

13 for Defendant Nichols.

14 * * * * *

15 PROCEEDINGS

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

17 THE COURT: Please be seated.

18 Good morning. The temperature in here is a
bit warm,

19 but I'm advised that somebody has been informed about
it and is

20 working on it. I'm sorry about that.

21 Mr. Mackey.

22 MR. MACKEY: If the Court please, I'd like to
take

23 just a couple minutes to raise two objections on what I
detect

24 to be objectionable questions evolving in the course of
defense

25 counsel's voir dire.

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1 THE COURT: All right.

2 MR. MACKEY: One is questions that I would
judge to be

3 argumentative and injecting personal views or
expressions of

4 belief by counsel. We've heard a series of questions
posed to

and 5 jurors about the Government having a theory of its case
some views 6 that the defense will call witnesses in and express
Government's 7 that those defense witnesses will contradict the
don't 8 theory, expressions of personal belief such as "We
the -- 9 believe we'll ever get to the penalty stage." I think
these 10 it's clear that the Court has addressed every one of
the jury 11 principles of law by the time any lawyer stands and so
burdens are 12 understands what the burdens are and where those
personal 13 and so questions that include expressions of counsel's
improper. 14 belief and predictions about the evidence are simply
where I 15 Beyond that, there are also other examples
16 think we're seeing too much foreshadowing of facts or
a series 17 foreshadowing of defense theories. We heard yesterday
certain 18 of questions about whether farmers are known to have
and might 19 ingenuity in being long distance from hardware stores
solve 20 have to rely upon whatever is on the farm in order to
that 21 that -- that problem. It really had nothing to do with

22 particular juror's qualifications to serve; so those
are my two
23 objections, your Honor, and I wanted to raise it since
I had
24 seen some evolution in that direction.

25 THE COURT: All right. Thank you.

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1 Mr. Tigar.

2 MR. TIGAR: Your Honor please, it is no secret
to a
3 juror that we have the right to contradict the
Government's
4 case. I can't see how a question that says we are
going to
5 contradict their evidence or contradict their theory
could
6 possibly be more than a description of the process. I
do not
7 recall any lawyer on our side saying that we do not
believe we
8 are going to get to a penalty phase. I think the word
was we
9 do not concede that we are going to get to a penalty
phase. As
10 the Court knows, when defense counsel rises to ask
questions of
11 a prospective juror about penalty questions before
we've even
12 had a trial, we labor under a considerable difficulty

in

13 attempting to put those in context. So while I would
agree
14 with Government counsel that we shouldn't say we don't
believe
15 we're going to get anywhere, express some idea like
that, the
16 fact that we don't concede seems to us unobjectionable.

17 With respect to questions about the jurors'
18 backgrounds, different jurors bring to this case their
life
19 experiences. And just as we examined, the Government
did at
20 length, the juror who had some experience in
explosives, you

21 know, what are you going to bring it to this case, what
do you
22 know about this process, it seems to us that these two
jurors
23 who happened to show up on the same day who had some
farming
24 experience, this is the -- you know, these are the
sorts of
25 questions, well, what do you do, how do you solve these

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1 problems and, you know, do you understand that that's
-- that
2 that's how things work; that those are questions that
have to

3 do with qualifications because they give us a clue as
to how
4 the jurors are going to look at certain kinds of
situations if
5 they should arise.

6 THE COURT: All right. Well, expressions of
opinion
7 must be avoided, of course. I don't, as I sit here
now,
8 remember whether the word "believe" was used, but it
should not
9 be.

10 With respect to the use of the word "theory"
with
11 respect to the Government's case, I have no objection
to that.
12 Or to say that you don't concede anything, that's fine.

13 With respect to the question about what do you
do when
14 you're a long way from town, I don't have any problem
with
15 that.

16 Let's proceed with 839.

17 (Juror No. 839 was recalled to the stand.)

18 VOIR DIRE EXAMINATION CONTINUED

19 BY THE COURT:

20 Q. Good morning.

21 A. Good morning.

22 Q. We're sorry to keep you waiting for a few minutes
this

23 morning, but counsel and I had some matters to discuss
first.

24 So you'll recall that yesterday, late in the
25 afternoon, you took your oath here and began to answer
some

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1 questions relating to your possible service as a juror
in the
2 trial of United States against Terry Lynn Nichols, and
I think
3 we had gone through the basics with respect to the
fundamental
4 principles of law that are applicable to this as in any
5 criminal case.

6 And -- excuse me -- you -- I asked you about
your
7 attendance at the University of Denver Law School, and
you said
8 you were attending there and that you had two courses
in
9 criminal justice or criminal procedure.

10 A. Yes. I've taken criminal law and criminal
procedure.

11 Q. Well, of course, these -- I assume that these
things we
12 talked about yesterday were covered in that course
material.

13 A. Yes, they were.

14 Q. How far along are you in law school?
15 A. I'm an evening student, and I'm in my last year, so
this is
16 my fourth year.
17 Q. And have you developed a plan as to what it is you
want to
18 do after graduation? Do you intend to practice law?
19 A. I'm not sure. I've worked for probably about 15
years or
20 more in higher education administration, working with
contracts
21 and grants, and I've had a full-time professional
position; and
22 when I started law school, I thought that that would
help me in
23 my current position. This last year, I decided to quit
that
24 job and get some experience in a law firm to see if I
might be
25 interested in practicing law. So I've been working
part-time,

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1 continuing to work with the university in contracts and
grants,
2 but I'm also working as an intern at Hall & Evans.
3 Q. And that's a general -- sort of a general-service
law firm
4 with a variety of clients, and the nature of their

practice is

5 broad?

6 A. Yes. My understanding is that they specialize in
7 insurance, and I'm working with the environmental law
group

8 because my particular area of interest is environmental
law.

9 Q. So you're taking a look at whether you want to
practice?

10 Is that the answer?

11 A. Yes. Maybe I'll learn more here.

12 Q. And of course, one of the things that I always ask
of

13 lawyers or law students who are in your situation and
possibly

14 about to serve as a juror, and that is if in the
instructions

15 of the Court, you hear things that you may disagree
with or

16 based on some work that you've had, you think that some
17 instruction is incorrect, you would nonetheless under
your oath

18 follow those instructions.

19 A. Yes, I would.

20 Q. So you won't judge the Judge? Is that --

21 A. No. I don't think I would.

22 Q. Okay. Now, you have gone to a lot of different
colleges

23 and universities in your life beginning, I guess, at
Lake

year 24 Forest, Illinois. And then you were -- did they have a
25 abroad or a -- is that when you went to France?

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for my 1 A. Yes. I -- I studied all four years at Lake Forest
once to 2 bachelor's, and I went abroad twice, once to France and
3 Greece and Turkey.

You got 4 Q. And then you went to graduate school. Let's see.
where you 5 your questionnaire -- well, I'm sure you -- you know
you may. 6 went. But if you want to look at your questionnaire,

7 A. Okay.

8 Q. Where were you enrolled when you went to China?

1978 9 A. I was enrolled at the University of Denver. From

international 10 until 1980, I was working on a master's degree in
to study 11 relations; and in 1980, I went to China the first time
degree 12 Chinese. And then I went directly from the master's

1983, I 13 program into the Ph.D. program; and from 1982 until

and 14 went back to China and taught international economics

15 English to Chinese students. And my plan was to stay
there for
16 two years and work on my dissertation, but I had to
come back
17 to the United States before I completed two years; and
my
18 dissertation is incomplete.

19 Q. Okay.

20 A. And then -- so I took a leave of absence from that
program

21 and started working at the Auraria campus and at the
University

22 of Denver; and then a few years ago, I decided to get
my law

23 degree until -- I had to put my dissertation on hold
until I

24 was able to get my two children through college because
my

25 dissertation chair required that I do my research in
China.

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1 Q. In China?

2 A. And I wasn't able to go back to China.

3 Q. Now, as I understand it from what you said at page
6, you

4 were both in Taiwan and in the People's Republic?

5 A. Yes. Let's see. I have to try to remember this.

6 Q. Okay.

7 A. When I went to China in -- let's see -- in 1982, I
stayed

8 there teaching until 1983.

9 Q. Where in China was that?

10 A. I was in Tianjin, which is the third largest city
in China.

11 It's an industrial port city. And I taught at a
university

12 there.

13 Q. And is that to Chinese students?

14 A. To Chinese -- actually, I was teaching Chinese
teachers.

15 Q. In English?

16 A. I taught in English, but I spoke fluent Chinese;
and so I

17 was able to also speak to them in Chinese because my
classes in

18 international -- in international trade and economics
were

19 difficult for them to understand in English because
their

20 English ability wasn't very good. And then I also
taught

21 English to these teachers. This was when China was
just

22 beginning to start their higher education system after
not

23 having one for so many years. So officially, I was
teaching in

24 English, but a lot of times, it was helpful to the
students to

Taiwan. 25 communicate to them in Chinese. So you asked me about

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1 Q. Taiwan, yeah.

States. My 2 A. So I left -- I had to come back to the United

sorry. 3 father was suddenly terminally ill with cancer. I'm

4 Q. I understand.

went back 5 A. And I came back here for a few months, and then I

Taiwan. 6 to Taiwan and I -- I spent the summer in 1983 in

7 And --

8 Q. Now, were you teaching then?

as a 9 A. Actually, I was -- I taught on the side informally

was 10 tutor, but I also studied Chinese some more because it

for my 11 important for me to be able to read and write fluently

12 dissertation.

13 Q. And did you learn to write --

very 14 A. I wrote Chinese. I could read and speak Chinese

15 fluently, but not anymore.

16 Q. That's a skill that one can lose without --

17 A. Very quickly.

18 Q. Yeah. And at that time, you were thinking of
pursuing your

19 doctorate, I take it?

20 A. Yes. And I still am.

21 Q. And you still are. And you -- you anticipate
completing

22 the dissertation that you started?

23 A. Yes. My -- my dissertation is about halfway
written; and

24 now, of course, it'll need updating. But my plan is to
finish

25 law school this spring, take the bar this summer, and
then when

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1 I finish the bar, since I've made the decision to be --
to work

2 part-time, I want to try to finish the dissertation
next year.

3 And at that point, then I'll determine what I want to
do as far

4 as a legal career or if I want to go back to the
university

5 environment and teach.

6 Q. And your children are -- well, one is in college
and living

7 at home?

New York. 8 A. No. She goes to school at Colgate University in
9 Q. Okay. Well, you're looking at many paths that may
be open 10 to you for you to pursue. And I take it this all
becomes 11 available to you as your children are leaving home.
12 A. Yes.
13 Q. And you are divorced; right?
14 A. Yes, I am.
15 Q. And how long ago were you divorced?
16 A. I was divorced in 1985.
17 Q. Okay. So -- and the children have been with you?
18 A. Yes.
19 Q. Since the divorce?
20 A. Uh-huh.
of 21 Q. We asked you to list here on pages 11 and 12 types
mention 22 employment with your immediate family; and on 12, you
-- 23 farming or ranching. And I take it that's your mother
24 A. Yes.
25 Q. -- who was raised on a farm in Nebraska?

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1 A. Yes.

2 Q. Is your mother living?

3 A. Yes.

4 Q. And your father has passed away, has he?

5 A. Uh-huh.

6 Q. And is your mother -- mother's family still have
that farm?

7 A. No. My grandfather has passed away so they -- my
mother's

8 family had only one son, and none of the daughters have
the

9 farm, so -- they haven't had the farm for years.

10 Q. So was it sold off in the estate --

11 A. My --

12 Q. -- proceeding?

13 A. My grandfather never owned the farm. He was a dry-
land

14 farmer and he leased.

15 Q. Oh, all right. Were there times in your growing-up
years

16 that you went over to the farm and --

17 A. Yes.

18 Q. -- spent summers, that kind of thing?

19 A. Yes.

20 Q. And did you do some work over there?

21 A. Well, I was pretty young, so it was -- I guess you
could

22 call it work, but it was more like play.

23 Q. Play to you. Okay. Now, during the time of your

marriage,

24 what type of work did your husband do?

25 A. Let's see. When we were first married, he -- we
were

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His 1 pretty young, and he -- we just graduated from college.

he did 2 first job, I think, was just working as a waiter; and

the 3 that for a few years, and then he got a job working at

then he 4 University of Colorado at Denver. He was teaching, and

program. 5 was also the director of the Asian-American EOP
And

his 6 then he did that until we were divorced, and then he --

he 7 family lives in Boston and he moved back to Boston, and

8 currently works for the Department of Education.

9 Q. Did you say EOP program?

10 A. Yes. Educational Opportunity Program.

11 Q. Seeking to place Asians or Asian-Americans in --

American 12 A. It was to -- the program was to assist the Asian-

their 13 students at the university in getting financial aid for

14 education, and then he also provided counseling

services to

15 those students if they had difficulties.

16 Q. Okay. Then you have worked with the University of
Colorado

17 and particularly the Health Sciences Center?

18 A. I was at the University of Colorado at Denver from
1986

19 until this past June, and I left that position; and
July 1, I

20 started at the Health Science Center.

21 Q. Now, turning back to the UCD-Denver, were you doing
this

22 grant writing, that type of thing there?

23 A. I started in that position as an intern, and I
worked as an

24 intern for just about a year; and then they -- I was --
and it

25 was in the office of -- at that time, it was called the
Office

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1 of Research Administration. And the office provides a
service

2 to faculty where we assist them in the grant-writing
process.

3 We actually do not write the grants, but we help them
identify

4 funding sources and then review their proposals to make
sure

5 that they comply with the guidelines, and then we
administer
6 those grants. I was responsible for making sure that
they
7 complied with regulations pertaining to the use of
human
8 subjects or animals, compliance with conflict-of-
interest
9 regulations or scientific misconduct.
10 Q. So to do that, you had to become quite familiar
with the --
11 all of the regulations that govern the particular
categories of
12 grants?
13 A. Yes.
14 Q. And then you kind of edited what they had prepared?
15 A. Somewhat. Not their scientific aspect.
16 Q. No. I understand.
17 A. Not that part. But yes, if they didn't comply with
the
18 regulations, then we recommended changes to them,
because we
19 wanted our proposals to be competitive and not be
disqualified
20 because they didn't meet the guidelines.
21 Q. Now, is that the kind of thing you're doing for the
Health
22 Sciences Center part-time?
23 A. Well, in -- when I first started at UCD, I -- we
received
24 mostly grants, but we had a few contracts; and so I had

to

25 become knowledgeable of contracts and the language in

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1 contracts, and so I learned a lot about contracts. And
the

2 position at the Health Science Center is one where I
review

3 contracts, negotiate them, and I write subcontracts,
and so I'm

4 not -- at CU Denver, I was the manager of the office,
so I

5 supervised a staff, and I had a great deal of
responsibility in

6 that area. But at the Health Science Center, I'm just
working

7 part-time, and I'm basically negotiating contracts.

8 Q. And was your own pursuit of your work in China and
Taiwan

9 pursuant to some grant?

10 A. I received a grant in order to help pay for the
costs.

11 Q. Was that a federal government grant?

12 A. No. I received a research grant from Shell Oil
Company.

13 Q. Because your field was about international
marketing and

14 that --

15 A. My -- my field was political economy, and Shell Oil

16 provided research fellowships to the University of
Denver
17 for -- I think they gave out one or two a year for
students to
18 do dissertation research, and it was administered
really by the
19 university. I don't think Shell Oil Company cared
about the
20 topic or who was doing it. They gave the university
the
21 freedom to determine who should receive the fellowship.
22 Q. Okay. So it wasn't directly from Shell to you? It
came
23 through the intermediary of the university?
24 A. Yes.
25 Q. I see. You mention in your answers here on page 22
at

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1 Question 101 an incident involv -- and then also at 104
on the
2 next page, an incident involving your daughter when she
was a
3 youngster.
4 A. Yes.
5 Q. And was hit by a car.
6 A. (Juror nods head.)
7 Q. Was she injured?

8 A. She almost died. She was run over by a car in
front of our
9 house. She was crossing the street at a corner; and a
man was
10 driving without a license, and he just went through the
stop
11 sign and ran over her. And she had a broken arm, a
broken leg,
12 her skull was crushed, and her entire body was burned.

13 Q. Very severe injuries?

14 A. Yes.

15 Q. And hospitalized for some time, I take it?

16 A. Actually, she recovered very quickly. She was in
the
17 hospital for about two weeks. And I think she went
home after
18 that time. Her -- she didn't really have brain damage
-- I
19 mean, it's been an amazing recovery. So I still think
there's
20 medical problems, but she's pretty much normal.

21 Q. Pretty much normal. And the police were involved
in the
22 investigation of that event, I take it?

23 A. Well, I don't really think the police did anything
that I
24 know of. They just --

25 Q. Well, they asked you questions, I guess. And you
remember

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1 that -- as far as you remember, you were in shock or --

2 A. Well, I'm sure I was. I mean, I think I was pretty
3 level-headed, but I -- you know, it was a shocking
event.

4 Q. Well, from what you said, though, about without
insurance
5 and the like, the driver of the car was identified?

6 A. Yes.

7 Q. And did that person take responsibility for his or
her
8 actions?

9 A. This is my understanding of what happened --

10 Q. Okay.

11 A. -- is that the police came to the accident -- I
went to the
12 hospital with my daughter.

13 Q. Sure.

14 A. So I wasn't really involved with the police. But
they
15 took -- I think they took him down to the police
station, held

16 him overnight, and released him the next day.

17 Q. Well, is it your understanding that he stopped?

18 A. He did stop. He did stop.

19 Q. Okay.

20 A. Yeah.

21 Q. And then with respect to all of the expenses of
your
22 daughter's treatment and so forth, how was that
handled?
23 A. My -- my car insurance and my health insurance
covered her
24 expenses; and then anything they didn't cover, I
covered.
25 Q. Where did you -- did you file a lawsuit against
this

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1 driver?
2 A. I contacted an attorney and he said that there was
no use
3 in pursuing it because the driver was indigent.
4 Q. Okay. And that's -- you took that advice, I take
it?
5 A. Yes.
6 Q. Now, there came a time, apparently, during your
marriage
7 when there was an IRS audit of your former husband.
I'm
8 looking at pages 19 and 20.
9 A. Okay.
10 Q. And I'm not sure this was during your marriage. I
jumped
11 to a conclusion there. I don't --

12 A. It was when we were first married and my husband
worked at
13 a restaurant. His employer was being audited and
because he
14 did not keep accurate records, the IRS also audited all
of the
15 employees of the restaurant. And because waiters and
16 waitresses are required to report their tips --

17 Q. Sure.

18 A. -- I think what the IRS determined was that a lot
of cash
19 is exchanged, and so you don't really have
documentation of how

20 much cash is exchanged. So they used a system where
they
21 looked at credit receipts that went through the
business and
22 determined kind of on an average basis what each
waiter,
23 theoretically, should have made.

24 Q. Sort of a percentage rule?

25 A. Yes. And based on that, they determined what
people should

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1 have claimed for their taxes; and as a result, they
determined
2 that my husband should have paid more taxes.

3 Q. All right. And your feeling from that, I take it

from what

4 you've said here, is that that seemed a bit arbitrary
and not

5 fair.

6 A. Yes. I think so. You know, I don't think it's as
cut and

7 dried as that. I mean, most people that work in a
restaurant

8 know -- well, and this was higher-class restaurant.
And

9 typically, waiters that worked there a long time are
given the

10 better tables and the better nights to work. And my
husband

11 was a -- a newer waiter, and he had the bad tables and
the bad

12 nights. And so I know that if you take an average,
that -- and

13 I think he was very honest in claiming his tips -- and
so if

14 you take an average, I think that he ended up paying
more than

15 his share.

16 Q. But I -- I take it then that it was resolved by
agreeing

17 with the assessment?

18 A. Yes.

19 Q. On -- you understand, basically, the charges in
this case?

20 A. Yes, I think so.

21 Q. And that under the statutes charged, there is the

to
any
22 possibility of a defendant found guilty being sentenced
23 death or to life in prison without the possibility of
24 release. You understand that?
25 A. Yes.

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regarding
regard to
may be in
to page
review them
1 Q. And for that reason, we asked you some questions
2 your views as to those possible punishments without
3 what the law is concerning them or what the procedure
4 jury determination of punishment. And if you'll turn
5 28, we have your answers, and I'd like for you to
6 so that you have them in mind.

7 A. Okay.
8 Q. Now, before being confronted with these questions
9 questionnaire, is the death penalty something that
10 discussed somewhat and thought about?

11 A. I suppose I have discussed it with people from time
12 time.

13 Q. But do you have a memory of having a particular

point of

14 view before you answered these questions?

strong

15 A. Not particularly. I mean, I don't think I have a

16 opinion or have really thought about it that much.

answers,

17 Q. And since September the 17th, when you gave these

these

18 is there anything that has caused you to rethink any of

this

19 answers, or would it be fair to say as you sit here

the same

20 morning, your answers would be the same if I asked you

21 questions?

22 A. I think they would be the same.

or lead

23 Q. And I don't want to try to put words in your mouth

here, I

24 you to any statements, but to summarize what you said

society that

25 think you're looking at principally the threat to

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were not

1 would be the risk of a threat to society if the person

2 put in prison for life or put to death.

3 A. Yes, sir.

Would

4 Q. So you're focussing on the protection of society?

5 that be the principal focus of your concern here?

6 A. Yes.

7 Q. Now, in the course of your work in law school or,
for that

8 matter, just in the course of your life, have you ever
observed

9 any criminal trial proceedings?

10 A. No, I haven't.

11 Q. And I think you said over here somewhere that
although

12 you've had these courses in law school, you don't have
much of

13 a familiarity with how things are in -- in the --
actually in

14 court.

15 A. That's right.

16 Q. So that your acquaintance with it is more from
reading

17 appellate opinions and the kinds of things that people
do in

18 law school.

19 A. Yes.

20 Q. Okay. Now, we need to talk about this at a little
greater

21 length because you recognize that the questions that
were asked

22 of you and the answers you gave are in the context of
what do

23 you think without regard to what is really involved.

24 A. Yes.

as it 25 Q. So this is a request for your opinions coming in,

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1 were.

2 In the -- in the trial of criminal cases, of
course,

3 you recognize the jury's function is to determine
whether the

4 evidence has established the offense charged. And the
Court

5 instructs the jury as to the elements of the particular
offense

6 and what therefore has to be proved beyond a reasonable
doubt,

7 and then the function of the jury is to decide whether
the

8 evidence, as they have heard it and it's been received,
does

9 prove the crime charged beyond a reasonable doubt.

10 A. Yes.

11 Q. And of course, if there is a reasonable doubt
remaining,

12 the defendant must obtain the benefit of that and be
found not

13 guilty. On the other hand, if the jury does determine
that the

14 evidence convinces them beyond a reasonable doubt that
the

15 elements of the offense are proved, then the jury
returns a
16 guilty verdict. And in cases not involving life in
prison
17 without release or death, that's the end of it from the
jury's
18 standpoint, and the matter goes back to the Court to
determine
19 the actual sentence. I mean, you understand that?
20 A. Yes.
21 Q. Generally. Now, the court, though, before imposing
a
22 particular sentence on a person found guilty by the
jury
23 verdict, must find out a lot more about the case, both
with
24 respect to the circumstances of the case and then a
good bit
25 more about the defendant. And accordingly, information
is

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1 gathered; and when it comes to information concerning
the
2 defendant, it's as much as can be obtained about him or
her,
3 which includes, of course, those things that go up to
make each
4 of us a unique human being, all about the defendant's
5 background, early years, family relationships, marriage

6 relationships, children or not, employment history,
what the
7 person has done in life, attitudes, sort of
psychological
8 makeup, all of these things that, as I say, describe
each one
9 of us individually. And of course, you recognize that
we are
10 all different, in part because of our backgrounds.

11 A. Yes.

12 Q. So there is then a hearing before the court on the
question
13 of what sentence is just for the particular person
being
14 sentenced. And at that hearing, that sentencing
hearing,
15 obviously, the lawyers on both sides, the prosecution
and
16 defense counsel, will be heard; and the judge then,
after
17 hearing it all and considering all of these things that
have
18 been submitted after the trial, makes a decision
individual to
19 that person, and that becomes the sentence in that
case. Now,

20 you understand that process?

21 A. Yes.

22 Q. In cases in Federal Court where, of course, we are,
as you
23 recognize -- and I emphasize the federal because there
are

24 differences among the states with respect to the jury's
role in
25 punishment in a capital case. But in Federal Court,
the law is

2999

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1 that when it comes to a question of life or death, we
don't
2 leave that up to judges. That's a decision to be
decided by
3 the jury and left to the jury as the 12 people who come
in here
4 and represent the community and form, really, the
conscience of
5 the community. And a jury finding a defendant guilty
of a
6 capital offense then has the responsibility for
determining
7 this punishment issue; and the choices given to the
jury are
8 life in prison without any possibility of release,
death, or
9 any lesser punishment, in which case it goes back to
the court
10 to decide the particular punishment. Understood?
11 A. Yes.
12 Q. Now, before the jury can make a decision about life
or
13 death, the jury must hear a good bit more. And we
then, in

second 14 cases of that type, proceed with a penalty hearing, a
this only 15 trial, where the issue is punishment. And of course,
already 16 happens if there's a guilty verdict, so the jury has
jury hears 17 decided the evidence proves the crime. And now, the
the crime 18 from the prosecution more about the circumstances of
hears 19 and its effects on people involved, so forth, and also
things 20 from the defense these things that pretty much are the
that is, 21 that I mentioned with respect to a sentencing court;
being, 22 everything about the defendant as an individual human
life can 23 all about his background. The circumstances of his
as a 24 include the role in the offense that the jury has found
who may 25 result of the trial, matching that with other persons

3000

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individual 1 be involved and so forth, and it is an issue of
2 sentencing. So in cases where there are more than one
3 defendant and more than one defendant found guilty, the

4 punishment of one defendant does not control the
punishment of

5 another. You understand that's true even in judge
sentencing?

6 A. Yes.

7 Q. It's an individual determination, and there
certainly can

8 be significant differences between two or more
defendants found

9 guilty of the same crime. You understand these things
that

10 I've said?

11 A. Yes, I do.

12 Q. Now, we refer to the second-stage information as,
on the

13 one hand, aggravating factors, things that the
Government is

14 urging supports the view that death is a deserved
punishment

15 for this person and this crime. And on the other hand,
we have

16 the mitigating factors, those things that are offered
and

17 argued by the defense to support the view that despite
the

18 crime, the defendant does not deserve to be put to
death

19 is. You because of, you know, who the defendant is and what he
is. You

20 understand?

21 A. Yes.

22 Q. And you know that at the end of trial on the
evidence, the
23 court gives instructions about the law, the elements of
proof
24 required for the offense and so forth. So, too, at the
end of
25 the penalty phase trial, the court gives instructions.

3001

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1 Now, in those instructions, the court outlines
for the
2 jurors, based on information that was presented in the
course
3 of the hearing, the aggravating factors and the
mitigating
4 factors that may be considered but -- and then tells
the jury,
5 in essence, to consider all that they have heard. And
then
6 ordinarily, we'll suggest a number of questions for the
jurors
7 to ask themselves in analyzing that information, but it
does
8 not come down to any sort of formula. There's no
equation
9 involved here. And it's not a matter of adding and
subtracting
10 points or anything like that. It is really, at bottom,
a
11 question of a reasoned moral judgment, responding to
all that

going to 12 has been presented to the jury. And each juror is
13 have to make in such a case a moral judgment about the
14 defendant and whether he should live or die. Do you
understand 15 that?

16 A. Yes.

17 Q. Now, the question, of course, that we ask you to
answer is 18 whether -- with this explanation in mind, do you think
that 19 you, sitting on a jury, would be able to base your
decision 20 about whether a defendant should be sentenced to life
or death 21 based on not only the circumstances of the crime, but
also on 22 his personal background and the individual
characteristics that 23 are shown by the information provided?

24 A. Yes, I do.

25 THE COURT: All right. We have lawyers on
both

3002

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1 sides -- it -- one lawyer on each side has an
opportunity to

2 question you a bit more, so please listen to their
questions

3 and answer to them.

4 Mr. Orenstein.

5 MR. ORENSTEIN: Thank you, Judge.

6 VOIR DIRE EXAMINATION

7 BY MR. ORENSTEIN:

8 Q. Good morning, ma'am.

9 A. Good morning.

10 Q. How are you this morning?

11 A. Fine, thanks.

12 Q. The Judge told you yesterday my name is Jamie
Orenstein.

13 I'm one of the attorneys who, together with my fellow
14 prosecutors, will be responsible for presenting the
evidence
15 against Mr. Nichols.

16 One of the things his Honor also told you
yesterday is

17 this is not a test. And are those about the five most
welcome
18 words a law student can hear?

19 A. Yes.

20 Q. From reading your questionnaire, it seems that you
lead a

21 very busy life. You're a law student, as was referred
to this

22 morning. You also have a part-time job; is that right?

23 A. Yes.

24 Q. And I understand from your questionnaire that

you're also

25 the editor of a legal journal.

3003

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1 A. I'm editor-in-chief of the Water Law Review, which
is a new
2 journal we just started, and I'm also managing editor
on the
3 International Law Journal.

4 Q. Are those competitive journals at your school? The
5 first-year students enter some competition to be
involved in
6 those?

7 A. Yes.

8 Q. So it looks like all that keeps you very busy. And
one of
9 the things I noticed from your questionnaire is that
you
10 started a novel sometime back in May when you were at
an
11 airport and you've just been too busy to finish it. In
the
12 months since the questionnaire was completed, have you
had the
13 chance to finish that?

14 A. No. I haven't.

15 Q. The reason I ask, of course, is because you
obviously lead

16 a very busy life and have a lot of demands. Do you
have any
17 concerns about what jury service in this case lasting
18 potentially a couple -- a couple of months or more might
do to the
19 various demands on your time?
20 A. Of course, I have concerns, and I've thought about
it. I
21 do lead a very busy life, and it's, in fact, busier
than the
22 things that you've identified; but I've always led a
busy life.
23 And I'm also a very well-organized person or else I
wouldn't be
24 able to do that. I -- and of course, serving on a jury
would
25 be an inconvenience as far as things that I want to do
and want

3004

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1 to accomplish, but I also feel that citizens have a
2 responsibility. And I probably could manage it.
3 Q. So -- so you're able to manage all the things that
you've
4 got and fulfill your civic obligation?
5 A. Probably one of the reasons that it would be more
6 manageable than, let's say, last year is that I'm
taking a
7 lighter load of classes. This is my last year. And

I'm

8 only -- usually, I would take four classes. This
semester, I

9 have just two classes. And next semester, I'll have
just one

10 class. I have an internship that really was a summer
11 internship, but I wanted to finish a paper that I'm
writing so

12 that should conclude hopefully by the end of this month
if I

13 finish that paper. And I was hoping to have a lighter
schedule

14 next spring so that I could start studying for the bar.

15 Q. You mentioned you're taking two classes this
semester.

16 Just out of curiosity, which classes are you taking?

17 A. I'm taking corporations and land use.

18 Q. So nothing that would have any influence on your
service as

19 a jury (sic) in a criminal case?

20 A. No.

21 Q. And is the schedule such with your evening classes
that you

22 could be here during the day and still make your class
at

23 night?

24 A. Yes.

25 Q. And there is one thing that piqued my interest in
your

Juror No. 839 - Voir Dire

1 conversation with his Honor. You went to China for a
year back

2 in 1980 and studied Chinese; is that right?

3 A. I went there -- in 1980, I was there about six
months.

4 Q. Six months. Had you studied Chinese before?

5 A. I studied Chinese probably for over ten years. I
started

6 in 1976, I think. It's very difficult to try and learn
Chinese

7 when you live in Colorado, so I studied it in many
different

8 ways, but --

9 Q. Now, having -- I'd like to go back to an area that
his

10 Honor covered with you to some extent and ask you a few
more

11 questions. And forgive me for discussing what is
obviously a

12 painful subject, but I want to ask a little more about
your

13 daughter's injuries. How old was she at the time?

14 A. She was five.

15 Q. That -- that was obviously a very traumatic
incident for

16 you as well as for her. The reason I ask about it is
because,

17 as I'm sure you're aware, there were a number of
people,

Oklahoma 18 including children, who were killed and injured in the

that? 19 City bombing. Let me not assume. Are you aware of

20 A. Yes.

of the 21 Q. Do you have any recollection of -- of the aftermath

22 bombing that you saw on --

don't read 23 A. As I said in here, I watch very little TV and I

did see 24 the paper. I'm too busy for that. But I did see -- I

children. 25 on TV pictures of the building and people with their

3006

Juror No. 839 - Voir Dire

you saw 1 Q. How did you respond -- what was your reaction when

2 those images and heard those stories?

mean, that, 3 A. I think my response was that it was tragic. I

4 you know -- probably mostly because of the children.

evidence in 5 Q. As I'm sure you can anticipate, there will be

6 this case about what happened at the bombing and in the

witnessed 7 aftermath of the bombing, testimony from people who

scene looked 8 it and some photographs, there may be, of what the

of 9 like. How do you think you would respond to that kind
personal 10 evidence as a juror sitting on a case, given the
11 experiences that you've had to go through?

respond to 12 MR. TIGAR: Object to how the juror would
13 that evidence, your Honor.

of the 14 THE COURT: Yes. Sustained as to the framing
15 question.

16 BY MR. ORENSTEIN:

presented with 17 Q. Do you have any concerns about if you were
serve 18 such testimony, how it might affect your ability to
19 fairly?

20 A. No.

pursue 21 Q. The other aspect of that incident that I wanted to
the police 22 with you a little bit further was you mentioned that
23 investigating your daughter's accident didn't do very
much.

24 What did you have in mind when you said that?

right 25 A. Well, it -- it just didn't seem to me that it was

Juror No. 839 – Voir Dire

1 that somebody would almost kill someone and not be
punished.

2 And they -- what I was told is if she had died, then we
would

3 have a case. That just didn't seem fair to me, because
I think

4 he had done something wrong. And I guess I never --
you know,

5 I was not knowledgeable of the law and what I could do,
and

6 I -- I suppose I would have expected the police to
communicate

7 with me, and they never did.

8 And as I said, I spent all of my time in the
hospital,

9 so I wasn't really trying to pursue anything -- I was
more

10 concerned about my daughter living than about what this
person

11 did. And so at a later point in time, I don't -- I
think my

12 only recourse then -- that I thought at the time was to
go to

13 an attorney and that an attorney would handle it for
me. And I

14 don't think I ever went to the police directly to get
any

15 assistance.

16 Q. Do you have any feelings about police or about law

17 enforcement authorities generally as a result of your

18 experience with the police in your daughter's case?

19 A. I don't think so, because I think I know that
there's lots
20 of negative feelings about the things that the police
do, but
21 I -- I realize that we have police to serve a role in
society
22 and each individual police officer behaves differently,
and
23 I -- I guess I don't feel that I would generalize about
the
24 entire police system on the behavior of one individual.
25 Q. So if a police officer or a -- some other law
enforcement

3008

Juror No. 839 - Voir Dire

1 agent were to testify in this case, do you think that
your
2 experiences with the police back when your daughter was
a child
3 and she was injured would have any effect on how you
would view
4 that person's testimony?
5 A. I wouldn't see it as being related.
6 Q. You told us earlier that you're currently working
part-time
7 at a law firm or as an intern?
8 A. Yes.
9 Q. Have you spoken to any of the attorneys there about
the

10 fact that you've been summoned as a juror in this case?
11 A. I did not say I was summoned as a juror in this
case. I
12 said that I had to report for jury duty.
13 Q. Did any of the attorneys offer you any advice about
how to
14 get out of jury service if you wanted to?
15 A. Every person has given me advice about how to get
out of
16 jury service.
17 Q. What kind of things have you been told?
18 A. Basically, people say to say you're either totally
against
19 capital punishment or totally in favor of capital
punishment or
20 to say outright that I think that he's guilty, things
like
21 that.
22 Q. So there were some discussions that you've had with
others
23 about jury service in this case?
24 A. Not this case.
25 Q. All right.

3009

Juror No. 839 – Voir Dire

1 A. But generally. But I think maybe some people
suspect that

2 it might be this case.

people
3 Q. I guess if you're going to jury service these days,
4 may assume what it's for.

an
5 Have -- in your work at the firm where you're
6 intern now, have you worked on anything other than
7 environmental type of cases?

write.
8 A. I wasn't hired to work on cases. I was hired to

9 It's a writing internship, and I'm writing articles for
10 publication. And they have been focused on --
primarily on
11 liability of environmental consultants.

12 Q. So nothing to do with the criminal law?

13 A. No.

criminal
14 Q. You mentioned earlier that you've taken courses in
15 law and criminal procedure. Have you also taken a
course in
16 evidence at law school?

17 A. Yes.

18 Q. And did -- and you also mentioned, I think, in your
19 questionnaire that you've taken a course in
constitutional law;

20 is that right?

21 A. Yes.

criminal
22 Q. Did either of those courses involve the study of

23 cases?

24 A. Well, yes.

25 Q. Naturally. As his Honor says, it isn't a test.
It's just

3010

Juror No. 839 – Voir Dire

1 a question of what your background is with this -- with
this

2 kind of matter.

3 How did you like the courses to the extent
that they

4 dealt with criminal law, you know, all of the courses
that

5 we've been discussing?

6 A. How did I like the courses. My criminal law
professor was

7 terrible, and I had no interest in the course. I took
evidence

8 then and that professor was extremely boring, and I
really

9 didn't like that course. And then I took criminal
procedure

10 very reluctantly and the professor was excellent and so
I felt

11 that course was good. And constitutional law, I think
is the

12 best course I've had in law school.

13 Q. In your constitutional law course, did you study
the Eighth

14 Amendment?

15 A. Pardon me?

16 Q. Did you study the Eighth Amendment in your
constitutional

17 law course?

18 A. I studied every amendment; but if you ask me now
about the

19 Eighth Amendment, I'm not going to remember.

20 Q. The amendment dealing with punishment. It's the
21 amendment under which a number of the death penalty
cases come

22 up.

23 A. Okay. I don't think we focused on that very much.

24 Q. A number of courses have different ways of going
about

25 teaching. Some are lecture courses. Some are sort of
free

3011

Juror No. 839 – Voir Dire

1 discussion among the students.

2 Were any of the courses in which you studied
criminal

3 cases the kind of courses where students would
participate a

4 lot?

5 A. The most participation would have been in criminal
6 procedure, and criminal law and evidence were more
lectures.

7 Q. In the procedure course, did you participate much
in the
8 classroom discussions?
9 A. No. I don't like to talk very much.
10 Q. Not a talker?
11 A. Only if I have to.
12 Q. Okay. And I know you started law school in 1994,
which was
13 the year that the O. J. Simpson case started. And I've
heard
14 that a number of professors around that time started
using that
15 case as a starting point for discussion or an example.
Did
16 that happen in any of your courses?
17 A. No. I think in my first year of law school, I -- I
didn't
18 take any criminal courses and so I don't think it was
relevant
19 to the courses I was taking. And if the case was still
going
20 on my second year, I think I was probably too busy to
focus on
21 that myself, and I don't think the professors really
focused on
22 it.
23 Q. So that was never discussed in class?
24 A. In -- my criminal law professor may have mentioned
25 something, but I don't recall, you know, exactly what
she might

Juror No. 839 - Voir Dire

1 have mentioned and it wasn't a heavy emphasis. It
wasn't used
2 as an example. It would have been a comment
occasionally.
3 Q. Were there any other cases that have been in the
news --
4 and I know professors do this a lot, take something out
of the
5 headlines and use that for classroom discussion. Any
other
6 criminal cases over the last few years since you've
been in law
7 school that have been the focus of a classroom
discussion?
8 A. No. And I think mostly in the classes I've had,
professors
9 have really focused on the case book and the cases
we're
10 reading.
11 Q. Obviously, one thing that I think we're all
interested in
12 is how you would bring your law school experience to
bear on
13 your service as a juror. And obviously, as someone
who's been
14 to law school, you're going to have more familiarity
with legal
15 concepts than many of your fellow jurors. How do you
think

16 that would, if it would, have an effect on how you
would act as
17 a juror and how you would interact with your
colleagues?
18 A. I am still just a student. I don't really have any
19 practical experience; and I think what I've learned,
hopefully,
20 would make me more knowledgeable and able to understand
more
21 about what my responsibilities are as a juror and how I
should
22 look at the law and analyze facts or whatever I'm
required to
23 do. I don't think that -- I wouldn't see myself --
even though
24 I -- I hopefully will know more than other jurors, I
don't
25 think I would see myself as being any better than they
are, and

3013

Juror No. 839 - Voir Dire

1 I guess I wouldn't feel that I would impose my values
on other
2 people.
3 Q. I'm not asking so much about your values,
obviously.
4 Everyone brings their own values to bear on this
process. But,
5 for instance, if during deliberations with fellow
jurors, you

a way 6 thought there was -- the conversation was proceeding in
because 7 that you thought was legally unsound, not factually,
a 8 everyone has their own view of the facts -- but just as
how do 9 matter of law, you thought it would be inappropriate,
10 you think you would act in that situation?

know what 11 A. I would probably express my opinion and let them
12 my perspective is and my understanding.

13 Q. Your perspective on the law?

14 A. Uh-huh.

of 15 Q. I -- I'd like to turn, if I could, to the question
know, I 16 punishment that his Honor discussed with you. And, you
that's not 17 should begin by saying that, as we all recognize,
until 18 something that the jury ever has to address unless and
doubt to the 19 the Government proves its case beyond a reasonable
course? 20 satisfaction of the jury. And you understand that, of

21 A. Yes.

questionnaire -- 22 Q. The -- the views that you expressed in the

you -- 23 if you would like to turn to page 28; right there, are

24 are those views that you've held for some time?

25 A. I think probably. I mean, as I said, it's not
something I

3014

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1 really contemplate. So I don't think that I've had a
recent

2 change in my views. I think social order is important,
and

3 that's why I probably have these views.

4 Q. And using your phrase "social order," I mean, that
seems to

5 be the -- the gist of -- of your answers, which is the
death

6 penalty is something that can be considered to protect
society.

7 Is that -- is that a fair statement? I don't want to
put words

8 in your mouth.

9 A. I guess I would see it more as protection than
punishment.

10 Q. As a protection. And I'm looking at your answer to
Part B,

11 where you wrote that "the death penalty may be
necessary in

12 some cases, but they would have to be extreme
situations where

13 there is no other option available and the threat of
this

14 person to" -- excuse me -- "to society would be so

great that

15 there is no other alternative."

16 Is that -- is that how you see the protecting-
society

17 part of the death penalty?

18 A. Do you mean do I see protection as being used only
in

19 extreme circumstances?

20 Q. No. Forgive me because that was a very poorly
phrased

21 question. I guess my question is, does the view that
you

22 expressed there that the death penalty is appropriate
where

23 there's no other option available spring from the idea
that its

24 purpose is to protect -- is to protect society from
those who

25 might harm it in the future?

3015

Juror No. 839 - Voir Dire

1 A. I guess -- I guess so.

2 Q. Short of the need to protect society from someone
who could

3 do such harm in the future, do you see any basis for
imposing

4 the death penalty as a general matter? Obviously, we
don't

5 know the facts of the particular case.

think
person
gotten
were so
expressed no
might be

6 A. Well, as I guess I hinted at, the only option I can
7 of is if it's not to protect people, it's to punish the
8 that committed the crime. And I -- I may have kind of
9 to this idea later on, is that if -- I guess if a crime
10 horrendous and the person committing the crime
11 remorse or no possibility of rehabilitation, that it
12 necessary to impose the death penalty.

Honor
death
question
without the
there is
protect

13 Q. The reason I ask this question is because, as his
14 explained to you, the -- one of the alternatives to a
15 penalty when a juror -- when a jury is faced with the
16 of punishment in a capital case is life in prison
17 possibility of ever being released. So in that sense,
18 always an alternative to the death penalty that can
19 society.

explanation from
you making
the

20 Given that view, given that -- that
21 his Honor, I'm wondering if you ever see yourself --
22 a moral choice to choose the sentence of death where

being 23 realistic possibility of life in prison without ever

24 released is another alternative.

I would 25 A. I think so. That there might be a situation where

3016

Juror No. 839 - Voir Dire

1 think that the death penalty would be a better
alternative to

2 life in prison.

behind 3 Q. And -- and can you explain what your thinking is

that 4 that, what might justify a death penalty where there is

5 alternative?

6 A. I don't know. Do I have to provide an answer?

7 Q. Well --

8 THE COURT: No, you don't.

fabricate a 9 JUROR: I mean, I'm not so sure I can

10 situation.

11 BY MR. ORENSTEIN:

wondering 12 Q. I'm not asking you to come up with facts. I'm

society 13 what would enter into your thinking about as long as

decid -- in 14 can be protected, what might be important to you in

15 making that moral choice?

16 MR. TIGAR: Object, your Honor. I think this
has been
17 covered.

18 THE COURT: Sustained.

19 MR. ORENSTEIN: Thank you, your Honor. I'll
move on.

20 BY MR. ORENSTEIN:

21 Q. Finally, ma'am, if you were to deliberate with your
fellow
22 jurors and come to the decision based on all of the
facts and
23 the law as provided by his Honor that the correct moral
choice
24 was to impose the death penalty, could you come into a
25 courtroom and announce your decision?

3017

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1 A. Yes, I could.

2 MR. ORENSTEIN: Thank you for answering my
questions.

3 THE COURT: Mr. Tigar.

4 MR. TIGAR: Thank you.

5 VOIR DIRE EXAMINATION

6 BY MR. TIGAR:

7 Q. Good morning.

8 A. Good morning.

9 Q. My name is Michael Tigar. And along with Ron
Woods, we're
10 lawyers appointed by the United States District Court
in
11 Oklahoma to help out Terry Nichols. And not only is
this not a
12 test, but the Socratic method is not in operation,
either.
13 I wasn't clear. How long did you spend in
China?
14 A. The first time I went to China, I spent about six
months.
15 Q. Right.
16 A. And then the second time I went, I was there about
a year.
17 Q. Did you have the opportunity to study the Chinese
criminal
18 justice system that was in operation at that time?
19 A. I would say that I didn't particularly study it,
but I had
20 a first-hand experience with the Chinese criminal
justice
21 system.
22 Q. What was your first-hand experience?
23 A. A colleague of mine and I went over to China the
first time
24 to study Chinese, and we were both working on our
25 dissertations. And she was going to stay for one year,
and

Juror No. 839 - Voir Dire

back 1 then I had to go back home and then I was going to come
2 and join her the second year.

was 3 After I came back to the United States, she
4 imprisoned in China for -- I can't think of the name of
the 5 crime --

6 Q. In some anti-government activity of some kind or --

7 A. Because in the process of conducting her research,
she had 8 access to documents that the client -- Chinese classify
as 9 internal documents, and basically those documents would

be very 10 innocuous documents to us. It would be what you would
find in 11 the library. But for them, it was internal

documentation.

Chinese 12 Q. Do you remember reading any of the books about the
13 criminal process?

14 A. I know -- I know I read about --

15 Q. Jerome Cohen's book?

16 A. I have read a lot by him.

in the 17 Q. The reason I ask is that if -- are you aware that

put on the 18 Chinese criminal justice system, a great emphasis is

19 defendant getting up and testifying?

20 A. Yes.

21 Q. And are you -- you're aware that it's different in
our
22 system?

23 A. Absolutely different.

24 Q. Okay. And can you think of a reason why an
innocent person
25 would choose not to take the stand and testify?

3019

Juror No. 839 - Voir Dire

1 A. Yes. Well, can I give you a specific reason?

2 Q. No. No. You don't --

3 A. I can think of a reason, yes.

4 Q. And you wouldn't have any problem obeying the
Court's
5 instruction if for some reason Mr. Nichols didn't
testify? We

6 don't know whether that's going to happen or not. That
the
7 jurors are not to talk about it, consider it, give it
any
8 weight -- give that fact any weight at all?

9 A. I think it's his right, and it shouldn't affect the
jury's
10 decisions at all.

11 Q. And I wanted to -- to then clear up another -- a

related

12 kind of a point. A prosecutor asked you about -- a
13 hypothetical about jury deliberation and would you
share your
14 views about some legal principle in the jury room, and
I want
15 to go back to that. In your questionnaire, you said at
page
16 37, Question 159, that you hadn't heard much, nothing
really,
17 except that he might have been an accomplice. And I
assume you
18 studied the law of principal and accessory,
accomplices, in
19 that boring criminal law course?

20 A. Yes.

21 Q. Okay. Now, did they make you learn the common law
crimes?

22 The elements of and all that kind of stuff?

23 A. Yes.

24 Q. Okay. Well, I want to use this as an example. If
it

25 turned out that under the Judge's instructions, the
definition

3020

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1 of an "accomplice" under federal law as Judge Matsch
gave it to

2 you was different than what you learned in that boring

criminal

3 law course where -- was the common law definition of an
4 "accessory," would you be able to follow Judge Matsch's
5 instruction as opposed to trying to convince the jurors

that

6 you knew what the --

7 A. Yes.

8 Q. -- real rule was?

9 A. Yes.

10 Q. You can do that?

11 A. Very easily.

12 Q. Okay. And now, to take an example of a course that
you did

13 like, you took a con law course that you did like?

14 A. Yes.

15 Q. And the professor, he or she talked about -- not
too much

16 maybe about the -- the Eighth Amendment, but did you do
the

17 Sixth Amendment, confrontation clause and confronting
the

18 evidence against you, cross-examination and so on?

19 A. Actually, not that --

20 Q. Okay. All right. Well, then I won't -- I won't
ask about

21 it.

22 You mention that when you talked about your
jury

23 summons with folks, that you got a lot of advice about

how to

24 get out of it; right? Now, did some of that advice
come from

25 lawyers?

3021

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1 A. You know, I don't speak to that many lawyers; and I
think

2 that may be because I'm involved working on the journal
with

3 law professors, I needed to tell people about my
schedule.

4 Q. Right.

5 A. So anyone that was with the legal community, I
don't think

6 they were advising me how to get out of it. What they
said is,

7 "You probably won't get on the jury because you're a
law

8 student."

9 Q. I see.

10 A. "And they don't like lawyers on" --

11 Q. Okay. Do you feel that you're influenced by the
views of

12 your colleagues when you have to make a decision and
stick to

13 it, or do you pretty much stick to your guns?

14 A. I think that I make my own decisions, but I'm open-
minded

15 and listen to other people's opinions, and I -- I like
to get
16 as much information as possible and weigh that
information
17 and -- and then I guess I feel if I've made the right
decision,
18 then I would probably stick with it unless someone else
could
19 convince me that it were not right.
20 Q. Now, did you happen to see any of the television or
radio
21 or paper -- newspaper coverage of the press appearances
by the
22 jurors that decided the McVeigh case?
23 A. I've seen nothing about that case.
24 Q. Okay. Now, you're aware that this case is one
that's
25 likely to excite a lot of media attention.

3022

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1 A. Probably.
2 Q. Okay. And of course, the jurors' privacy is
shielded as
3 much as possible. But after the case is over, jurors
-- their
4 identities may become known to the press or whatever.
Would
5 you have any problem, however you decided the case,
living with

6 that fact, even though your result might be criticized
by
7 people?
8 A. I think I don't care too much about other people's
opinions
9 and particularly the press.
10 Q. Okay. And finally, before I move off of this, your
-- you
11 did take an evidence course; right?
12 A. Yes.
13 Q. Now, you've seen one -- you've seen two objections
today.
14 Would you find yourself -- because it's the duty of a
lawyer to
15 object, and no inference should be drawn by -- by
lawyers
16 objecting or the lawyers as to whom the question is --
the
17 objection is directed or the Judge's opinion. Would
you be
18 able, as a juror, to refrain from -- from keeping track
of the
19 balls and strikes on the objections; that is, as they
were
20 ruled on? You know, to not second guess the Judge in
21 conversation with other -- other jurors?
22 A. Well, judging from what happened today --
23 Q. Uh-huh.
24 A. -- I would say that my focus is not so much on the
25 objections, but the content of what we're discussing or

what --

3023

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1 Q. Okay.

2 A. -- is happening here. So I don't think I would be
capable
3 of keeping track of --

4 Q. Okay. So you would -- if the Judge said, Okay, you
know,
5 disregard that question, or just listen to the answer
the
6 witness is permitted to give, that's what you would
give
7 attention to?

8 A. Yes.

9 Q. Okay. You said that you had spent some time in
Dijon?

10 A. Yes.

11 Q. How -- now, in addition to learning Chinese, did
you learn
12 some other languages along the way?

13 A. I studied French my entire life, so I spoke French
14 fluently.

15 Q. And when you were visiting in France, did you
observe
16 anything about the French justice system? Did you
attend any
17 trials or read about them in the paper?

18 A. Yes. But that is so long ago that I don't recall
much, but

19 I understand -- I know their system is different from
ours.

20 Q. Their system is different and -- and again, you --
you

21 understood we probably do it by -- we certainly do it
by

22 different rules than the French tribunals.

23 Let me turn then to some of the other things
that you

24 talked about on your questionnaire. You had checked --
if

25 you'll take a look at pages 11 and 12. And the
Question 53

3024

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1 starts on page 11 and then goes over to page 12. And
the yes

2 as a yes answer for farming or ranching, that's the one
you

3 told us about; right?

4 A. Uh-huh.

5 Q. Now, what sorts -- what kind of a farm was it? Was
it

6 crops or livestock or -- that was in your family?

7 A. It was crops. Dry-land farm.

8 Q. Okay.

9 A. And which crops, I don't remember.

10 Q. Okay.

11 A. I think a lot of different crops.

12 Q. And newspaper, magazine, or journal, those are the
journals
13 you've told us about; correct?

14 A. Yes.

15 Q. Okay. Now, you said, I thought, that you had --
you had

16 published or co-authored articles that had been
published; is

17 that right?

18 A. Yes.

19 Q. And is that in the Colorado Bar Journal or the
Water Law

20 Journal or --

21 A. No. I had published a -- I wrote a paper on
forestry in

22 China that I published with a professor from UCD.

23 Q. Okay.

24 A. And then just recently in the law firm, we just
wrote an

25 article that was in the Rocky Mountain News, and we're

3025

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1 haven't currently writing one for For The Defense; but I

2 published in any law publication.

3 Q. Well, I'm -- I thought I heard you say that -- that
you
4 were doing some work on the liability of environmental
5 consultants.

6 A. Yes. That's the article that we're writing to
publish in
7 For The Defense.

8 Q. Oh, I see.

9 A. It's not been published yet.

10 Q. And that deals with the liability under CERCLA or
--

11 A. Well, I started out writing about CERCLA, but the
attorney

12 I'm working with wants it to be very general; so we're
not

13 focussing on CERCLA but looking at liabilities that
might

14 exist. We're looking at negligence, breach of
contract,

15 implied warranty --

16 Q. Again, it's not a test. And on the International
Law

17 Journal, are you doing any writing with -- with that
group?

18 A. No, I don't write. I'm an editor and I have
written book

19 notes, but that's all.

20 Q. But you're the managing editor?

21 A. I'm the managing editor.

22 Q. That terrible job?

23 A. There are actually two managing editors. I have a
24 colleague, and he does most of the work. And since I'm
editor
25 to the other journal, I'm happy about that.

3026

Juror No. 839 - Voir Dire

1 Q. That's Professor Nanda is the advisor on that?

2 A. Yes.

3 Q. What did I do with my paper?

4 MR. TIGAR: Excuse me, your Honor.

5 BY MR. TIGAR:

6 Q. You mentioned that you like to hunt.

7 A. Yes.

8 Q. What kind of hunting do you do?

9 A. I just hunt birds, small game.

10 Q. All right. So ducks or --

11 A. I have actually just started hunting, and I have
only
12 hunted doves and ptarmigan and grouse and hopefully
ducks,
13 soon.

14 Q. And do you own your own firearms?

15 A. Yes.

16 Q. Now, could you turn to page 32, please. You talk
on --

control there.

I just

people who

various

are sold

open

read,

3027

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at least

have

justice

17 generally, you answered some questions about gun

18 And I don't want to go into your answers or whatever.

19 want to ask if there's evidence in this case about

20 make their living going to gun shows and selling the

21 range of guns and ammunition and related things that

22 at gun shows, would you be able to look at that with an

23 mind?

24 A. I think so.

25 Q. You mentioned that among the books that you had

1 although it had been a while since you'd had time, or

2 owned, was something by John Grisham.

3 A. Yes.

4 Q. Do you remember which Grisham book or books?

5 A. I've read all his books.

6 Q. Okay. Does reading his books give you any views or

7 you, from his books, taken any view about the criminal

8 system, prosecutors, defendants, how the system works
or --

9 A. No. I look at his books as fiction, and they are
just fun

10 to read. I haven't -- I don't -- I don't look at it in
11 relation to the law.

12 Q. And would you then please take a look at page 18,
Question

13 84. You had checked off some organizations with which
you're

14 familiar, and one of them was the ADL. And I wonder
what your

15 familiarity is with the ADL.

16 A. I really don't know anything about it. I remember
when I

17 was in graduate school --

18 Q. Okay.

19 A. -- perhaps doing something with them and hearing of
them,

20 but I don't really know --

21 Q. Well, the reason I ask is that for -- I mean, not
22 something -- have you read anything from the ADL about
the

23 Oklahoma City bombing case or --

24 A. I haven't ever read anything they have written.

25 Q. Okay. I'd like now to turn for a moment to talk
about one

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1 of the things that was discussed before. There will
be, in 2 this case, evidence about, obviously, the Oklahoma City
bombing 3 and so on. And I know this question has been asked in
a 4 different form, but I want to just put it right out
there.

5 Would you be able, knowing, you know -- looking at
evidence 6 that may be very emotional, may be gut-wrenching, to
7 nonetheless focus on the question under the rules of
law: Did 8 the Government prove each of the elements of each of
these 9 offenses as to Terry Lynn Nichols?

10 A. Yes.

11 Q. Okay. And finally, I would like to turn to this --
to page 12 28, if you would, and ask some of these questions about
13 punishment. This is a -- this is an area that we only
have one 14 chance to ask you about. Certainly, we do not concede
that

15 jurors will ever have to face this issue. The
Government will 16 present its evidence; and from the very first witness,
we will 17 cross-examine those witnesses. And then after they
rest, we 18 will present witnesses; but they will have the

opportunity to

19 cross-examine. And at the end of the day, Mr. Nichols
is
20 entitled to an acquittal, a verdict of not guilty, if
there is
21 a reasonable doubt. So we don't concede that there
will be a
22 penalty phase at all.

23 However, if there is a guilty verdict, we
don't have
24 the opportunity to call everybody back in and then
start the
25 dialogue. So we have to talk about it now.

3029

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1 When you came in this morning, had you read or
heard
2 anything about the execution last evening in Colorado?

3 A. I didn't -- I knew it was happening.

4 Q. The Gary Davis case?

5 A. But I haven't --

6 Q. Okay. Have you -- in forming your opinions or
expressing

7 your views -- and on page 28, you were asked generally,
you

8 know, if -- if you could make the law, how would you do
it. In

9 forming that, were you thinking about any particular
cases that

10 you have heard about or read about over time as ones in
which,
11 you know, you -- you'd want to think that particular
punishment
12 was appropriate?
13 A. I suppose the only case I can think of, if you want
me to
14 give you a specific case --
15 Q. Sure.
16 A. -- would be like maybe the Jeffrey Dahmer case. I
mean, it
17 would -- I think of it more as being used for psycho
killer
18 types of people.
19 Q. Uh-huh. All right. And had you thought of it in
the
20 context of war criminals, for example? I don't know if
when
21 you were in Dijon when they were having those debates.
There
22 were arrest warrants out for collaborators.
23 A. You know, when I was in Dijon, I was not thinking
about
24 that at all.
25 Q. Okay. Well, I understand that.

3030

Juror No. 839 - Voir Dire

1 A. And I wasn't involved in that --

2 Q. Uh-huh.

3 A. -- politically or anything. I actually have not
really
4 thought about it. Since I've received a summons for
jury duty,
5 I have not thought about it in the context of war
criminals.

6 Q. Okay. Well, you heard Judge Matsch talk about the
rules
7 that operate here, and I want to review some of those
things
8 with you. First, did -- did you understand the court
to say
9 that under our system, there is no such thing as an
automatic
10 death penalty?

11 A. Yes.

12 Q. Okay. And that is a -- that's what the judge will
13 instruct: That is a command of the Constitution and of
the
14 federal statutes. And then Judge Matsch talked about
that
15 second phase or second trial, really, that one would
get to if
16 there was a guilty verdict; and he talked about
aggravating and
17 mitigating factors that the jurors would hear
information
18 about. What did you understand him to -- to mean by
the
19 mitigating factors or the mitigating evidence?

20 A. I think the mitigating evidence would be factors
that you
21 would take into consideration that would lessen the
level of
22 punishment.
23 Q. Okay. And did you understand that the mitigating
factors
24 would or could include not only things about the crime,
the
25 different roles that different people might have
played, but

3031

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1 also about an individual defendant, their background,
what
2 influences were on them, whether they had ever been in
touch
3 with the law before, but things about the defendant as
an
4 individual?
5 A. Yes.
6 Q. Okay. And understanding that this is a very
difficult
7 matter to confront, would you be able to listen to all
of the
8 information presented and then listen carefully to
Judge
9 Matsch's instructions -- you know, this is what the law
says
10 how this decision is supposed to be approached -- and

in the

11 light of that, make your own individual, reasoned,
moral

12 response?

13 A. Yes.

14 Q. Would you be able, in doing that, to consider the
full

15 range of options; that is to say, life without
possibility of

16 release, death penalty, or turn it back to -- some
lesser

17 sentence, in which case it goes back to the judge to
make a

18 determination?

19 A. Yes.

20 MR. TIGAR: Thank you very much for visiting
with us

21 this morning.

22 THE COURT: We all thank you for your
cooperation in

23 answering all of these questions. And of course, I'm
sure you

24 appreciate that we cannot tell you now whether you will
serve

25 on the jury and won't be able to tell you when we can
tell you,

3032

1 because this process goes on. We will be talking with

other

2 people, as I'm sure you understand.

excused -- 3 So as you go from here -- and you are now

when you 4 please continue to follow the cautions that were given

the 5 left the auditorium building out there after completing

6 questionnaire. Be careful about news, about watching

7 television, listening to the radio, reading newspapers,

others to 8 magazines, and so forth, and in conversation with

matter 9 avoid anything about this case or about the subject

said 10 that -- so that you could come back to us and do as you

the law 11 you would do here, decide with an open mind based on

12 and the evidence. You will do that, will you?

13 JUROR: Yes.

if you 14 THE COURT: And if you have any changes, like

change of 15 get called out of town on some unexpected trip or

know 16 phone number or something, please call us and let us

and 17 immediately, because we want to stay in touch with you

18 we'll get back to you as soon as we can.

19 JUROR: Okay.

20 THE COURT: All right. You're excused for

now.

21 I'm going to take the recess. We'll take a
20-minute

22 recess.

23 (Recess at 10:11 a.m.)

24 (Reconvened at 10:30 a.m.)

25 THE COURT: Be seated, please.

3033

1 206. Is that -- okay.

2 Will you please raise your right hand and take
the

3 oath from the clerk.

4 (Juror No. 206 affirmed.)

5 THE COURTROOM DEPUTY: Thank you.

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

7 VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q. You recall taking that same oath earlier last month
out at

10 the Jefferson County Fairgrounds' auditorium building?

11 A. Yes, sir.

12 Q. And at that time, you and other persons who had
received

13 jury summons for the trial of United States against
Terry Lynn

14 Nichols were present, and so was I and so were other
people who
15 are here in front of you now. And I want to be sure
you know
16 who is here. So let me reintroduce the people you met
before.

17 First, for the Government -- Government's
counsel in
18 the case, Mr. Lawrence Mackey and Ms. Beth Wilkinson.
And
19 they're now joined by Mr. Patrick Ryan and Mr. James
Orenstein.

20 You did not meet Mr. Ryan and Mr. Orenstein
before.

21 They were not with us at that time.

22 A. Correct.

23 Q. You did, however, meet Mr. Michael Tigar and Mr.
Ronald

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

25 as well.

3034

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1 And then after those introductions, I gave
some --

2 excuse me -- explanations regarding the case and the
3 background, and so forth, and then asked you to fill
out a long

4 questionnaire, and you did.

5 A. Yes.

6 Q. And you have it there with you now.

7 A. Yes, I do.

8 Q. And one of the things that I noted on page 4 is
that you

9 have a condition affecting your hearing.

10 A. Yes.

11 Q. How is that right now? Do you have any trouble
hearing?

12 A. Well, if it's kind of lower or monotone, softer
voice and

13 stuff, why, then, sometimes I have a little problem;
but --

14 Q. This is a problem in one ear?

15 A. My left ear, yeah. Uh-huh.

16 Q. We have a device that helps people with hearing.
If you

17 have any trouble hearing as we go along this morning,
we can

18 try that.

19 A. Well, as of now, so far, I haven't had any problem.

20 Q. I don't think you'll hear any monotones or soft
voices

21 today, but it could happen later.

22 Well, you let me know if you have any trouble
hearing

23 and we'll try that.

24 A. Okay.

25 Q. Now, I want to review with you the things that I

did

3035

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1 mention to everybody out there, just so -- it isn't
that you
2 don't remember them, but I just want to make sure we
are -- all
3 sort of start with the same basic understandings.
First of
4 all, as I explained, the case concerns an event in
Oklahoma
5 City, Oklahoma, on April 19 of 1995, when a federal
office
6 building was destroyed by an explosion and people in
that
7 building were killed and injured and then charges were
filed in
8 Oklahoma City in the Federal Court there in the form of
an
9 indictment, which simply is a statement of charges, as
it were,
10 and that the Government's lawyers filing those charges
alleged
11 that a man named Timothy James McVeigh and Terry Lynn
Nichols
12 and other persons not named in the indictment entered
into a
13 conspiracy or an agreement to bomb that building and to
kill
14 and injure the people in it. And the indictment goes
on to

15 allege that they committed offenses in carrying out
that plan
16 and in actually bombing the building and that in these
charges
17 there are also included eight counts or charges of
first-degree
18 murder of the -- of law enforcement officers of the
agencies of
19 the national government who were in the building and
died in
20 the explosion.

21 And, of course, you probably were aware of
that before
22 my explaining it --

23 A. Yes, sir.

24 Q. -- were you?

25 And then I explained about the procedural
history of

3036

Juror No. 206 - Voir Dire

1 the case, in that the case was moved from Oklahoma
City, where
2 it was filed, to this court in Denver because of the
3 difficulties that may be involved or might be involved
in
4 getting a jury in Oklahoma City where the event took
place.

5 And then after it was moved here, I entered,
as the

6 judge in the case, an order that separated the named
defendants

7 for trial, so that Timothy James McVeigh and the
evidence that

8 pertains to him would be tried separately from Terry
Lynn

9 Nichols. And the reason for that, of course, is that
there may

10 be considerable differences in what that evidence is
and that

11 it would be unfair to have one jury hear both cases.

12 So there was an order of separation, and there
has

13 been a trial of the evidence as it relates to Mr.
McVeigh. And

14 I advised you and the others present that the outcome
of that

15 case, of that trial, was that the jury found that the
evidence

16 proved Mr. McVeigh guilty of the offenses charged and
then

17 there was an additional trial with respect to
punishment and

18 the jury recommended the death sentence.

19 And then as I explained, the outcome of that
case,

20 both with respect to the finding of guilty and the

21 recommendation on sentence, cannot in any way be
considered

22 with respect to this case involving Mr. Nichols because
we

23 start all over with a clean slate. And to consider the

--

Nichols 24 anything about the McVeigh trial in connection with Mr.
25 would really violate the whole purpose of the order for

3037

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1 separate trials. You remember hearing me say that?

2 A. Yes, I do.

3 Q. And do you understand that, the reasons behind
that?

4 A. Yes, I do.

5 Q. So, you know, to put it in a very plain way, I was
the

6 judge who presided in the trial of Mr. McVeigh, so I
heard all

7 of that evidence in that trial; and I'm not considering
any of

8 that now in beginning the trial of Mr. Nichols. And,
of

9 course, jurors, to the extent that they may have heard
or read

10 something about the earlier trial, have to do the same
thing.

11 You understand that?

12 A. Yes.

13 Q. Okay. I also mentioned some of the fundamental
things

14 about our criminal justice system under the United
States

15 Constitution, which is that any defendant charged in a
criminal
16 case in any court in this country is presumed to be
innocent of
17 whatever those charges are. It makes no difference who
the
18 defendant is or what the charges are, the presumption
is
19 innocence. And that carries throughout a trial and
entitles
20 that person to an acquittal, a verdict of not guilty,
unless a
21 jury of 12 fair-minded people who listen to the
evidence and
22 are bound by the evidence and the law determine that
the case
23 has been proved beyond a reasonable doubt.
24 Now, that's not something that you heard the
first
25 time when I explained it, is it?

3038

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1 A. No.
2 Q. And that no defendant in a criminal case has any
burden or
3 duty of proving himself not guilty or indeed of
proffering
4 anything at his trial. No defendant has to bring in
any

no
5 witnesses. No defendant has to offer any exhibits, and
questions
6 defendant has to take the witness stand and answer
jury.
7 from the lawyers or give any explanation at all to the
challenge
8 He can simply remain silent and through his lawyers
case by
9 all of the Government's evidence that is offered in the
the
10 the cross-examination of witnesses and by objections to
11 relevance and admissibility of the evidence.

12 Do you follow me on that?

13 A. Yes, I do.

14 Q. And so putting it into practical application in
this case,
15 it means that Mr. Nichols is in this room with us this
morning
16 presumed to be innocent of these charges made against
him and
17 he is at the end of a trial to be judged on the
evidence and
18 to -- if the jury, after hearing all of the evidence
and
19 following the law, decides that there is still a
reasonable
20 doubt, they must give him the benefit of that
reasonable doubt

21 and find him not guilty. Do you understand that?

22 A. Yes, I do.

23 Q. Do you accept that?

24 A. Not wholeheartedly.

25 Q. All right. Tell me what you don't accept about it.

3039

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maybe his
got him
judgment

1 A. Well, I guess I probably operate on an assumption
2 association with, say, some of the people in the past
3 in this predicament, and I just think it wasn't good
4 on his part.

5 Q. Well, you're assuming a lot of things.

6 A. True.

about any
talking

7 Q. And I don't know -- where did you hear or read
8 association that Mr. Nichols may have had? Are you
9 about an association with Mr. McVeigh?

10 A. Yes, sir.

that?

11 Q. And where -- and what have you heard or read about

buddies and

12 A. Well, I read and heard both that they was army
13 so forth.

14 Q. Where? Where have you heard that or read it?

15 A. In the newspaper.

16 Q. Which newspaper?

17 A. Basically, Rocky Mountain News.
18 Q. You've been following stories in the Rocky Mountain
News
19 since -- well, tell me what your reading habits have
been with
20 respect to the Rocky Mountain News and anything about
this
21 case.
22 A. This case here, since we went to Jefferson County
23 Fairgrounds, I've shied away from.
24 Q. Sure, yes. I understand.
25 A. But prior --

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1 Q. But before that, yes.
2 A. Prior to that, I just -- I mean I didn't pay close
3 attention to it, but I just -- I mean, you know, you'd
have to
4 almost live in a cave not to hear about the McVeigh
trial.
5 Q. Yeah.
6 A. So --
7 Q. And of course, we understand that and recognize
that as
8 people get called in here for jury service, they will
have
9 heard or read something. But what the law says is that

you

10 must set that aside. You know, in much the same manner
as I've
11 just described, having heard the evidence in the trial
of
12 Timothy McVeigh, I can't consider anything that
happened in
13 that case in any way in making rulings or approaching
the trial
14 of this case.

15 Now, people have different abilities with
respect to
16 their ability to set those things aside. And we're not
asking
17 you to do the impossible, if it is impossible in your
case.

18 You, individually. But what I was coming back to with
these
19 fundamental principles of our law is that certainly
Terry
20 Nichols, as anyone else charged with a crime, is
entitled to
21 the benefit of the doubt and to limiting the jury --
the jury
22 limiting consideration of the question of guilt to the
evidence
23 that's actually presented at trial.

24 Now, you understand?

25 A. Yes.

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1 Q. Conceptually, at least, you understand what the law
2 requires of jurors to do. And the question for you is
to tell
3 us -- and it's your own answer that we're looking for
here.

4 I'm not trying to talk you into anything. The question
for you
5 is will you be able to do that in this case?

6 A. You mean, be able to base my decision on -- if I
get picked
7 as a juror, base it on what I hear after the trial
starts?

8 Q. In the trial itself, yes, without giving any
attention to
9 what you have read about it before you came in here.

10 A. Well, I -- I'm sure I probably could, but it would
be a
11 little difficult at times. I mean, you know, you would
have to
12 do a little soul-searching as far as maybe thinking,
well, who
13 is right.

14 Q. Yeah, but it isn't -- you know, it isn't who is
right, it's
15 what's proved. That's the question; and you have to be
able,
16 sitting here this morning, with Terry Nichols sitting
here this
17 morning, look at him and say in your own thinking, Mr.
Nichols,

18 you're presumed to be not guilty of these charges, the
19 Government is going to have to prove it.
20 A. Well, yeah, I mean, because I guess if I would have
got
21 myself in the situation he's in and he was over here,
I'd want
22 him to give me the -- where I started out with a clean
slate.
23 Q. Now, you say, you know, having gotten himself into
the
24 situation. He's in the situation being a defendant in
this
25 courtroom because these lawyers filed charges against
him. You

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1 understand that?
2 A. True.
3 Q. Okay. So it isn't correct under our legal system
to think,
4 well, he got himself into it, let's see if he can get
himself
5 out, or something like that. That's not how we
approach it.
6 Rather, we approach it that the Government has brought
this
7 defendant into court by the filing of charges. The
defendant
8 has said, I'm not guilty of those charges; so it is up
to the

9 Government to try to prove it. And it's up to a jury
to judge
10 that proof, to judge that evidence and to make a
decision at
11 the end of the trial as to did they prove it beyond a
12 reasonable doubt, or not? And the "it" comes down to
the
13 particular charges.

14 What happens at the end of a trial in a
criminal case
15 is that the judge gives to the jury instructions on the
law.
16 Among the instructions given is a statement of what has
to be
17 proved for each crime charged, the elements of the
offense, we
18 talk about. Understand that?

19 A. Yes.

20 Q. And then the jury has to consider what they heard
as
21 evidence at the trial and not anything outside of what
was
22 heard and seen in the evidence in court at the trial
and
23 decide, well, did they prove it beyond a reasonable
doubt.

24 Now, I want to emphasize another point, and
that is no
25 defendant has to prove anything. No defendant has to
bring in

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1 any witnesses or show anybody that he's not guilty. No
2 defendant has to take that witness stand and answer any
3 questions that are asked of him by lawyers in the case,
and no
4 defendant has to come before a jury and explain
anything. What
5 the law says is that a person charged can simply remain
silent
6 and challenge the evidence that the Government brings
in, the
7 testimony of witnesses and the exhibits and objections,
rulings
8 on, you know -- there is rules of evidence that govern
what a
9 jury can decide a case on and cross-examining the
witnesses and
10 so forth. But again, when it comes to the end of the
trial,
11 the jury, 12 people, decide, well, has it been proved,
or do we
12 still have a reasonable doubt? And if they say, We
still have
13 a reasonable doubt, their duty is to find the defendant
not
14 guilty.

15 Do you understand now these basic points?

16 A. Yes, I do.

17 Q. Now, you know, it is possible for people not to be
able to

18 follow the law for whatever reason. So I'm not putting
you on
19 trial. That isn't our purpose here. And we're not
asking you
20 whether you're a good citizen and will follow the law
or
21 whether you're a bad citizen and disregard the law.
That's not
22 the kind of questioning we're asking here.
23 What we're asking is given what you have said
about
24 reading of newspapers, as you said you have, will you
come in
25 here with an open mind and listen and decide only on
the basis

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1 of what happens at the trial?
2 A. Well, I mean, I would sure do my best. I mean, you
know.
3 Q. And, you know, you said some things in response to
our
4 questions in here, and we'll get to that -- that you do
have --
5 you did form some opinions about Mr. Nichols and
whether he's
6 guilty, and we read that; but we asked you to come in
anyway
7 because we needed to explore these things with you and
explain

tell us 8 to you exactly what's involved. And then only you can
9 whether you can do it.

law and 10 So what I have been going over with you is the
11 what I am again asking you to answer is whether you can
evidence and 12 actually listen to the evidence and decide on the
13 set aside your preformed opinions.

done 14 A. Well, sir, like I say, I would just do like I've
15 everything else in my life. I'd just do my best.

know, 16 Q. And have you had in your life situations where, you
as a 17 you went into a situation thinking one thing and then
18 result of whatever happened, you changed your mind?

that -- 19 A. Depending upon the situation. Naturally, I've had
be. 20 some things aren't what you maybe thought they would

include 21 Q. And you understand that when things are reported in
22 newspapers or on radio or television in news, they can
inside of 23 hearsay and rumor and a lot of things that never see
24 a courtroom because it's not admissible as evidence.

25 A. Yes, sir.

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1 Q. And that's why we limit what juries can decide on
as to
2 what is actually in evidence and on things that the
defendant
3 has a chance to challenge. It isn't just the rules of
4 evidence. It's also what we talk about as the
adversary
5 system. There are two sides to the case, just as there
are --
6 excuse me -- at least two sides to most things. And it
isn't
7 until something is said about a person, that person has
a right
8 to challenge it, that we ought to rely on it. That's
sort of
9 the fundamental idea of the law.

10 So tell us what you think about that.

11 A. I just -- like I say, I just think that -- I mean,
I
12 would -- I would do my best, you know, to do what I
thought was

13 right after I heard the testimony and so forth.

14 Q. And when you say do what was right, are you
speaking about

15 doing what is the duty of a juror?

16 A. Basically, yes. I mean, relying on my own, say,
beliefs

17 and so forth.

18 Q. Well, what do you mean when you say rely on your

own

19 beliefs?

20 A. Well, I mean, I guess there are so many involved,
you

21 know . . .

22 Q. Well, let me ask it this way: Do your beliefs
include

23 these notions of fairness that it's easy to file a
charge but

24 it's not so easy to prove it and we can only go on the
basis of

25 the proof?

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1 A. I sure believe in that.

2 Q. And not only believe it but actually do it in this
case

3 where you heard some things?

4 A. Well, sure. I mean, even in your everyday life,
you can

5 hear that so-and-so did this or whatever, and then
after you

6 investigate, you find out that it was, you know --
there wasn't

7 any truth to it after you -- you know --

8 Q. Okay. Well, let's talk a little about your life
and the

9 experiences of it. We've asked you a lot of things in
this

quite
try to
that
answers and
to no one
doing

10 questionnaire about that. Some of these things are
11 private and personal. We respect your privacy and will
12 honor that in all ways that we can. That's the reason
13 when you answered this questionnaire, I copied the
14 gave it to these people who are directly involved but
15 else. And they in turn will use it only for what we're
16 here.

to come
able to
television,
in the
that. But
said here
public

17 And as you also know, we arranged ways for you
18 and go to the courthouse without any media people being
19 photograph you or put your picture in the paper, on
20 and all that, so that we can respect your privacy. And
21 course of the questioning, we'll also attempt to do
22 you do understand or should understand that what is
23 in open court is just that: It's open. This is a
24 proceeding. You understand?
25 A. Yes, sir.

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1 questionnaire

Q. Now, I understand from your answers in the

2 that you were born in Sterling?

3 A. Yes, I was.

4 your

Q. And you lived in that area of Colorado -- I guess

5 family was on a farm for a while?

6 A. Yes.

7 were on a

Q. And I think I recorded or wrote a note that you

8 farm from like 5 to 13 years old?

9 A. Yes, uh-huh.

10 into

Q. Now, was that farm up there in the valley, going

11 Sterling?

12 A. It was northeast of Sterling.

13 Q. Northeast. How big a farm?

14 I mean,

A. Well, my dad and my uncle were just sharecroppers.

15 they --

16 Q. Somebody else's land?

17 A. Yes, uh-huh. They had a landlord.

18 Q. Were they raising cattle there, too?

19 A. Mostly crops, alfalfa, sugar beets, corn.

20 Q. And you worked on the farm, I take it --

21 A. Uh-huh.

work did 22 Q. -- a good deal in those years. And what kind of
mowing 23 you do? I mean, were you out there with a tractor and
24 hay and all that?
was mostly 25 A. Well, that was the later years. The first years

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the 1 working in the beet fields, you know, the thinning and
2 hoeing.

3 Q. Sure.

I didn't 4 A. And then you helped with the hay and so forth; but
5 get to drive, being as I had older brothers and so
forth.

6 Q. They got the tractor seat?

7 A. Yeah, they got the good jobs.

your 8 Q. Okay. Did you -- you said it was your father and
9 uncle?

10 A. Yes, uh-huh.

came time 11 Q. Did they bring in workers, field workers, when it
12 for working the beets?

13 A. What we couldn't do ourselves.

14 Q. Did they bring in migrant workers?

15 A. Yes.

16 Q. To do that from Mexico?

17 A. Yes, sir.

18 Q. And regularly, every year in season?

19 A. Pretty much so, yeah.

20 Q. All right. And then you moved to Greeley, I guess.

21 A. That was when I came out of the service, and so
forth. I

22 moved to Greeley when I was -- let's see -- well, I was
about

23 low 30's. I was out of the service about 10 years when
I moved

24 to Greeley.

25 Q. So when you -- before you went into the Army and
came --

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1 and when you came back out, still Sterling was your
home?

2 A. Yes, uh-huh.

3 Q. And you did on page 13 tell us you were in the Army
from

4 1956 to 1958?

5 A. Yes, I was.

6 Q. And were you stationed at any time outside the
continental

7 United States?

duty. 8 A. Yes. I was over in Korea for 15 months' tour of

that you 9 Q. And on page 14, you indicate here at Question 61

10 were at one time a witness in a court-martial.

11 A. Yes.

12 Q. What was that -- what was the offense being tried?

the mail 13 A. He stole mail. He was the sergeant that carried

barracks, and 14 from the division headquarters to our individual

little 15 he around Christmastime -- I guess he wanted to get a

16 extra spending money.

took 17 Q. So not only stole it but apparently opened it and

18 money out of it.

witness. 19 And what was your -- you were called as a

20 What did you testify about?

than they 21 A. Well, I didn't have much to testify about, other

in his 22 found some of the mail that my relatives had sent to me

23 apartment. That's how I got called.

24 Q. So you were identifying your mail --

25 A. Yes.

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1 Q. -- that you didn't get.

2 A. Uh-huh.

and 3 Q. Okay. And was there anything about -- you went in
4 answered questions.

5 A. Yes, just if that was my, you know --

6 Q. Okay.

just 7 A. Like I say, it was around Christmastime, so it was
8 Christmas cards and so forth.

News. 9 Q. Okay. Now, you have -- you take the Rocky Mountain
10 You've already told us that.

11 A. Yes, uh-huh.

12 Q. And also, the Greeley Tribune?

13 A. Yes, sir.

14 Q. And do you read both of them every day?

haven't, but 15 A. Well -- well, like yesterday and today, I sure

16 whenever --

about out 17 Q. So you've been trying to follow what I told you

relate 18 at the fairgrounds to stay away from things that could

19 to this case.

20 A. Yes, I have.

21 Q. And does that mean you also stayed away from things

22 relating to the execution of a death sentence in
Colorado?

23 A. Basically.

24 Q. Well, you mentioned today you haven't read the
paper.

25 A. I didn't read the papers yesterday or today because
it

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1 just, you know, not enough hours to do it.

2 Q. All right. You also, I guess, regularly watch
television

3 news?

4 A. Try to.

5 Q. And you mentioned Channel 4 and 9 --

6 A. Yes, sir.

7 Q. -- in here as being the newscasts. What time of
day is it

8 you're accustomed to watch those newscasts?

9 A. Usually at 10:00.

10 Q. At night?

11 A. Yes.

12 Q. And you switch from one to the other, or --

13 A. Basically watch it most of the time. I'd say 75
percent of

14 the time on Channel 4.

15 Q. Okay. We asked you some questions in here about
your views
16 of punishment and particularly as to punishment by a
sentence
17 to prison for life without ever being released and a
sentence
18 to death. And you recall those questions, and I want
you to
19 turn to page 28 for your answers. And the explanation
of why
20 the questions were put in the way they are begins on
page 27,
21 but you may remember that. And you realize that we had
to ask
22 you these questions on the possibility that there may
be a
23 guilty verdict in the case.
24 A. Uh-huh.
25 Q. And that the crimes charged here including charges
of

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1 murder are crimes that under federal law make a
punishment of
2 life in prison without release on parole and death
3 possibilities. And those are possible sentences.
4 So what we wanted you to tell us is what your
thoughts
5 were about such punishment without regard to what the
law is or

your 6 the procedure involved, just to give us some idea what
that's the 7 thinking is on those subjects. Do you understand
particular 8 reason for the questions and that -- and these
9 questions?

10 A. Yes, I do.

the more 11 Q. Now, you said, of course, that you believe only in
12 severe crimes would such punishments be appropriate.

13 A. Yes.

of 14 Q. And then you include murder and rape as these types
the law 15 crimes. Is the matter of the death penalty and whether
you've 16 should provide for a death sentence something that
17 thought very much about in your life?

believe 18 A. I haven't spent much time thinking about it, but I
19 in capital punishment as far as, you know --

20 Q. That the law should provide for that possibility?

21 A. True.

length 22 Q. And you know it's a matter that is debated at some
views. And 23 and that there are a lot of people with differing
life in 24 there are people who believe that it is wrong to take a

death 25 a court process and therefore there should never be the

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laws 1 sentence imposed in court, and some of our states have
2 just like that that do not provide for death penalty.

think that 3 On the other extreme, there are those who
4 the death penalty should be imposed for particular
crimes 5 almost automatically. If there is a murder, it ought
to be a 6 death sentence. And then there is a lot in between.

somewhere 7 Now, what I understand here is that you're
8 in between. Is that right?

murder, to me, 9 A. Well, I mean, I -- from -- say pertaining to
believe 10 if it was premeditated and so forth, why, then, I would
11 in the death sentence. If it was, say, an accidental
--

doesn't 12 Q. Well, you can rule out accident because the law
13 provide for such a sentence in the event of accident.
It has 14 to be a murder, a killing and an intentional killing,
or there 15 wouldn't -- you never get this question.

16 Now, do you -- as you -- as you are there
right now,
17 sitting there right now, do you have a view that if a
person is
18 found guilty of premeditated murder, the only sentence
that
19 should be imposed is death; that it's automatic?
20 A. Well, I'd say pretty much so.
21 Q. And would there be any cases or circumstances you
think in
22 which the -- even though a person is found guilty of
23 premeditated murder, death is not a sentence that
should be
24 imposed?
25 A. Well, it would have to be kind of an exceptional
situation,

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1 I think. I mean, you know.
2 Q. Well, let me explain what the law is and then see
what you
3 think. What happens in a case in which the crimes
charged are
4 such that these penalties of life in prison with no
release and
5 death are possible punishments, there is first a trial
on the
6 question of the evidence, the things that we've been
talking

7 about at some length here earlier on: Does the
evidence prove

8 guilt beyond a reasonable doubt?

9 And of course if the jury answers that
question no,

10 the verdict is not guilty and that's the end of it. If
the

11 jury answers that question yes and finds a defendant
guilty,

12 then there is more to it.

13 Now, in cases that don't involve this type of
14 punishment, life or death, the question of punishment
is left

15 to the court, the judge. You understand that?

16 A. Uh-huh.

17 Q. So in terms of so many years or that kind of thing,
fines

18 and the rest, we ask a judge and leave it up to a judge
to make

19 a decision. And before judges make decisions on
sentencing,

20 they have to get more information than just what came
to them

21 at the trial because this goes well beyond the evidence
that's

22 presented at trial and involves other things.
Understand?

23 You have to answer out loud, sir.

24 A. Yes, sir.

25 Q. And among those other things would be information
about the

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1 crime and its effects but also a lot of information
about the 2 defendant, the person found guilty. This is after the
trial, 3 you understand. This is before sentencing.

4 And so information is provided to the judge
about the 5 defendant and his background, his life story, really,
all that 6 there is to know about him: where he was born and
raised, what 7 family relationships there have been, what he's done in
life, 8 whether there is any other criminal record, whether he
has 9 worked and contributed to society, whether he served in
the 10 armed forces, you know, something about his attitudes
and 11 beliefs, all of these things that go to make up an
individual 12 human being and make each one different from all the
others.

13 You do understand that there are differences among all
of us?

14 A. Yes, sir.

15 Q. And then the judge holds a hearing, a sentencing
hearing at

16 which the prosecution lawyers speak, the defense
lawyers speak,
17 and then the judge decides, having considered it all,
this is
18 the sentence for this person for this crime. And not
all
19 people get sentenced the same, even though they may
commit the
20 same crime.

21 And in a case in which more than one person is
22 involved in exactly the same crime, they can be
sentenced
23 differently. You understand that?

24 A. Yes, sir.

25 Q. Now, when it comes to life or death as an issue in

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1 punishment, we don't have judges make sentences like
that or
2 make decisions like that. That's for a jury under
federal law,
3 and that's where we are, under the federal system. And
4 therefore, we ask jurors to come in, decide the case on
the
5 evidence; and, of course, again, if the verdict is not
guilty
6 because it's not proved, that's the end of it. But in
the

involves 7 event that a defendant is found guilty of a crime that
jury 8 capital punishment, more is yet to be done and the same
all of 9 that heard the trial evidence now again gets presented
judges 10 this kind of information that I have talked about that
11 get before they make sentences.
hearing; 12 So there is a second trial, a penalty phase
Government 13 and it is at that time that the lawyers for the
crime, what 14 present information about the circumstances of the
effects. 15 happened not only in terms of the actual crime but its
defendant; 16 And then the defense presents information about the
when 17 and it can also include circumstances of the crime and,
the 18 there is more than one person involved, something about
or more 19 role of the particular defendant, recognizing that two
roles that 20 people in the same crime might have quite different
about 21 they played in connection with it, but then also a lot
kind of 22 the defendant as an individual human being, these same
is things 23 things that I mentioned in judge sentencing, and that

done in 24 about the life history, who the defendant is, what he's
really, 25 his life, because what the jury is being asked to do,

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1 is to value another life.
2 And then at the end of that trial, the court
gives 3 instructions to the jury and says, Now, this is what
you've 4 heard; and you've heard these things as aggravating
factors, 5 things that may suggest to you that death is the
deserved 6 punishment; and you've heard these things as mitigating
7 factors, those things that may suggest to you that
despite the 8 crime, this defendant does not deserve to be put to
death.

9 And then in connection with those
instructions, the 10 court will suggest some questions for the jurors to ask
11 themselves in analyzing it. But there is no formula or
12 equation or anything like that. It comes down to
making a 13 moral decision whether another human being should live
or die.
14 That's what the jury is asked to do.

15 Do you follow me?

16 A. Yes, I do.

17 Q. So what I ask you and for you to tell us just what
you

18 think, and that is with this explanation in mind and
having

19 also in mind what you've told us about your view of
capital

20 punishment, do you think that if you were to serve on
the jury

21 you would be able -- and the jury found a defendant
guilty --

22 that you would be able to base your decision about
whether that

23 defendant should be sentenced to life or death based
not only

24 on the circumstances of the crime, what he was found
guilty of,

25 but also his own background and individual
characteristics?

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1 A. Yes.

2 THE COURT: All right. Well, we have some
questions

3 from the lawyers on each side, so if you'll please
listen to

4 them.

5 Mr. Ryan.

6 MR. RYAN: Thank you, your Honor.

7 VOIR DIRE EXAMINATION

8 BY MR. RYAN:

9 Q. Good morning.

10 A. Good morning.

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

12 Oklahoma City; and I'm here with other prosecutors, and
13 together we will present the evidence we have against
14 Mr. Nichols.

15 You've heard a lot about the rules this
morning of

16 court, the way that we do things in a courtroom. Are
you going

17 to be able to be fair and give Mr. Nichols a fair
trial?

18 A. Well, like I said earlier, I would just -- like
I've

19 approached everything else in my life: I'd try to do
my best

20 under the circumstances.

21 Q. Now, you know, when I was a kid growing up, my dad
told me

22 to get up at 6:00 the next morning. If I said, I'm --

23 MR. TIGAR: Object.

24 MR. RYAN: -- I'm going to do my best.

25 THE COURT: There is an objection, but I'll
overrule

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1 it. You can go ahead.

2 BY MR. RYAN:

3 Q. -- I'll do my best, he wouldn't really take that as
a very

4 satisfactory answer. And it's important to all of us
-- and I

5 realize that you're not in your element right now,
you're not

6 in an environment that you're comfortable with. But we
need to

7 have some level of assurance from you, if you can make
it, that

8 you can give everyone here a fair trial.

9 A. Well, like the Judge asked me -- I'm just being
honest. I

10 would just do my best. I mean, that's all I could say.

11 Q. As you sit here today, can you think of any reason
why you

12 would not be able to afford Mr. Nichols a fair trial?

13 A. I didn't say that I couldn't afford him a fair
trial.

14 Q. I'm sorry. I misstated. Is there any reason in
your mind

15 right now that makes you think that you could not give

16 Mr. Nichols a fair trial?

17 A. Well, not really, no. I mean -- if I -- if I have
to be a

18 juror -- I mean, put in that words, if I'm picked as a

juror, I

19 would like -- you know, I would give him my best.

20 Q. You heard his Honor tell you that the law, the
framework

21 that we're working in here in court -- the law states
that

22 Mr. Nichols is presumed to be innocent. And you -- I
know you

23 heard that because you made some comment to his Honor
about if

24 you were in his position, you'd want a jury to presume
you to

25 be innocent.

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1 A. Well, yeah. It's only -- it's only human nature.

2 Q. So can you accept that principle, that first
principle that

3 his Honor talked to you about: As Mr. Nichols sits
here today,

4 he's innocent?

5 A. True.

6 Q. Because the prosecutors, we haven't presented any
evidence

7 at all in this case. The trial hasn't even started
yet. Are

8 you with me?

9 A. Right. Correct.

10 Q. Now, one of the things that -- another thing that
the Court
11 talked to you about is that the defendant, Mr. Nichols,
and his
12 counsel don't have to present any evidence. It's not
an
13 obligation they have. It's our obligation, the
prosecution's
14 obligation, to prove his guilt. Can you accept that?

15 A. Yes.

16 Q. So in other words, he doesn't have to testify, you
can't
17 hold it against him that he doesn't testify. Does that
make
18 sense?

19 A. Yes, it does.

20 Q. It's our Constitution.

21 A. Right.

22 Q. And one of the -- one of the -- I don't think you
have this
23 document that I have in front of me in your folder
there, but

24 it's the original questionnaire that you sent in to the
Court,
25 oh, maybe two months ago.

3061

Juror No. 206 - Voir Dire

1 A. Oh, yeah. No, I don't have that.

2 Q. And it asked you there any reason why you might not
be able
3 to serve. And I'm going to read to you what you wrote
here at
4 the bottom.

5 A. All right.

6 Q. "I believe the information I have already read in
the
7 newspapers and heard on TV makes me think that Terry
Nichols is
8 guilty of this crime just by association with all of
the other
9 antigovernment people in the past few years."

10 Did I read that correctly? Sounds like what
you
11 wrote?

12 A. That's basically the way I remember it.

13 Q. And that's essentially the same type of information
you
14 supplied in the written questionnaire that you have in
front of
15 you. You made a statement: "Birds of a feather flock
16 together." Do you recall that?

17 A. That's right.

18 Q. Now, I think you also express the notion, if I
heard you
19 correctly, that you've encountered experiences in life
where
20 you went in thinking things were going to be a certain
way and
21 after you started investigating it, learning more about

it, you

22 found that wasn't the case.

23 A. I believe I can say that I'm -- been in that
position.

24 Q. So, for example, you've heard that Mr. Nichols and

25 Mr. McVeigh were in the military together. That's
something

3062

Juror No. 206 - Voir Dire

1 you've read or you've seen on television.

2 A. Probably both.

3 Q. Right. But what we need for you to be able to do
-- and

4 this is why I want to see if you can -- is to pretend
and act

5 as if you don't know that right now, because there is
no

6 evidence of it in this case, because we haven't started
the

7 case. And you wait until if there is evidence of that,
then

8 you can consider it; but if there is not, then you just
have

9 got to take it out of your mind because it's not proven
in

10 court. Is that something you can do?

11 A. Well, getting back to what I said five minutes ago,
it

12 would be, you know -- sometimes when you've heard

something, it

13 might take a little while to overlook it; but maybe if
enough

14 circumstances was put forth, why, then, I could. But,
you

15 know, like I say --

16 Q. Well, but we need for you to start off with a blank
slate,

17 with a clean slate towards Mr. Nichols, as if there is
no

18 evidence at all against him.

19 A. Well, I -- like -- I mean, it would be tough to do,
because

20 you've already got this stuff circulating in your mind,
so to

21 speak; and then I guess maybe the more information you
heard to

22 dispute it, why, then, it -- it would be -- it would go
in, you

23 know, say out of your mind.

24 Q. Have you had situations where you thought, you
know, Fort

25 Collins -- you had heard they had a good football team;
then

3063

Juror No. 206 - Voir Dire

1 when they came over to play, you saw they weren't very
good at

2 all?

3 A. Well, I'd have to say maybe they had a bad day.

4 Q. But both teams started with the score zero to zero.

5 A. Right.

6 Q. There is no favoritism to either side. Right?

7 A. True.

8 Q. And you wouldn't want a referee that was already
thinking
here
them a
do.
the
anybody, but,
1, if I
going to
to
case?
kind of

9 before the game started, Well, I know that Fort Collins

10 has got a pretty good team and maybe I need to help

11 little bit. You wouldn't want that kind of referee.

12 A. No, because that's not what he's getting paid to

13 Q. So are you going to start this case off favoring

14 Government?

15 A. I hope I don't have to start it off favoring

16 you know -- I mean, sure, I -- I can start from Square

17 have to, I mean.

18 Q. So the defense doesn't have to come in and prove --

19 disprove something you've got in your head. You're

20 wait until the Government proves it before you're going

21 accept it as a fact you're going to consider in the

22 A. Well, let's put it this way: Maybe they would just

23 solidify something that was already in my mind.

24 THE COURT: May I see counsel at the bench?

25 (At the bench:)

3064

Juror No. 206 – Voir Dire

1 (Bench Conference 25B1 is not herein transcribed by
court

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

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3068

Juror No. 206 - Voir Dire

1 (In open court:)

2 MR. RYAN: Thank you very much.

3 JUROR: You're welcome.

4 THE COURT: Thank you for answering all of
these

5 questions; and I've determined that you can be excused
in this

6 matter. Please don't consider this as a judgment
against you

7 or that you've been tested and failed the test or
anything like

8 that. All right? We're just -- I just reached the
conclusion

9 here that it would be very difficult for you to sit on
this

10 jury and set aside the things that you've heard and the
11 opinions that you've formed; but I'm not, you know --

don't go

12 away from here thinking I called you a bad person.

13 JUROR: No, my ego is pretty big.

14 THE COURT: Well, you know, I just want you to
know

15 that we appreciate all that you've done in cooperating
with us

16 here and going through this process and you're openness
with

17 your answers.

18 JUROR: Well, that's the way I was raised, I
mean, you

19 know.

20 THE COURT: I know. So thank you very much.
We do

21 ask you not to talk about this with other people. Will
you do

22 that?

23 JUROR: I sure will.

24 THE COURT: All right. We appreciate your
time with

25 us, and you're now excused.

3069

1 JUROR: Okay. Thank you.

2 THE COURT: Okay.

3 No. 35.

oath from 4 Will you raise your right hand and take the
5 the clerk, please.

6 (Juror No. 35 affirmed.)

7 THE COURTROOM DEPUTY: Thank you.

yourself 8 THE COURT: Please be seated. You can make
9 comfortable there and move that chair around as you see
fit.

Anywhere 10 You don't have to talk right into the microphone.
11 near will pick you up.

12 JUROR: Thank you.

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

referring 15 Q. And you understand that "the case now on trial"
States 16 to -- referred to in this oath is the case of United
17 against Terry Lynn Nichols.

18 A. I do.

you that 19 Q. And you got a jury summons a while back notifying
have been 20 you were among those who by chance selection process
21 called for possible service on this jury.

22 A. I'm aware, yes.

and 23 Q. And that you then filled out a little questionnaire
24 sent it back to us and then got notice to come out to

the

25 Jefferson County Fairgrounds last September 17 and
answer some

3070

Juror No. 35 - Voir Dire

1 more questions. And you and others did that.

2 A. Yes, sir.

3 Q. And you remember that I was there and spoke to all
of you

4 about the background of the case and what the trial was
going

5 to be about and some of the procedural history of the
case and

6 also introduced some people to you who were there with
me. And

7 they're here again now, so I want to introduce them
again so

8 you know who is here in the room with us.

9 And I introduced Mr. Lawrence Mackey and Ms.
Beth

10 Wilkinson as lawyers for the Government. They're right
here at

11 this first table. They're joined now by Mr. Patrick
Ryan and

12 Mr. James Orenstein. They were not there when you were

13 introduced to the Government lawyers before, but
they've joined

14 us now.

15 Also, you met Mr. Michael Tigar and Mr. Ronald

Woods,

16 attorneys for Terry Nichols; and Mr. Nichols, of
course, was

17 also there.

18 And then you answered a questionnaire,
answered a lot

19 of questions in writing, and we took those answers and
made

20 copies of them for purposes of what we're doing now,
giving

21 them out to the lawyers here with us but not to anybody
else.

22 And we at all times recognize that you have some
privacy

23 interests, and we try to protect your privacy as much
as we

24 can. It is for that reason that we are not referring
to you by

25 name here but assigned a number to you and also
arranged for

3071

Juror No. 35 - Voir Dire

1 going and coming to the courthouse so that you can't be
2 photographed by newspapers or television or whatever
and have
3 those pictures published.

4 Now you know that we're in court, and this is
an open
5 proceeding now in open court; so what is said here is
public.

6 You understand that?

7 A. Yes, sir.

8 Q. Okay. And if there is anything asked of you that
you want

9 to make private at your request, we can make some
arrangements

10 to do that.

11 A. I would appreciate that, sir.

12 Q. All right. Now, we're going to ask you some
questions; but

13 first -- and we're not going to go over the whole
questionnaire

14 again. Don't worry about that. You've given us a lot
of

15 answers. We're going to follow up on some of these
things, and

16 we'll have some additional questions; but before
starting the

17 questions -- and I'll be asking you some questions and
then a

18 lawyer on each side will do it. And I know you were
with us

19 all day yesterday waiting to come in here.

20 A. Yes.

21 Q. So we've already taken a lot of your time, and we
22 appreciate that that's inconvenient for you, but we
need to

23 take a little more time.

24 A. It's understandable.

25 Q. And before I start with any questions, though, I

want to go

3072

Juror No. 35 - Voir Dire

1 back and review some of the things that I said because
they are
2 important to us here and go back to an explanation that
I gave
3 that this case.

4 And the reason we're here arises out of an
event that
5 took place in Oklahoma City on April 19 of 1995, on
which day a
6 federal office building in Oklahoma City was exploded
and
7 people in it were injured and killed and that later,
charges
8 were filed in Oklahoma City in the Federal Court there
by way
9 of an indictment, a paper that outlines the charges
made by
10 lawyers for the Government, Department of Justice, and
that in
11 that indictment it is charged, alleged, that a man
named
12 Timothy James McVeigh and Terry Lynn Nichols -- and the
13 indictment says "other persons not named" -- were in a
14 conspiracy or a criminal agreement to bomb that
building and to
15 kill and injure the people in it; that in the language
of the

16 indictment, paraphrased here, they went ahead and did
it and
17 committed crimes in connection with it; and the crimes
include
18 eight allegations of first-degree murder of eight law
19 enforcement agents of the United States government
agencies who
20 were in the building and died in the explosion and that
after
21 those charges were filed, Mr. McVeigh and Mr. Nichols
entered
22 pleas of not guilty, thereby disputing everything that
was
23 alleged in the indictment and creating the issues for
trial;
24 that the case was then moved from Oklahoma City here to
Denver
25 for trial because of a concern about the ability for
people in

3073

Juror No. 35 - Voir Dire

1 Oklahoma City to judge the case as jurors, since the
event
2 happened in their midst, and that after the case came
here, I
3 ordered separate trials, saying that it would not be
fair for
4 Mr. McVeigh and Mr. Nichols to be tried in the same
trial and
5 be judged by the same jury because of differences

between them.

6 And accordingly, I said there would be a trial
of the
7 evidence as it relates to Mr. McVeigh and another trial
of the
8 evidence as it may relate to Mr. Nichols. A trial of
Timothy
9 McVeigh has been held. A jury hearing that evidence
determined
10 that it satisfied them that he was guilty of the crimes
11 charged. There was then another hearing or second
trial, at
12 which the jury determined that based on all that they
had heard
13 and seen in that -- those two trials, they came in with
a
14 recommendation of a death sentence.

15 Now, you're aware of those things?

16 A. Yes, sir, I am.

17 Q. And here we are now selecting a jury for the trial
of
18 Mr. Nichols and to determine the evidence as it relates
to him.
19 Nothing that happened in the trial of Mr. McVeigh can
be
20 considered here in the trial that will be held as to
21 Mr. Nichols. To do so would violate the very reason
for
22 separate trials. You understand that?

23 A. Yes, sir, I do.

24 Q. Okay. And just to make it clear, you know, I -- I

was the

25 judge at the trial of Timothy McVeigh. I heard that
evidence;

3074

Juror No. 35 - Voir Dire

1 but I'm not considering that in any way as I start this
trial

2 with respect to Mr. Nichols. We start with a clean
slate. And

3 no one should assume that what was heard as evidence in
4 Mr. McVeigh's trial would be heard in this case.

5 Now, you recall that I discussed some
fundamental

6 concepts, principles of our Constitution in the
criminal

7 justice system, saying that any person charged with any
crime

8 in the United States is presumed to be innocent of the
charge.

9 You're aware of that?

10 A. Yes, sir, I believe I'm aware.

11 Q. And that this presumption of innocence carries
throughout

12 the trial, entitles that person to an acquittal, a
verdict of

13 not guilty, unless everybody serving on the jury
considering

14 the evidence that was presented in the course of the
trial

beyond a 15 determines that the case has been proved and proved
right? 16 reasonable doubt. You've heard those words before;
17 A. Yes, sir.
court has 18 Q. And that no person who is charged in a criminal
In 19 any burden or duty of proving himself to be not guilty.
witnesses or 20 fact, they have no burden or duty of calling any
charges. 21 introducing any evidence. The Government brings the
witnesses and 22 It's up to the Government lawyers to bring in the
the jury 23 the exhibits, things upon which they rely to show to
24 what they claim to support the charges.
in any 25 And a defendant on trial doesn't have to bring

3075

Juror No. 35 - Voir Dire

No 1 witnesses and does not himself have to be a witness.
any 2 defendant has to get onto that witness stand and answer
He can 3 questions from lawyers or explain anything to the jury.
prove it and 4 simply remain silent and require the Government to

in by 5 challenge that evidence that the Government does bring
examination 6 objections to its admissibility and also by cross-
7 of the witnesses relied on.

8 You're aware of these things?

9 A. Yes, sir, I am.

sitting 10 Q. And accordingly, you understand that Mr. Nichols is
innocent 11 with us here in this room this morning presumed to be
12 of the charges in this case?

13 A. Sir, would you repeat that, please.

Terry 14 Q. Yes. That because of these principles of law, Mr.
be 15 Nichols sits here with us in this room now presumed to
him? 16 innocent of these charges that have been made against

17 A. I do understand, yes.

minded, 18 Q. And that unless 12 jurors being fair-minded, open-
at the 19 and considering only the evidence that's been presented
beyond a 20 trial -- unless they find that that convinces them
verdict 21 reasonable doubt that he's guilty, he's entitled to a
22 of not guilty. You understand that?

23 A. Yes, sir, I do.

24 Q. Do you accept these points?

25 A. Yes, I do accept these points.

3076

Juror No. 35 – Voir Dire

law that 1 Q. And are you willing to follow them as the rules of
2 would apply in this case?

3 A. Yes, sir, I do.

understand it. 4 Q. Now, you were on a jury once before, as I

5 A. Yes, sir.

us 6 Q. I know on page 26 of your questionnaire, you tell
was that? 7 something about that experience. About how long ago

six 8 A. If I'm not mistaken, it was possibly about five or
9 years ago.

you 10 Q. Five or six. And the way I understand it from what
there was 11 wrote, the jury never had to reach a verdict because
12 a plea bargain reached.

13 A. Yes, there was.

14 Q. Is that what happened?

15 A. Yes.

16 Q. Well, did you start the trial?

17 A. We were actually held in a holding room, I guess it

would

18 be, and --

19 Q. Did you go through a process like this where you
were asked

20 questions about whether you could be a fair juror, if
you

21 remember?

22 A. I believe I did, yes, sir, if I'm not mistaken. We
were --

23 I was in a room with other people, and I do believe we
were all

24 asked if we could --

25 Q. And then you were told something about a plea
bargain?

3077

Juror No. 35 - Voir Dire

1 What were you told?

2 A. We were told that we were dismissed and that as
such that

3 there was a plea bargain that has been come to.

4 Q. Were you in a courtroom actually? Did you ever get
into

5 the courtroom?

6 A. No, sir, I did not.

7 Q. Okay. So this process that we're talking about is
still

8 new to you. You haven't --

9 A. Yes, sir, it is.

10 Q. -- gone through it as a juror?

11 A. This is true, sir.

12 Q. Now, a little about your background. My
understanding is

13 from what you've told us that you were born in
Tennessee?

14 A. Yes, sir.

15 Q. Raised in Texas?

16 A. This is correct, sir.

17 Q. And Denison, Texas, in particular?

18 A. Yes, sir, it is.

19 Q. Now -- and also, you spent some time in Clovis, New
Mexico?

20 A. Yes, sir.

21 Q. Was -- what were you doing when you were in Clovis?

22 A. At the time, I was married. My wife at the time
was in the

23 Air Force, and I was there with her.

24 Q. She was assigned to the Air Force base there?

25 A. Yes, sir.

3078

Juror No. 35 - Voir Dire

1 Q. And you're now divorced?

2 A. Yes, sir.

3 Q. And you and she had two children? They live with
her?

4 A. No, sir.

5 Q. Tell me -- pardon me.

6 A. My children are with my second wife.

7 Q. Second wife. Okay. And -- excuse me. You're
separated?

8 A. That's correct, sir.

9 Q. From the second wife.

10 A. Yes.

11 Q. And the children are with her. Am I right?

12 A. One child. My son is with her.

13 Q. And the daughter?

14 A. My daughter is -- she's I guess -- she's an adult
now.

15 She's on her own.

16 Q. On her own. Okay. Now, you mentioned that at one
time

17 your father had some land and raised cattle?

18 A. Yes, sir.

19 Q. Where was that?

20 A. In Denison, Texas.

21 Q. And did he raise the cattle there where you lived,
or did

22 he have that -- have them out on some other land?

23 A. It was on a separate -- separate land, yes.

24 Q. So did you live in town?

25 A. Yes, we lived -- yes, lived in town.

Juror No. 35 - Voir Dire

1 Q. Okay. And he had -- did he own the land that the
cattle

2 were on?

3 A. Yes, sir.

4 Q. How much land was it?

5 A. Approximately 10 acres, if I'm not mistaken.

6 Q. And how old were you when he had this livestock
operation?

7 A. From ages of -- from about 5 to about 15 or 16 or
so, I

8 believe.

9 Q. Did you go out there and do some work with these
cattle?

10 A. Yes, sir, yes.

11 Q. A lot?

12 A. Quite a bit, yes.

13 Q. Okay. How far out of town was the land?

14 A. It was relatively close in town. It was within the
city

15 limits, I guess it would be, approximately 10 blocks
away from

16 our home, our family home.

17 Q. But so you could walk over there?

18 A. Basically, yes, sir.

19 Q. And what happened to that land? Does your father
still

20 have it?
21 A. I'm not actually sure, sir. My father has passed
on now.
22 I'm not sure.
23 Q. You don't know what happened to it?
24 A. I -- no, I don't, sir.
25 Q. Do you know anything about it, whether he sold it
or --

3080

Juror No. 35 - Voir Dire

1 A. I'm not aware of that, sir.
2 Q. And your father had been in the Air Force. Is that
right?
3 A. This is correct, sir, yes.
4 Q. While you were growing up?
5 A. This is before I was born.
6 Q. Before you were born. Now, you've had some
experience with
7 the court system in that you had a lawsuit, I guess.
Page 22
8 is where I'm looking. You had a lawsuit about, what,
losing a
9 job?
10 A. Yes, sir.
11 Q. And how long ago was that?
12 A. Approximately -- about five -- about four or five
years

13 ago.

14 Q. And what kind of a job did you have there?

15 A. I was doing maintenance, Department of Maintenance.

16 Q. And was it your claim that you were -- you lost
that job
17 because of discrimination?

18 A. That's -- yes. From my understanding, speaking
with the
19 lawyer, that was the approach that was to be taken, I
guess it
20 was. My understanding also was I was unlawfully let
go.

21 Q. So did it go to court?

22 A. No, sir. I -- afterwards, I spoke with lawyers and
I was
23 told that I basically didn't have a case based on
24 discrimination.

25 Q. But do you feel today that you did have a case and
it

3081

Juror No. 35 - Voir Dire

1 should have gone forward? Do you have any feeling like
that?

2 A. To a point, yes, I do; but under the laws as they
are, I
3 understand I don't.

4 Q. Okay. Well, do you feel that that was an
injustice; that

about 5 you were treated unfairly but you couldn't do anything

6 it? Do you have some carryover feeling like that?

7 A. To a point, yes, sir, I do.

8 Q. Do you think that race had anything to do with it?

class 9 A. Honestly, no, sir, I don't. I believe it was a

10 situation.

11 Q. A what situation?

12 A. It was more of a class or a status situation.

24, 13 Q. Okay. Now, you also had a situation here on page

long ago 14 Question 105, where -- just tell us, first of all, how

15 was this incident?

not 16 A. I believe it was around -- in the late 70's, if I'm

17 mistaken.

18 Q. Was that here in Denver?

19 A. Yes, sir, it was.

happened. 20 Q. And tell us, you know, in a general way what

I 21 A. I was basically walking -- walking down the street.

base; 22 believe it was Yosemite, walking towards the Air Force

remark 23 and a patrol car was coming up behind me, and I heard a

24 come from the patrol car.

25 Q. And what did you do?

3082

Juror No. 35 - Voir Dire

1 A. I kept walking.

2 Q. Well, did you turn around and confront the police
officer?

3 A. No, sir.

4 Q. Did you make a report about it to any authorities?

5 A. No, sir, I didn't.

6 Q. But you remember it and you remember it well enough
to put

7 it down as something that affects your view of at least
those

8 police officers or one of them?

9 A. I'm sorry, sir, would you repeat --

10 Q. Well, you put it down here; and, you know, I guess
I see

11 that, or in reading it think that, well, it was
significant

12 enough to you that you put it down here because it
affected

13 your view, at least, of one police officer.

14 A. This is correct, sir, yes.

15 Q. And this was a patrol car; right?

16 A. Yes, sir.

17 Q. Now, how -- do you have some view about police
officers

18 generally or Denver police officers or something more
general
19 than this one officer or two officers on that
particular
20 occasion?
21 A. Most definitely, sir.
22 Q. And what is your view?
23 A. That he was just one particular gentleman.
24 Q. All right. You understand what I'm trying to find
out is
25 whether you have a more general view of -- that there
is racism

3083

Juror No. 35 - Voir Dire

1 in the police or law enforcement generally. That's
what I'm
2 asking you. Do you have any such opinion?
3 A. Would you repeat that again, sir, please.
4 Q. Yes. What I'm asking you to tell us is whether you
have a
5 view that with the Denver police or with law
enforcement
6 generally, there is an attitude of racism against
people of
7 color.
8 A. No, sir.
9 Q. Okay. Well, you know, we're not -- the reason that
I ask

10 you that question is that, of course, in any criminal
case,
11 there are people as witnesses who are police or FBI or
law
12 enforcement agents of some kind, come in and give
testimony
13 normally; and one of the things that jurors must do is
to judge
14 their testimony, both as to whether they are people who
tell
15 the truth and also whether what they said is the truth
as to
16 what happened. And people -- excuse me -- can have
because of
17 something that's happened to them in life or because of
18 something that's happened to another person they know
about or
19 what they read -- people can have opinions about people
working
20 in any role, whether it's law enforcement or lawyers or
judges
21 or whatever. And certainly, there are perceptions that
people
22 can develop from one or more incidents where they say,
well,
23 you know, people like that have an attitude or a bias
or a
24 prejudice. You understand what I'm saying?
25 A. I think I do, yes, sir.

Juror No. 35 – Voir Dire

1 Q. All right. And I'm simply trying to ask you openly
whether

2 you have any such views that would affect your
consideration of

3 the testimony of law enforcement people and
particularly those

4 who are white.

5 A. No, sir.

6 Q. Okay. Now, there was a time apparently here -- I'm
looking

7 to Question 108 -- when somebody accused you -- you see
your

8 answer there?

9 A. Yes, sir.

10 Q. How long ago was that?

11 A. Approximately 10 to 12 years ago.

12 Q. And was that here in Denver?

13 A. It was in Texas.

14 Q. In Texas. Denison?

15 A. Yes, sir.

16 Q. And excuse me. Was this a check that was
insufficient

17 funds or there was no bank account, that kind of thing?

18 A. It was for insufficient funds, sir.

19 Q. What happened?

20 A. It was during the birth of my daughter, my first
child, and

21 expenses just kind of went over and I got in over my

head. I

22 was going to school and working at the time; and I got
out of

23 school and lost my funds -- funding from school from my
GI

24 Bill, and I got behind on payments.

25 Q. And did you -- did you consult a lawyer?

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Juror No. 35 - Voir Dire

1 A. At that point -- at that time, no, sir.

2 Q. Well --

3 A. Afterwards, I did, yes.

4 Q. Pardon me?

5 A. Afterwards, I did, yes, after circumstances brought
me to

6 the courts to take care of this.

7 Q. Yes.

8 A. I spoke with a lawyer then, yes.

9 Q. And then what did you do?

10 A. Made restitution.

11 Q. Was there actually a charge filed?

12 A. Yes. There was a misdemeanor, if I'm not mistaken.

13 Q. Now, have you ever been arrested or had any other
charges

14 filed on you anywhere?

15 A. No, sir.

Air
16 Q. And -- well, let's see. I forgot. You were in the
17 Force yourself, too; right?
18 A. Yes, sir.
19 Q. Now, were you in the Air Force the same time as
your former
20 wife?
21 A. Yes, sir, for a partial time, yes.
22 Q. Were you stationed at the same base?
23 A. Yes, sir, here in Denver for a while, yes.
24 Q. What, at Lowry?
25 A. At Lowry, yes, sir.

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1 Q. Okay. What did you do in the Air Force?
2 A. Logistics. Shipping and receiving, sir.
3 Q. Okay. And you got an Article 15, I guess, because
you were
4 late to a formation.
5 A. Yes, sir.
6 Q. Is that the only discipline that -- formal
discipline that
7 happened to you in the Air Force?
8 A. Yes, sir.
9 Q. As I understand it, you're now working in the
shipping

10 department of, what, a medical supply company?

11 A. Yes.

12 Q. And you -- you've been working there about how
long?

13 A. I'll be there two years. Well, I was actually two
years

14 the 11th of this month.

15 Q. Have you talked to anybody there about your being
summoned
16 for this jury?

17 A. Yes, sir.

18 Q. And talked with them about -- you understand that
if you

19 were to serve on this jury, you may be in trial for
several

20 months?

21 A. Yes, sir. That's what I was -- I brought it to my
22 supervisor's attention that I was -- had to come in.

23 Q. And what did that person say to you?

24 A. Bring your paperwork.

25 Q. I can't hear --

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1 A. Bring your paperwork as such to verify that I was
here.

2 Q. Yeah, for these days; but did you talk with him or
her

3 about that you would be away from work for several
months if
4 you were selected on the jury?
5 A. Yes, sir, that was brought up, yes, that I could
possibly
6 be.
7 Q. Yeah. And what were you told about that?
8 A. I was told -- it was brought to my attention that I
9 possibly could only have three days for jury as far as
finances
10 and things.
11 Q. That's what you were told?
12 A. Yes.
13 Q. So what -- if that is the policy of the company
that you'd
14 only get paid for three days, that would seriously
disrupt your
15 financial situation, I take it.
16 A. Yes, sir, it would.
17 Q. And when did you have this conversation? Was it
after
18 Jefferson County Fairgrounds and you filled in the
19 questionnaire?
20 A. Yes, sir, it was.
21 Q. And what -- just tell us what your position is now
as far
22 as what would happen to you if you got picked for this
jury and
23 you weren't going to get paid there and you got paid

the \$40 a

24 day here and later 50.

25 A. I would adjust, sir.

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1 Q. You could adjust?

2 A. I would attempt to adjust.

3 Q. Do you have any savings or other resources that
would help

4 you in that, or some family who could assist you,
something

5 like that?

6 A. That is possible, sir, yes.

7 Q. Do you have payments that you have to make for
support?

8 A. Yes, sir.

9 Q. Now, please don't take any offense at this, but are
you

10 behind on payments?

11 A. I guess I'm in a unique situation. My wife -- my
wife is

12 somewhat tolerant and knows my situation, so I send
what I can

13 when I can.

14 Q. And where does your former wife live? Does she
live in

15 this area?

16 A. No, sir. She's in Des Moines, Iowa.
17 Q. Des Moines, Iowa. Do you pay support directly to
her, or
18 through a court, or what?
19 A. Through her.
20 Q. Directly?
21 A. Yes, sir.
22 Q. Have you talked to her about the possibility that
you're
23 going to be short because you're in -- on jury duty?
24 A. Yes, sir, I have.
25 Q. And what response did she make?

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1 A. Her response was, "When you find out where you're
at and
2 what's going on, let me know."
3 Q. Now, in addition to the work that you have --
excuse me --
4 that we've already talked about, you write.
5 A. Yes, sir, I do.
6 Q. You write poetry?
7 A. Yes, sir.
8 Q. And you also, I guess, read poetry and admire some
poets,
9 including, I guess the poet laureate of the United
States?

10 A. Yes, sir.

11 Q. Right? What -- you know, for somebody who writes
poetry to

12 have somebody say, Well, what do you write about, is a
little

13 ridiculous, knowing the sensitivity of poetry and so
forth; but

14 can you give us some notion about your approach to
poetry in

15 terms of your writing?

16 A. At this stage, I'm writing love; and basically
through my

17 separation, I'm writing about women, I guess -- women
and love

18 and emotions.

19 Q. And have you had -- have you sent any of your
poetry

20 anywhere to see if you could get it published?

21 A. Most definitely, yes, sir.

22 Q. Has any of it been published?

23 A. As of yet, no. As of yet, no, sir.

24 Q. And sometimes people who are writers have other
people who

25 try to place their work in quarterlies or whatever
kinds of

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1 publications that may be available. Have you consulted

with

2 somebody to try to get some of your work published?

3 A. Excuse me, sir. I've been approached by two
subsidiary

4 companies to do as such, yes.

5 Q. Do you belong to a writer's group or club or
organization

6 where they try to help each other?

7 A. No, sir, I do not.

8 Q. So you're doing your work alone.

9 A. Yes, sir.

10 Q. How long have you been writing?

11 A. Since about the third or fourth grade.

12 Q. And have you ever taken any courses to help with
that?

13 A. No, sir, I haven't.

14 Q. Or studied poetry in any organized way?

15 A. No, sir, I have not.

16 Q. But you've read a lot?

17 A. Yes, sir, I have.

18 Q. Is that right?

19 A. Yes, sir.

20 Q. And do.

21 A. Yes, sir.

22 Q. Now, do you also write lyrics, music lyrics?

23 A. Yes, sir, I do.

24 Q. And same line of questioning there: Has any of

your music

25 lyrics been used by anybody with music?

3091

Juror No. 35 – Voir Dire

would 1 A. No, sir. On a small scale to a degree, I guess it
2 be. I have people that I work with that are trying to
3 encourage me and things; but as far as being published
and 4 things and monetary gain from it, no, sir.

5 Q. Are you musically inclined as well as -- I mean,
can you 6 write music as well as the lyrics?

7 A. To a degree, yes, sir.
8 Q. Do you do any performing like in, you know -- we
have some 9 places, I think, where people can go as amateurs and
read 10 poetry or perform music, coffee houses, places like
that.

11 A. As far as my poetry, no, sir. I feel like a person
should 12 read my poetry and not be programmed by myself to my
side or be 13 swayed by myself with it.

14 Q. All right.

15 A. I suppose that I have played in a couple of bands
in my

16 earlier years, yes.

17 Q. What kind of instruments or what instruments have
you
18 played?

19 A. I've played -- my love is saxophone, drums, bass
guitar,
20 lead guitar.

21 Q. Okay. Now, you understand that the responsibility
in this
22 case that we ask of people to undertake as jurors would
be to
23 hear and consider the evidence and decide whether the
evidence
24 supports the charges that have been made about Mr.
Nichols.

25 A. I'm sorry, sir. Would you repeat it, please.

3092

Juror No. 35 - Voir Dire

1 Q. Yes. You understand that what we're talking about
in this
2 case and the reason we're talking with you and others
is that
3 we are seeking a jury of people who can come in, hear
the
4 evidence that is offered at trial and received at trial
and
5 judge that evidence as to whether it proves the charges
made
6 against Mr. Nichols.

7 A. Yes, sir.

8 Q. That's what we're here about.

9 A. I understand, yes, sir.

10 Q. And we also, though, had to ask you some questions
in this

11 questionnaire about your attitudes or opinions
concerning

12 punishments and particularly the punishment sentence to
life in

13 prison without possibility of release and a sentence to
death

14 and that the reason we ask these questions is that the
crimes

15 charged in this case under the statutes that are
involved

16 provide for the possibility of such sentences. You
understand

17 that?

18 A. Yes, sir, I do.

19 Q. All right. And we therefore had some questions in
this

20 questionnaire on that subject. And page 28 is where
this --

21 these questions were asked of you. Excuse me. And
take a

22 moment to look at the questions so you have them in
mind and

23 the answers that you wrote so you also have them in
mind.

24 Now, your answers are quite brief; and I want
to ask

25 you the first -- as a first question whether this issue

of

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Juror No. 35 – Voir Dire

1 death penalty is something that you gave very much
thought to
2 before you were asked these questions on September 17.
3 A. I have on occasion, sir, gave it thought, yes.
4 Q. And, you know, in our society people have strong
views
5 about capital punishment. On the one hand, there are
those who
6 say never, should not be done in court. There are also
those
7 who say, you know, you killed somebody, you should be
killed.
8 Those are extreme views out here on the edges, and then
there
9 is a lot in between. And, of course, this issue gets
debated
10 publicly from time to time. There are differences in
the laws
11 of the states. There are states who do not have
capital
12 punishment as a part of the law; and in those states
that do
13 have capital punishment, there is frequently discussion
about
14 whether that should be the law or whether it should be
applied
15 in particular cases. Are you aware of that generally?

16 A. Yes, sir, I am.
17 Q. And as you have read or seen things about this
subject,
18 what views have you formed?
19 A. On the death penalty?
20 Q. Yes.
21 A. My view is it depends on the crime.
22 Q. That's what you said. And can you expand on that a
little?
23 You understand, first of all, we ask you this without
telling
24 you anything about the law. I mean, we just put it to
you what
25 do you think if you could make the law. So that's a
very broad

3094

Juror No. 35 - Voir Dire

1 question. I want to narrow it down a little and first
tell you
2 that every place where there is the death penalty, it
has to be
3 a crime that relates to a killing, an intentional
killing. We
4 don't have in this country now the death penalty for
other
5 kinds of crime. Understood?
6 A. Yes, sir, I understand, yes.
7 Q. So when you say it depends on the crime, we sort of

start

human 8 with, well, the crime involves the killing of other
9 beings.

have a 10 Now, given that additional explanation, do you
law be 11 view about when the penalty of death should under the
12 available to be imposed?

13 A. Would you repeat that, sir. Sorry.

doesn't 14 Q. I'll try. Understanding that the death penalty
killing of 15 really come up unless there has been an intentional

the 16 another human being, then, when you say "it depends on
murder. 17 crime," that's the kind of crime we're talking about,

was 18 A. I guess before I wasn't aware that that -- what it
19 actually just used for.

carrying it 20 Q. Sure. I understand that. And that's why I'm

asking 21 on. I'm not quizzing you about your answers now. I'm

then 22 you for your view, given a little more explanation, and

Now, 23 I'll pursue this a little farther with you. All right?

murder 24 with the information that we're only talking about

25 cases, what is your opinion or view or attitude about

whether

3095

Juror No. 35 - Voir Dire

1 the death penalty is appropriate to be imposed? I
mean, should

2 it be in all murder cases?

3 A. I guess it would come into play how horrific the
situation

4 was, how bad the situation was and the murder, if it
was

5 intended, if -- I guess that kind of goes into your
statement.

6 Q. I'm sorry. I didn't hear the last part.

7 A. I guess it kind of goes into the statement that you
made

8 that a person would have to have the intent of
murdering or

9 something to that effect.

10 Q. Well, let me explain a little more about what the
procedure

11 actually is under federal law. I've talked about there
are

12 differences among the states and so forth. You
understand now

13 we're in Federal Court and we're applying federal law.

14 A. Yes, sir.

15 Q. And federal law does provide for the possibilities
of a

16 sentence to death or to life imprisonment, which means

really

17 that, no chance of ever getting out; and then there is
a
18 possibility of less than that, less than either of
those two,
19 but we're talking about cases of murder, cases that
involve
20 intentional killing.

21 A. Excuse me.

22 Q. Okay.

23 A. Yes.

24 Q. Are you -- when I say "okay," I'm just asking you
if you
25 follow me.

3096

Juror No. 35 - Voir Dire

1 A. I'm following you, yes, sir.

2 Q. All right. And in criminal cases not involving
murder in
3 federal courts, not involving the possibility of death
4 sentences or life or death as the choice, we have the
jury come
5 in and decide this first question: Does the evidence
prove the
6 charge beyond a reasonable doubt, what we've talked
about at
7 length. Understand?

8 A. Yes, sir.

9 Q. If the answer is no, the verdict is not guilty, you
10 understand, it's all over. If the answer is yes and
the
11 verdict is guilty, then in these other kinds of cases,
the jury
12 does not have any role to play in deciding the
sentence. Do

13 you understand that?

14 A. I understand, yes, sir. Yes.

15 Q. Okay. Where there has been a finding of guilty,
then, by a

16 jury verdict, the case goes back to the judge, to the
court;

17 and the judge decides what is the sentence that should
be

18 imposed for this person for this crime, so it's a
combination

19 of what the crime was and a lot about the defendant who
20 committed the crime according to the jury verdict.

Follow me?

21 A. Follow you, yes, sir.

22 Q. And before such an individual sentencing decision
can be

23 made, the judge making the decision has to get a lot
more

24 information than what was heard at the trial. Now,
that

25 information includes more things about the
circumstances of the

Juror No. 35 - Voir Dire

1 crime itself, what happened and, you know, what the
2 consequences were of the crime, what happened to people
who
3 were the victims and the like.

4 And then also consideration must be given to
5 information about the defendant as a human being; and
that goes
6 to that person's background, his history, his personal
history,
7 you know, under what circumstances did he grow up, what
the
8 family relationships have been, marriages, divorces,
children,
9 work history, military service, what this person's life
has
10 been. And then there is a hearing at which the court
hears
11 from the prosecution and defense and then weighs all of
these
12 things, considers all of these things carefully and
then says
13 this is the sentence that is appropriate for this
person
14 committing this crime. And it is unique to him or her,
because
15 it depends upon all of these individual circumstances,
16 regardless of the crime itself. I mean, the crime sets
certain
17 levels for punishment, but the actual sentence is made
on a

18 very individual basis. Follow me?
19 A. Following, yes, sir.
20 Q. Now, when it comes to life or death as possible
sentences,
21 we don't have judges make a decision like that. We ask
jurors
22 to do that in Federal Court and to come in here, you
know, from
23 the community and various backgrounds and walks of life
and
24 experiences of their own and sit as a group of 12 and,
first of
25 all, judge whether the evidence proves the charge. And
again,

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Juror No. 35 - Voir Dire

1 if not, the verdict is not guilty and that's the end of
it.
2 But if such a charge is proved, that's not the end of
it for
3 the jury because it's up to the jury now to decide
punishment
4 and particularly the choices of life imprisonment with
no
5 possibility of release, or death, or some lesser
sentence, in
6 which case it goes back to the judge again to decide.
You hear
7 me?

8 A. Yes, sir.

9 Q. And understand?

10 A. I understand, sir.

11 Q. Now, before the jury can make a decision like that,
the

12 jury has to hear a lot more. And it's sort of like the
judge

13 having to make an individual sentencing decision; so
does it

14 fall to the jury to decide this on a very individual
basis.

15 And so there is a second trial or hearing on the
question of

16 sentence or punishment. And at that time, the
prosecution, the

17 Government lawyers, bring in information to be
considered by

18 the jury about the circumstances of the offense and
things that

19 suggest according to the prosecution that death is
deserved for

20 this crime and for this person. The defense, on the
other

21 hand, brings in information to the contrary,
information that

22 suggests that death is not deserved for this person,
even

23 though the crime has been one that involves the
possibility of

24 a death sentence. So that information about the
defendant as

25 an individual human being follows along in the same way
that

Juror No. 35 - Voir Dire

kinds of things human offense, in the the individual; not points? provided at some been as

1 I've suggested for a sentencing decision made in other
2 cases by a judge. These are the things relating to the
3 defendant's background, you know -- again, all of these
4 that make up a unique and individual life of another
5 being. And that also can include the role in the
6 where in cases where more than one person is involved
7 same crime and has been found guilty of the same crime,
8 sentencing of those two or more people has to be
9 and what happens in the sentencing of one person does
10 control what happens to another. You understand these
11 A. Yes, sir, I do.
12 Q. And at the end of all of that information being
13 this second hearing, the court again gives the jury
14 instructions, saying in effect -- summarizing what has
15 heard and saying, well, now, this is what you've heard

16 aggravating factors, aggravating in terms of the person
should
17 be sentenced to death; here's what you've heard as
mitigating
18 factors, the things that support the view that
regardless of
19 the crime, death is not a deserved punishment for this
human
20 being and then asks the jury to ask themselves some
questions,
21 just to sort of help analyze this information.

22 And instructions like this can't be given
ahead of
23 time. You know, I can't tell you what would be
aggravating or
24 mitigating factors in this case, as indeed I can't tell
you
25 what the evidence in this case may be, because turning
back to

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Juror No. 35 - Voir Dire

1 where we were before, the assumption now is that Mr.
Nichols is
2 not guilty, and by that assumption we would, of course,
never
3 get to the question of sentencing.
4 But in the event of a verdict of sentencing
(sic),
5 then the jury would have to decide whether the
defendant lives

6 or dies. Understand?

7 A. Yes, sir, I do.

8 Q. Now, do you have any question about what I've
talked about

9 here about the procedure and the law that is actually
involved?

10 A. No, sir, I do not.

11 Q. Well, the question that you have to answer for us
is that

12 if you were to serve on the jury and you were to find a
guilty

13 verdict, return a guilty verdict and then you were to
listen to

14 all that was presented at the sentencing hearing, all
of these

15 things that I've talked about, including the individual

16 background, everything about the defendant's life --
with that

17 in mind, do you think that you would be able to make a
decision

18 about life or death and base your decision about the
sentence

19 of the defendant based not only on the crime itself and
what

20 happened, the circumstances of the crime, but also
giving full

21 consideration to the background and individual
characteristics

22 of the defendant as another human being?

23 A. I would be able to do that. Yes, sir, I would.

24 THE COURT: Okay. Now, we've been at this a

while.

ask you 25 We're going to take a recess for lunch, and then we'll

3101

each side 1 to be back in for a few more questions. A lawyer on
which is 2 has the opportunity to ask some questions as well,
3 only fair.

to take 4 So we'll ask you to step out now. We're going
we'll 5 about an hour and a quarter for a lunch break, and then
6 be back for you to answer yet some more questions.

out now. 7 Thank you for your cooperation. You may step

8 (Juror out at 12:18 p.m.)

Government 9 THE COURT: Do you have this sheet that the
10 provided?

11 MR. WOODS: Yes, your Honor.

12 MR. TIGAR: Yes.

come back 13 THE COURT: All right. Well, we'll recess,

it's 14 in whatever an hour and a quarter is from now. I guess

15 1:35.

16 (Recess at 12:19 p.m.)

17 * * * * *

18

19

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21

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24

25

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13 * * * * *

14 REPORTERS' CERTIFICATE

15 We certify that the foregoing is a correct
transcript from

Dated 16 the record of proceedings in the above-entitled matter.

17 at Denver, Colorado, this 14th day of October, 1997.

18

19

Paul Zuckerman

20

21

Bonnie

Carpenter

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23

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