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2977

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

13 for Defendant Nichols.

14 \* \* \* \* \*

15 PROCEEDINGS

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

17 THE COURT: 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.

2978

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

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

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.

2979

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

2980

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

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

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

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

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

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

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

2981

Juror No. 839 - Voir Dire

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,

2982

Juror No. 839 - Voir Dire

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

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

2983

Juror No. 839 - Voir Dire

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

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

7 A. Okay.

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

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

10 until 1980, I was working on a master's degree in  
international  
11 relations; and in 1980, I went to China the first time  
to study  
12 Chinese. And then I went directly from the master's  
degree  
13 program into the Ph.D. program; and from 1982 until  
1983, I  
14 went back to China and taught international economics  
and

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.

2984

Juror No. 839 - Voir Dire

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

2985

Juror No. 839 - Voir Dire

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

2986

Juror No. 839 - Voir Dire

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?

2987

Juror No. 839 - Voir Dire

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

2988

Juror No. 839 - Voir Dire

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

2989

Juror No. 839 - Voir Dire

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

2990

Juror No. 839 – Voir Dire

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

2991

Juror No. 839 - Voir Dire

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

## Juror No. 839 - Voir Dire

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

2993

Juror No. 839 - Voir Dire

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

2994

Juror No. 839 - Voir Dire

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.

2995

Juror No. 839 – Voir Dire

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?

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

16 opinion or have really thought about it that much.

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

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

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

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

21 questions?

22 A. I think they would be the same.

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

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

25 think you're looking at principally the threat to  
society that

2996

Juror No. 839 - Voir Dire

1 would be the risk of a threat to society if the person  
were not

2 put in prison for life or put to death.

3 A. Yes, sir.

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

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,

2997

Juror No. 839 - Voir Dire

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

2998

Juror No. 839 - Voir Dire

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

Juror No. 839 – Voir Dire

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

Juror No. 839 – Voir Dire

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

Juror No. 839 – Voir Dire

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

Juror No. 839 - Voir Dire

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

Juror No. 839 – Voir Dire

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

Juror No. 839 - Voir Dire

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  
18 such testimony, how it might affect your ability to  
serve 19 fairly?

20 A. No.

pursue 21 Q. The other aspect of that incident that I wanted to  
22 with you a little bit further was you mentioned that  
the police 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

Juror No. 839 - Voir Dire

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.

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

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

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

10 situation.

11 BY MR. ORENSTEIN:

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

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

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

Juror No. 839 - Voir Dire

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

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

3 After I came back to the United States, she  
was  
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.

12 Q. Do you remember reading any of the books about the  
Chinese

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.

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

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

19 defendant getting up and testifying?

20 A. Yes.

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

23 A. Absolutely different.

innocent person  
24 Q. Okay. And can you think of a reason why an  
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.

Court's  
4 Q. And you wouldn't have any problem obeying the  
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

Juror No. 839 - Voir Dire

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.

you did

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

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

14 A. Yes.

too much

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

the

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

the

17 Sixth Amendment, confrontation clause and confronting

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

19 A. Actually, not that --

ask about

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

21 it.

jury

22 You mention that when you talked about your

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

Juror No. 839 - Voir Dire

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

Juror No. 839 - Voir Dire

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

Juror No. 839 - Voir Dire

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

Juror No. 839 - Voir Dire

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

Juror No. 839 - Voir Dire

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

Juror No. 839 – Voir Dire

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

Juror No. 839 – Voir Dire

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

Juror No. 839 - Voir Dire

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

Juror No. 839 - Voir Dire

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

Juror No. 206 - Voir Dire

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

Juror No. 206 - Voir Dire

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

Juror No. 206 - Voir Dire

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

Juror No. 206 - Voir Dire

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

Juror No. 206 - Voir Dire

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 --

3040

Juror No. 206 - Voir Dire

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.

Juror No. 206 - Voir Dire

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

3042

Juror No. 206 - Voir Dire

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

## Juror No. 206 – Voir Dire

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

3044

Juror No. 206 - Voir Dire

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.

## Juror No. 206 - Voir Dire

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?

3046

Juror No. 206 - Voir Dire

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

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.

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.

Juror No. 206 – Voir Dire

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

3048

Juror No. 206 - Voir Dire

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 --

3049

Juror No. 206 - Voir Dire

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.

Juror No. 206 - Voir Dire

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

3051

Juror No. 206 - Voir Dire

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

3052

Juror No. 206 - Voir Dire

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

3053

Juror No. 206 - Voir Dire

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,

3054

Juror No. 206 - Voir Dire

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

3055

Juror No. 206 - Voir Dire

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

3056

Juror No. 206 - Voir Dire

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,

3057

Juror No. 206 - Voir Dire

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

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?

3058

Juror No. 206 - Voir Dire

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



## Juror No. 206 - Voir Dire

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.

3060

Juror No. 206 - Voir Dire

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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24  
25

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

it and 16 indictment, paraphrased here, they went ahead and did  
include 17 committed crimes in connection with it; and the crimes  
agencies who 18 eight allegations of first-degree murder of eight law  
after 19 enforcement agents of the United States government  
entered 20 were in the building and died in the explosion and that  
was 21 those charges were filed, Mr. McVeigh and Mr. Nichols  
trial; 22 pleas of not guilty, thereby disputing everything that  
Denver 23 alleged in the indictment and creating the issues for  
people in 24 that the case was then moved from Oklahoma City here to  
25 for trial because of a concern about the ability for

3073

Juror No. 35 - Voir Dire

event 1 Oklahoma City to judge the case as jurors, since the  
here, I 2 happened in their midst, and that after the case came  
fair for 3 ordered separate trials, saying that it would not be  
trial and 4 Mr. McVeigh and Mr. Nichols to be tried in the same  
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

cattle 1 Q. Okay. And he had -- did he own the land that the

2 were on?

3 A. Yes, sir.

4 Q. How much land was it?

5 A. Approximately 10 acres, if I'm not mistaken.

operation? 6 Q. And how old were you when he had this livestock

so, I 7 A. From ages of -- from about 5 to about 15 or 16 or

8 believe.

cattle? 9 Q. Did you go out there and do some work with these

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?

city 14 A. It was relatively close in town. It was within the

away from 15 limits, I guess it would be, approximately 10 blocks

16 our home, our family home.

17 Q. But so you could walk over there?

18 A. Basically, yes, sir.

still 19 Q. And what happened to that land? Does your father

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  
those

7 it down as something that affects your view of at least  
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?

3085

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.

3086

Juror No. 35 - Voir Dire

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 --

3087

Juror No. 35 - Voir Dire

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.

3088

Juror No. 35 - Voir Dire

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?

3089

Juror No. 35 - Voir Dire

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

3090

Juror No. 35 - Voir Dire

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

3093

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,

3098

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

1 I've suggested for a sentencing decision made in other  
kinds of  
2 cases by a judge. These are the things relating to the  
3 defendant's background, you know -- again, all of these  
things  
4 that make up a unique and individual life of another  
human  
5 being. And that also can include the role in the  
offense,  
6 where in cases where more than one person is involved  
in the  
7 same crime and has been found guilty of the same crime,  
the  
8 sentencing of those two or more people has to be  
individual;  
9 and what happens in the sentencing of one person does  
not  
10 control what happens to another. You understand these  
points?  
11 A. Yes, sir, I do.  
12 Q. And at the end of all of that information being  
provided at  
13 this second hearing, the court again gives the jury  
some  
14 instructions, saying in effect -- summarizing what has  
been  
15 heard and saying, well, now, this is what you've heard  
as

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

3100

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 \* \* \* \* \*

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3102

1 INDEX

Page

2 Item

3 Jurors

4 Juror No. 839

2980

5 Voir Dire Examination Continued by The Court

3002

6 Voir Dire Examination by Mr. Orenstein

3017

7 Voir Dire Examination by Mr. Tigar

8 Juror No. 206

3033

9 Voir Dire Examination by The Court

3058 10 Voir Dire Examination by Mr. Ryan

11 Juror No. 35

3069 12 Voir Dire Examination by The Court

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.

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Paul Zuckerman

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Carpenter

Bonnie

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