24 And then at the end of it, at the end of that
what it 25 the court will review with the jurors in instructions

the
second
as
the idea
sentenced
court
support the
not
understand?

1 is that they have heard in the information part -- in
2 information provided at this part of the trial, this
3 trial, and review those things that may be considered
4 aggravating factors, the things that tend to support
5 that death is what should happen; that defendant be
6 to death. The other side -- on the other hand, the
7 explains those things that have been heard and can be
8 considered as mitigating factors, the things that
9 idea that despite the crime, the sentence to death is
10 justified for this individual human being. You

11 A. Yes, sir.

fact
guilty of
considered
clearly to
respect
case if

12 Q. And the importance of that, of course, includes the
13 that in cases in which two or more people are found
14 the same crimes, the sentences must be separately
15 and may well be different. And to put it, you know,
16 you, the fact that a jury reached a death decision with
17 to Mr. McVeigh cannot control any jury decision in this

You 18 the case ever gets this far as a punishment hearing.

19 understand?

20 A. Yes, sir.

21 Q. Because it depends on what is heard on these
aggravating

22 and mitigating factors and how the jury assesses,
really, the

23 life of the human being on trial.

24 And then as a part of the instructions,
though, the

25 court is not able to give you any kind of a formula.
It can

2830

Juror No. 110 - Voir Dire

1 suggest some questions to be asked by the jury of
themselves in

2 analyzing these factors, but the -- in the last
analysis, the

3 question comes down to each individual juror making a
decision

4 that is a moral judgment, a reasoned one but reasoning
from

5 what has been presented and then decide as to whether
the

6 defendant should live or die. Actually, there are
three

7 questions: One is should the penalty be life in prison
without

8 any possibility of ever being released, or death, or

there is

9 the possibility that the jury may determine it should
be some
10 sentence lesser than those two and turn it back to the
court to
11 decide.

12 So you've followed very carefully. I know
you've
13 listened attentively. Do you have any question about
my
14 explanation of this process?

15 A. No, sir.

16 Q. So what I must ask you, having heard this
explanation and

17 considering these things that I have talked about:
Will you --

18 do you think that you will be able to -- if you were to
serve

19 on this jury to reach a decision about whether the
defendant

20 should be sentenced to life or death based on not only
the

21 circumstances of the crime but on all of these things
that may

22 be presented regarding his personal background and
individual

23 characteristics?

24 A. Yes, I do.

25 Q. And you understand we can't go into what those are
now,

Juror No. 110 - Voir Dire

1 just as we can't go into what the evidence may be
because we

2 have to wait and see what will be presented. And so
certainly,

3 the jury has to wait and see and be open-minded until
they hear

4 it all before reaching a decision. And is that
something that

5 you believe you can do?

6 A. Yes, I do.

7 THE COURT: Okay. Well, we're well into the
normal

8 noon hour. I think we'll recess now and then ask you
to be

9 back. And it won't be too long and we'll -- now is the
time

10 that when you come back, the lawyers on each side will
have a

11 chance to question you a little further.

12 JUROR: Okay.

13 THE COURT: So bear with us. We'll get you
out of

14 here yet today; so we're going to take about an hour
and a

15 quarter. And you can step out now.

16 JUROR: Thank you.

17 (Juror out at 12:22 p.m.)

18 THE COURT: All right. Mr. Tigar?

19 MR. TIGAR: Yes, your Honor. The question to
which
20 the Court sustained an objection: I understand the
Court is
21 talking to the jurors about the general kinds of
mitigating
22 factors that might be introduced, just as the Court is
talking
23 about presumption of innocence.

24 THE COURT: Yes.

25 MR. TIGAR: I thought I'm permitted to ask a
question:

2832

1 Can you afford the presumption of innocence . . . And
follow
2 up on that. My question to which the Court sustained
an
3 objection was word for word from the statute, your
Honor; that
4 is to say, from the death penalty statute. And what I
was
5 trying to do in a hypothetical case, not this case, was
to ask
6 if the juror could consider and give effect to what the
7 Congress has specifically said can be a mitigating
factor,
8 because that juror is clearly life impaired if the
juror said

9 to me, Well, I couldn't possibly give that any
consideration.

10 THE COURT: I understand your approach, but
I'm not

11 going to let the Government lawyers come in here and
review the

12 aggravating factors in the statute, either. I mean, if
I were

13 to permit you to do that, then they should be able to
run down

14 the list of aggravating factors, and that isn't going
to

15 happen. That's my ruling.

16 MR. TIGAR: Your Honor, may I respectfully
suggest

17 that when the Government asks the jurors if they're
capable of

18 assessing the death penalty in a case in which they all
know

19 that 168 people are dead that essentially that job has
been

20 done. That's the reason for my concern. I don't mean
to argue

21 with your Honor after your Honor has ruled, but I
thought that

22 taking it in this way was a permissible way.

23 THE COURT: Okay. Well, I've resolved the
issue and

24 we'll proceed accordingly.

25 MR. TIGAR: Your Honor, may I make an
additional

are 1 suggestion to the Court about -- You said that jurors
2 brought to the courthouse so that nobody can take their
3 picture.

4 THE COURT: Right.

that 5 MR. TIGAR: Would the Court be willing to say
6 nobody in the media can take your picture, get it into
the 7 papers, so we don't have any suggestion that there is
some 8 security concern there?

9 THE COURT: Sure. We had some matter to
resolve of 10 record, too, that I think should be non-public, a
11 communication.

12 MR. TIGAR: Yes, your Honor.

can do 13 THE COURT: If you'll come to the bench, we
14 that.

15 (At the bench:)

court 16 (Bench Conference 23B1 is not herein transcribed by
17 order. It is transcribed as a separate sealed
transcript.)

18

19

20

21

22

23

24

25

2837

1 (In open court:)

2 THE COURT: All right. We'll recess, 1:40.

3 (Recess at 12:25 p.m.)

4 * * * * *

5

6

7

8

9

10

11

12

13

14

15

16
17
18
19
20
21
22
23
24
25

2838

	1	INDEX
Page	2	Item
	3	Jurors
	4	Juror No. 874
2705	5	Voir Dire Examination by The Court
2732	6	Voir Dire Examination by Mr. Orenstein
2745	7	Voir Dire Examination by Mr. Woods
	8	Juror No. 4
2758	9	Voir Dire Examination by The Court

2784 10 Voir Dire Examination by Mr. Ryan

2796 11 Voir Dire Examination by Mr. Tigar

12 Juror No. 110

2810 13 Voir Dire Examination by The Court

14 * * * * *

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 13th day of October, 1997.

19

20

Paul Zuckerman

21

22

Bonnie

Carpenter

23

24

25