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3267

1

APPEARANCES

and

2

LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNES,

3

JAMIE ORENSTEIN, Special Attorneys to the U.S. Attorney

Colorado,

4

General, 1961 Stout Street, Suite 1200, Denver,

5

80294, appearing for the plaintiff.

Law, 1120

6

MICHAEL TIGAR and RONALD WOODS, Attorneys at

appearing

7

Lincoln Street, Suite 1308, Denver, Colorado, 80203,

8

for Defendant Nichols.

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* * * * *

10

PROCEEDINGS

11

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

12

THE COURT: Be seated, please.

959?

13

Good morning. Are we ready to proceed with

14 MR. MACKEY: Yes.

15 THE COURT: Good morning.

16 JUROR: Good morning.

17 THE COURT: If you'll raise your right hand
and take
18 the oath from the clerk, please.

19 (Juror No. 959 affirmed.)

20 THE COURTROOM DEPUTY: Thank you.

21 THE COURT: Please be seated there in that
chair near

22 the microphone. You don't have to speak directly into
that

23 microphone. Anywhere near it will work.

24 JUROR: Okay. Thank you.

25 THE COURT: You can move the chair around a
bit as it

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1 may be comfortable for you. It is a swivel.

2 VOIR DIRE EXAMINATION

3 BY THE COURT:

4 Q. And you were here all day yesterday, waiting to
come in

5 here; and we apologize for making you come back a
second day,

6 but --

7 A. That's fine.

8 Q. I'm sure you can appreciate that it is difficult
for us to

9 time these. We can't program it in any certain way
because it

10 always depends upon the individual that -- who's in
here

11 answering questions.

12 A. Fine. They treated me very good.

13 Q. All right. Well, you, of course, know that the
case now on

14 trial is referring to the case of United States against
Terry

15 Lynn Nichols.

16 A. Yes.

17 Q. You received a jury summons as a result of a
computer draw,

18 as it were, a random-chance selection, answered a
preliminary

19 questionnaire on qualifications, and then you received
a notice

20 to come out to the Jefferson County Fairgrounds on --

21 auditorium on September the 17th. And it was then and
there

22 that I met with you and other members of the jury panel
and

23 also introduced the people who were with me, and they
are with

24 me again and I want to introduce them again, so you
know who is

25 with us this morning.

Juror No. 959 – Voir Dire

1 We have with us as attorneys for the
Government
2 Mr. Lawrence Mackey, who's here at this first table,
and
3 Ms. Beth Wilkinson. And we're now joined by Mr.
Geoffrey
4 Mearns and Mr. James Orenstein, additional attorneys
for the
5 Government.
6 You also recall meeting Mr. Michael Tigar and
7 Mr. Ronald Woods, attorneys for Terry Lynn Nichols; and
of
8 course, Mr. Nichols was with us as the defendant in the
case.
9 And then you answered 166 questions, a long
10 questionnaire; and we appreciate your cooperation in
doing
11 that. And as I told you we would, copies of that
questionnaire
12 have been made and given to the lawyers who are here
for the
13 limited purpose of what we're doing here. We
understand that
14 we asked you some matters that are somewhat invasive of
your
15 privacy, and we attempt insofar as we can, recognizing
that
16 this is a public matter -- we're attempting to protect

your

17 privacy. That's why we're not referring to you by
name.

18 That's why we arranged for you to come and go to the
19 courthouse, so you can't be photographed for television
or any
20 of those things.

21 And in the course of this questioning, we'll
also

22 attempt to do it in a way that recognizes those
interests, as

23 well. And we're not going to ask you all these
questions over

24 again, but there are a few things that I want to ask
you to

25 expand on, a few additional questions, and then a
lawyer for

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Juror No. 959 - Voir Dire

1 each side will have an opportunity for some more
questions of

2 you. So bear with us, if you will.

3 Now, this isn't the first time that you've
been called

4 for jury service?

5 A. That's right.

6 Q. In this court, I take it, because you said at page
26 --

7 and you have your questionnaire there, I hope -- at

page 26 of

8 the questionnaire that you were on jury duty here in
the

9 1970's.

10 A. Yes.

11 Q. And you mentioned Rocky Flats and immigration.
Now, those

12 were two cases?

13 A. Yes, they were.

14 Q. And was I the judge on --

15 A. No. I believe it was Judge Kane.

16 Q. On both?

17 A. I think so.

18 Q. And the Rocky Flats had to do with a demonstration
that

19 took place on a -- a day out there when a number of
people came

20 out and blocked all of the entrances and exits to the
21 nuclear -- as it was then, the nuclear weapons plant?

22 A. Yes.

23 Q. And it was a protest with respect to the
Government's

24 operation of that plant and, essentially, people who
wanted to

25 see it shut down.

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Juror No. 959 - Voir Dire

1 A. Yes.

2 Q. And we had arranged for those people to be tried in
groups.
3 We called them at that time affinity groups because
they had
4 certain -- but you probably don't know that, but were
there
5 like ten or twelve people tried in your case?

6 A. I can't really recall. It doesn't seem like there
was a
7 big group.

8 Q. Were they there without lawyers or with a lawyer
advisor?

9 A. I believe they had lawyers. It was quite a while
ago.

10 Q. I understand. But mostly, it was relating to -- do
you
11 remember the word "trespass"?

12 A. Trespass.

13 Q. It was a trespass case?

14 A. Yes. Yes.

15 Q. And the jury returned a guilty verdict?

16 A. Yes, they did.

17 Q. And were you the foreperson of that jury?

18 A. No, I was not.

19 Q. The immigration case, what was that about? Was
that a
20 illegal reentry after being deported?

21 A. Yes.

22 Q. And was the person from Mexico or --
23 A. Yes, I believe so.
24 Q. And were you the foreperson on that jury?
25 A. No, I was not.

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Juror No. 959 - Voir Dire

1 Q. Well, it has been 20 years or so, so --
2 A. Yes.
3 Q. -- you may not remember some of the principles of
law
4 applicable or anything in particular about the case.
But you
5 recall that I gave some explanation there when you were
with
6 the other jurors before you filled out the
questionnaire about
7 the background of this case, saying some things that
probably
8 were already well-known to you, but I want to review
that so
9 that we have sort of the same foundation here of
understanding
10 before questions are asked of you. And you recall that
I
11 explained that this trial arises out of an event in
Oklahoma
12 City, Oklahoma, on April the 19th of 1995, on which day
there

13 was an explosion that destroyed a federal office
building,
14 resulting in death and injury to people in the
building; that
15 thereafter, the Government, through lawyers, filed
charges
16 against two named persons, named men, one of which was
Timothy
17 James McVeigh and the other Terry Lynn Nichols. And
then the
18 charge in the indictment referred to those two and
other
19 persons not named in the indictment as having engaged
in a
20 conspiracy or criminal agreement to bomb that building
and to
21 injure and kill people in it and that they carried --
according
22 to the allegations, carried out such a bombing. And
the
23 allegations, the charges in the indictment then include
eight
24 murder charges with -- charging the defendants with the
killing
25 of eight law enforcement agents who were in the
building and

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Juror No. 959 - Voir Dire

1 died in the explosion.
2 Also said, of course, that to these charges,
both of

thereby 3 the named defendants entered pleas of not guilty,
moved 4 creating the need for trial and that the case was then
about 5 from Oklahoma City here to Denver because of a concern
occurred, to 6 asking people in Oklahoma City, where this event
7 sit as jurors.

entered 8 And after the case was moved here to Denver, I
so that 9 an order separating the two defendants named for trial
conclusion 10 there would be separate trials based on the legal
court at 11 that it would not be fair for both of them to be in
reason 12 the same time and be judged by the same jury for the
in the 13 that there were expected to be significant differences
14 evidence as it relates to each of these persons named
15 individually.

already 16 So separate trials were ordered, and there has
in that 17 been the trial of Mr. McVeigh here; and a jury selected
that trial 18 case, considering the evidence that was received at
then 19 as it related to Mr. McVeigh, found him guilty. And
20 because of the nature of the sentencing process, the

jury

the 21 proceeded to hear another second trial, as it were, on
sentence. 22 question of punishment and recommended a death

before I 23 Now, I'm sure you probably were aware of that

it is 24 told you about it, but I want to mention that because

case 25 very important to realize here that the outcome of that

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Juror No. 959 - Voir Dire

connection 1 and nothing about that case can be considered now in

violate the 2 with the trial of Mr. Nichols because that would

that we 3 whole reason for the separate trial order. The case

page. 4 are about to try here, we're starting fresh on a clean

trial 5 And just to make it absolutely clear, I presided at the

aside 6 of the evidence relating to Mr. McVeigh, and I put that

this 7 and start anew here. I don't know what the evidence in

way. You 8 trial is going to be, and you must take it the same

9 understand?

10 A. Yes, I do.

11 Q. I also reviewed with you and others certain of the
12 fundamental principles of the criminal justice system
in the

13 United States required by the provisions of the
Constitution of

14 the United States. We refer to these sometimes as due
process

15 of law and what is required under due process of law,
and, of

16 course, it begins with a fair-minded jury. People can
come in

17 and decide according to the law and the evidence.

18 Another fundamental principle is that every
defendant,

19 no matter who he or she may be or what the charges may
be, in a

20 criminal charge in any court in the United States is
presumed

21 to be innocent of the charges made against that person;
and

22 that presumption of innocence carries through the trial
and

23 entitles that person to an acquittal or a finding of
not guilty

24 unless 12 jurors are satisfied that the evidence that
they

25 heard and saw at trial showed him to be guilty beyond a

remember 1 reasonable doubt. That's the test. And I'm sure you
here. 2 something about that, perhaps, from 20 years ago being

3 A. Yes, I do.

is 4 Q. And no person who is accused in the United States
trial. 5 required in any way to prove anything at his or her

answer 6 There is no need to call witnesses, and no defendant is
7 obligated in any way to take the witness stand and

the 8 questions or in any way to have to explain anything to

require of 9 jury. A person accused can simply remain silent and

that means, 10 the prosecution to prove the case against him. And

with the 11 of course, that it is up to the prosecutors to come in

that's 12 evidence, the witnesses, the exhibits, whatever it is

challenge that 13 being relied on. And the defendant may simply

witnesses, 14 evidence through the cross-examination of the

you 15 objections to the evidence offered, and so forth. And

lawyers 16 probably remember things about that process, too, about

judge 17 objecting to the questions of other lawyers and the

18 making rulings and so forth.

19 A. Yes, I do.

20 Q. And, you know, that is the basic process. It
applies in

21 all cases, and the presumption, of course, in the
procedure

22 apply in this case, as well. So Mr. Nichols sits with
us this

23 morning presumed to be not guilty of the charges made
against

24 him, and you accept that?

25 A. Yes, I do.

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Juror No. 959 – Voir Dire

1 Q. Do you agree with these principles of our law and
agree to

2 follow them if you were to serve on the jury?

3 A. Yes, I do.

4 Q. And of course, what it means then is at the end of
the

5 trial, when the case is given to the jury and the court
gives

6 instructions about these are the things that have to be
proved

7 to constitute the crime, if the jury, after considering
it,

8 discussing it, decides a reasonable doubt remains, the
plain

9 duty of the jury is to return a verdict of not guilty.

Do you

10 understand that?

11 A. Yes, I do.

some of

12 Q. Now, I want to visit with you a little bit about

Coloradan?

13 your answers in the questionnaire. You are a native

14 A. Yes, I am.

15 Q. And live now in the Denver area?

16 A. Littleton, actually.

17 Q. Okay.

18 A. Thank you.

It's

19 Q. Well, we count that as the Denver area out here.

38 if

20 close enough. And you made a -- we asked you on page

service, and

21 there's anything you can think of regarding your

22 you brought to our attention that you know my brother's

23 daughter?

24 A. Yes, I do.

were

25 Q. My niece named Leslie. That you were -- and she

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Juror No. 959 - Voir Dire

1 roommates in college?

2 A. Yes.

3 Q. Back in -- was it '71?

4 A. It was in the 70's. It was our second year at CU.

5 Q. Okay. And you said that you have not seen or
talked to me

6 or ever met me?

7 A. No.

8 Q. You probably met my brother, though.

9 A. Yes, I did.

10 Q. And I'm sure at that time, he probably visited you
and his

11 daughter at times, did he?

12 A. Yes, he did. Uh-huh.

13 Q. Okay. Well, you say you haven't seen her since
then.

14 A. No.

15 Q. Or kept track of it. With the indulgence of
counsel, I'll

16 just bring you up to date.

17 A. Good. Thank you.

18 Q. She -- she lives -- she's married and has one son
and lives

19 in Vermont.

20 A. Oh, great.

21 Q. And I haven't seen much of her, either, in the last
eight

22 or nine years because she seldom gets back here, but --

23 A. Well, thank you.

24 Q. And I take it, you know -- my brother and I are

quite

25 different, also. He's bigger and better looking than I
am.

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Juror No. 959 – Voir Dire

1 But is there anything from your relationship with my
brother's
2 daughter that would in any way affect your ability to
judge in
3 this case?

4 A. No.

5 Q. With me judging in the case?

6 A. No.

7 Q. All right. Well, of course, that's the kind of
thing we
8 wanted you to do, bring everything possible to our
attention,
9 and we appreciate your doing so.

10 Now, you did go to the University of Colorado?

11 A. Yes, for a couple of years.

12 Q. And then you have married?

13 A. Yes.

14 Q. And it looks like maybe you married a high school
15 classmate?

16 A. Yes, I did.

17 Q. And you have one son?

18 A. Yes, I do.

19 Q. Who is now in college?

20 A. Yes.

21 Q. And as I understand it, you are now employed as a
human --

22 in the human resources work with a -- what we'll call
an energy

23 company?

24 A. That's right.

25 Q. And you have been there quite a while, 20--some
years?

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Juror No. 959 - Voir Dire

1 A. Yes, I have.

2 Q. All in the human resources --

3 A. Basically, yeah.

4 Q. Yeah. Which is sort of like what we used to call
5 personnel.

6 A. That's right.

7 Q. And what -- what are your more specific duties in
that

8 employment?

9 A. At this point, I'm involved in coordinating a
severance

10 program for some of the employees that we're going to
have to

11 lay off.

12 Q. They are downsizing their personnel?
13 A. Yes. We're -- our presence in Denver is getting
smaller.
14 Q. And you're probably -- we're not trying to invade
any
15 company secrets here, but you're probably also
consulting with
16 some lawyers in connection with that?
17 A. Yes, I am.
18 Q. Because one has to be concerned that that's done
fairly
19 and -- and nondiscriminatorily in particular?
20 A. Yes. Yes.
21 Q. And is this the first time that you have been
involved in
22 such a reduction in size of the personnel?
23 A. No, it's not.
24 Q. So you've been through this before?
25 A. Yes, unfortunately.

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Juror No. 959 - Voir Dire

1 Q. And of course, that's the way it's been with the
extractive
2 industries --
3 A. Uh-huh.
4 Q. -- around here.

5 A. Uh-huh.

6 Q. Now, all of your work with this company has been in
this
7 area?

8 A. Yes, it has.

9 Q. By that I mean, geographically, here in Colorado.

10 A. Yes.

11 Q. Your husband, as I understand it, is -- works in
12 investments in a brokerage firm?

13 A. Yes. Municipal bonds.

14 Q. Specializing in municipal bonds. And he's done
that for
15 some time, has he?

16 A. Yes, he has.

17 Q. You mention on page 24, if you'll turn to that,
please -- I
18 just want to refer to Question 109, where you have
given a yes

19 answer. Can you tell us what you're referring to there
in a
20 general way.

21 A. Yes. It's an alcohol-related motor vehicle -- DUI.

22 Q. Yeah. DUI. And what -- not by name, but what
23 relationship?

24 A. My son and my husband.

25 Q. And at two different times or --

Juror No. 959 - Voir Dire

1 A. Oh, yeah. Yes. Of course.

2 Q. And how long ago were these incidents?

3 A. My son, I believe, was six years ago; and my
husband
4 probably ten years ago.

5 Q. And were there charges?

6 A. They were arrested. I guess. I mean --

7 Q. I mean, did that follow up with some court
appearance
8 and --

9 A. Yes.

10 Q. -- result in some --

11 A. Yes.

12 Q. -- form of fine and --

13 A. Yes.

14 Q. -- any imprisonment?

15 A. No. No imprisonment.

16 Q. Okay. Now, as I understand it, your view of that
is that
17 you thought that was just and -- and you have no
objections to
18 what happened in those incidents.

19 A. Yes.

20 Q. And you have indicated that -- on page 22, that so
far as
21 you are aware and are concerned, the criminal justice

system is

22 working well, very well.

23 A. Yes.

24 Q. That's your view today, is it?

25 A. Yes, it is.

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Juror No. 959 - Voir Dire

1 Q. And you also remember, I take it -- I'm not
suggesting you

2 remember what they were, but you remember in these
previous

3 cases that the judge gave instructions at the end of
the trial

4 to guide the jury in what it had to consider and how to
do

5 that, and the burden of proof was a part of that.

6 A. Yes.

7 Q. And you recognized on page 30 that you must follow
the

8 Court's instructions. That's part of the essentials of
the

9 system.

10 A. Yes.

11 Q. Now, we asked you some questions here about
punishment and

12 your view of the punishment of life in prison without
any

13 possibility of release and the punishment of death in

criminal

14 cases. And of course, I'm sure you probably understand
the
15 reason for us asking you that, because the nature of
the
16 charges in this case under the statutes involved make
it
17 possible that a person found guilty of such charges may
be
18 punished by life in prison -- in prison with no release
or by
19 death or some lesser punishment, but it's up to a jury
to
20 decide. So we wanted to know something about your
opinions and
21 attitudes concerning those punishments before talking
with you
22 further about the law and what would actually be
involved.

23 So on page 27, there was a kind of explanation
of the
24 preface, as it were, for the questions asked of you,
25 recognizing as it says that this would never be an
issue unless

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1 there's a guilty verdict returned.

2 A. Uh-huh.

3 Q. And that by asking questions of this nature,
there's no

already
wanted to
just
these

4 suggestion of, you know, anything other than what we've
5 talked about, the presumption of innocence. But we
6 know something about your views here, and I want to
7 briefly review with you what you wrote, and that is --
8 are your answers on page 28. Are they?

9 A. Yes. They are.

aware that
much
the
death
states that
subject
statutes.
offenses,
pretty
no right

10 Q. And tell me first -- of course, I'm sure you're
11 the issue of punishment by death is something that is
12 debated in our society, and there are differences among
13 states today. There are some states where there is no
14 penalty provided for any crime, and there are other
15 do provide for it, including Colorado under certain
16 circumstances. But we're in Federal Court now and not
17 to any state laws, and we're dealing with federal
18 And federal law does provide, for certain kinds of
19 the possibility of such sentences. And you gave us
20 short answers here. I'm not criticizing you. There's
21 or wrong answer, obviously. We're looking for your

views.

22 Is the subject of the death penalty a matter
that has
23 concerned you or that you've paid particular attention
to over
24 the years?
25 A. Well, I -- I believe it has concerned me because
it's a

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1 very strict penalty, but I --
2 Q. Of course.
3 A. And it would have to depend on the circumstances
and, you
4 know, everything involved, but -- I believe we need it.
5 Q. And, you know, has it been something that you've
talked
6 about with your husband or your son or friends over the
years
7 in connection with any particular trial or event or
book that
8 you read or movie that you saw or anything like that?
9 A. No. I really haven't discussed it that much with
anyone.
10 Q. Okay. And you say here, with respect to it, under
B, what
11 you've just said. It depends on the crime and all the
12 circumstances.

13 A. Yes.

14 Q. And then you -- and C and D, put death down. I
assume you

15 mean the death of a victim, the person affected by the
crime.

16 A. Right. Yes, I did.

17 Q. So you're talking about a murder; is that right?

18 A. Yes.

19 Q. I mean, as murder is commonly known, without going
into

20 definitions, but -- and of course, under the laws that
we talk

21 about and really under all of the laws in the United
States,

22 there's no death penalty unless there is a killing, an
23 intentional killing of someone.

24 So, you know, that's a class of crime that has
to be

25 involved before we even talk about such punishment.
But let me

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Juror No. 959 - Voir Dire

1 review with you what the process is and what the law is
in a

2 general way and then ask you a little more about it.

3 As I said, the question of punishment is not a
part of

4 the trial, itself. That is the trial of the evidence,
whether

beyond 5 it's sufficient to establish the elements of the crimes
and 6 a reasonable doubt. If not, the verdict is not guilty
verdict is 7 that's the end of it. And in the case where the
involve 8 guilty, then there's more that happens, but it doesn't
court years 9 the jury so that in the cases where you sat in this
And you 10 ago, it was up to the judge to decide the punishment.
don't 11 probably remember an instruction along the lines that
That's the 12 think about the punishment. That's not your job.
talking 13 judge's job, and so it is in most cases where we're not
14 about such penalties as we are concerned with here.
punishment, the 15 So in a case that involves some lesser
done its 16 jury brings in its verdict and then is discharged, has
before a 17 job, and then it's up to the court to decide. And
another 18 court -- a judge makes a decision like that, there's
information, 19 hearing, and a lot more is gathered together as
the 20 both with respect to the circumstances of the offense,
defendant, the 21 crime involved, and also, a great deal about the

about 22 person found guilty. And that includes a lot of things
ask 23 that person's life, some of the same kinds of things we
that 24 about your background, but in more detail with where
relationships 25 person was born and raised, what the family
have

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work 1 been, what his or her marriage relationships have been,
that 2 history, military service, you know, all of the things
person from 3 occur in human life and that really distinguish one
and we 4 all others, because our life stories are all different
information then 5 are different people. And it is all of this
hears from 6 having been gathered that is presented, and a judge
a 7 both sides, prosecution and the defense, and then makes
combination 8 decision that a particular sentence is the appropriate
is the 9 punishment for the crime and the person. So it's a
10 of those things. It's not just a matter of, well, this
11 crime, this is the sentence. Otherwise, there would be

no

12 reason for the hearing and no reason to gather such
13 information.

14 Now, it is the same with respect to these
punishments
15 except that we do not have judges in the Federal Court
make

16 life-and-death decisions. That is a matter we ask the
jury to

17 decide. And it is done in this way: That the same
jurors who

18 have decided the question of whether the evidence was
19 sufficient and having reached a verdict of guilty now
must hear

20 more, and there really is a second or subsequent trial
on the

21 question of what is the appropriate sentence, the just
22 sentence. And in that trial or hearing, both sides
present

23 information again, witnesses, exhibits, and it is from
the

24 Government expected that they would come in with
information

25 about the circumstances of the crime and its effects to
suggest

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1 that the death sentence is the just sentence in the
case.

2 The defense will be expected to present all
the same
3 kind of information about the individual that I
mentioned in
4 connection with judge sentencing. So it's the person's
life
5 story and more than that. Also, it includes attitudes,
6 opinions, beliefs. It can include a difference in the
role in
7 the offense, because even in cases where more than one
person
8 was involved in the same criminal conduct, the
sentences may
9 well be different because of the differences in these
factors
10 that are presented at the sentencing case -- sentencing
trial.
11 You followed me very carefully, I know.
12 A. Yes. Yes.
13 Q. And then at the end of that second hearing or
trial, the
14 court also gives instructions, and these instructions
explain
15 to the jury, well, this is what you've heard and these
are the
16 things based on what you've heard that you may consider
as
17 aggravating factors or circumstances, things that would
tend to
18 support a decision for the death sentence. These are
the
19 things that you've heard as mitigating factors. These
are the

particular 20 things that suggest that, despite the crime, this

21 individual does not deserve to be put to death. You

22 understand?

23 A. Yes, I do.

may 24 Q. And then the court, having explained what the jury

analysis 25 consider, would suggest some questions to be asked in

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of a 1 of that. But these questions don't amount to some kind

a 2 formula or equation. It isn't mathematics here. It's

beings 3 question of human judgment and the judgment of 12 human

4 about another human being.

jury then 5 And as I said earlier, the choices that the

possibility 6 has, the sentencing jury, is life in prison with no

the jury 7 of release -- it's truly life in prison -- death, or

those two 8 can decide, well, it should be something less than

9 and turn it back to the judge to decide. Understand?

10 A. Yes, I do.

11 Q. Any question about the explanation I've given?
12 A. No.
13 Q. Now, with that explanation in mind and considering
your own
14 views and opinions and recognizing that what happens
here in
15 the end is that each juror has to make a judgment that
is, in a
16 sense, a moral judgment about another life, another
human
17 being -- so with this explanation, do you think that
you will
18 be able, if you were to serve on the jury and there's a
-- a
19 guilty verdict, to make a decision about whether a
defendant
20 lives or dies on his personal background and
characteristics
21 and all of these individual circumstances, as well as
the
22 circumstances of the crime?
23 A. Yes. It would be very difficult, but yes, I could
do it.
24 Q. And when you say "very difficult," are you
referring to the
25 kind of question presented?

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Juror No. 959 - Voir Dire

1 A. Just the decision that I'd have to make would be
very

2 difficult, but --

3 Q. Yeah.

4 A. -- I could do it.

5 Q. It is a very heavy responsibility --

6 A. Exactly.

7 Q. -- to decide whether another person lives or dies?

8 A. Yes.

9 Q. Is that what you're saying?

10 A. That's exactly what I'm saying.

11 Q. And again, the question is can you make that
decision open

12 to all of these things that I suggest may come in and
-- and we

13 can't tell you in advance what factors would be
presented just

14 as we can't tell you in advance what evidence may be
presented

15 at the trial, but you have to be open --

16 A. Yes.

17 Q. -- to it and consider these things in arriving at a

18 decision.

19 A. Yes.

20 Q. And you tell us you can do that?

21 A. I can do that.

22 Q. All right.

23 THE COURT: We have some questions from
counsel in the

24 case, one to a side.

25 So Ms. Wilkinson.

3290

Juror No. 959 – Voir Dire

1 MS. WILKINSON: Thank you, your Honor.

2 VOIR DIRE EXAMINATION

3 BY MS. WILKINSON:

4 Q. Good morning, ma'am.

5 A. Hi.

6 Q. As his Honor told you, my name is Beth Wilkinson,
and I'm

7 one of the prosecutors who will be presenting the
evidence

8 against Mr. Nichols in this case.

9 I'd like to ask you a few more questions if
you

10 wouldn't mind. And I'd -- if we could start by going
back to

11 your work, because as I was listening to you and your
Honor

12 discuss the responsibilities of a juror, if you were to
go to a

13 penalty phase where you'd have to hear all that
information

14 about another human being and about the crime, I
thought maybe

15 some of the things that you do in your work might be

16 analogous -- analogous. I realize it's not exactly the

same,

I want
about
true?

17 but it sounds like from what you do -- and that's what
18 to ask you about -- that you sometimes make decisions
19 people after taking in a lot of information. Is that

20 A. I basically give advice and counsel --

21 Q. Okay.

22 A. -- to team leaders about employees.

23 Q. And what type of issues do you normally deal with?

getting
issues.

24 A. Personnel issues, discipline issues, people not
25 along, you know. Just your basic work-environment-type

3291

Juror No. 959 - Voir Dire

first have
the
you can?

1 Q. And when you deal with discipline issues, do you
2 to hear from the team leader about what's happened in
3 situation and basically gather as much information as

4 A. Exactly. You have to hear from everyone.

you may
what's

5 Q. All right. And when you go into those situations
6 sometimes, do you sometimes have some information where
7 have either a preconceived notion or some idea of

8 happened, but not all the information?

9 A. Sometimes, you have some preconceived notions but
you need

10 to listen to everyone, so --

11 Q. So is it fair to say that you often have to put
those aside

12 and listen to everything before you make a decision?

13 A. Yes.

14 Q. I ask you that because that's a bit of what his
Honor is

15 asking you could you do in a case like this. You know,
because

16 we have these two phases, one would be the guilt phase
and

17 another would be the penalty phase, that if you and
your fellow

18 jurors have determined that the Government proved its
case

19 beyond a reasonable doubt and you found a defendant
guilty,

20 you'd have some of the information. Right? You'd know
he had

21 committed the crime?

22 A. Yes.

23 Q. But you wouldn't have all the information?

24 A. Yes.

25 Q. You wouldn't know what type of person he was and
all the

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1 other factors that his Honor told you we can't tell you
what
2 they could be. And what I want to know from you, can
you keep
3 an open mind in that second stage, even though you know
some of
4 the information, and listen to everything before you
decide
5 that very important decision that you and your Honor --

6 A. Yes, I believe so.

7 Q. -- were talking -- when you answered the
questionnaire, on

8 those questions on page -- I think it was 28, I think
you

9 basically ended up telling us your views were the same
as the

10 law? Right? Because you said it depends on the crime
and all

11 the circumstances?

12 A. Yes.

13 Q. Did you understand from his Honor that while that
is the

14 law in Federal Court, that means there's no automatic
death

15 penalty in any case?

16 A. Yes.

17 Q. No matter how horrible the crime is, no matter how
many

18 horrible factors there are, you still have to consider

all the

19 circumstances?

20 A. Yes.

21 Q. And can you accept that as a juror?

22 A. Yes, I can.

had

23 Q. Now, you also told us in the questionnaire that you

24 heard about the McVeigh verdict; is that right?

25 A. Yes.

3293

Juror No. 959 - Voir Dire

you

1 Q. And that you haven't followed any publicity since

2 received your summons?

3 A. No, I have not.

4 Q. In accordance with his Honor's instructions; right?

5 A. No.

Oklahoma

6 Q. But did you hear some of the publicity about the

the

7 City bombing early on, either right around the time of

8 bombing or anytime thereafter?

9 A. Just right around the bombing.

saw

10 Q. And do you recall the images or the things that you

11 that kind of are in your memory?

going 12 A. I recall the picture of the Murrah Building just

13 down.

14 Q. Do you remember anything else about the coverage
that first

15 few days?

16 A. Just the interviews with the firemen. That's about
all.

17 Q. Was there anything specifically that you focused on
or was

18 of particular interest to you?

19 A. No.

20 Q. You didn't follow the investigation then, did you?

21 A. No.

22 Q. You don't know -- this is not a test. You look --
don't

23 worry, we're not -- we're -- that's not an issue. We
just want

24 to know what information you know; and I think from
what you've

25 told us, whatever information you have, you can set
aside and

3294

Juror No. 959 - Voir Dire

1 come in with an open mind?

2 A. Yes, I can.

3 Q. Is that true? Do you know anything about Mr.
Nichols?

4 A. Only what I have learned since being involved in
this.

5 Q. What his Honor told you about the charges --

6 A. Yes.

7 Q. -- out at Jefferson County?

8 A. Yes.

9 Q. And you don't know anything about his background,
do you?

10 A. No.

11 Q. And do you know anything about how he came into
federal

12 custody?

13 A. No.

14 Q. So you're not going to have any of those issues
that you'd

15 have to set aside --

16 A. No.

17 Q. -- before serving as a juror? Now, you did tell us
on page

18 31, if you could take a look at that, Question 133,
that you

19 heard one comment by a public official. You see that
there at

20 the top of the page?

21 A. Uh-huh. Yes, I do.

22 Q. You said you heard President Clinton say action
would be

23 taken.

24 A. I remember an interview that they had with Clinton
probably

taken. 25 right after the situation, and he said action would be

3295

Juror No. 959 - Voir Dire

that 1 That -- that was all I could really remember. I guess
2 stuck with me.

3 Q. You don't remember any other details --

4 A. No.

you 5 Q. -- about anything he might have said or -- and do

case? 6 remember the Attorney General saying anything about the

7 A. No.

variety 8 Q. You told us that you like to read and you watch a

9 of news programs.

10 A. Uh-huh.

you 11 Q. Some like "Dateline", "20/20" and "60 Minutes." Do

bombing, 12 recall seeing anything about the case either about the

television 13 itself, or about Mr. McVeigh or Mr. Nichols on those

14 shows?

remember 15 A. I'm sure that I've watched them, but I -- I can't

16 anything specifically from them.

17 Q. Nothing that stayed with you?

18 A. No. Huh-uh.

19 Q. And you also said you read the Rocky Mountain News?

I used

20 A. As -- I did. I haven't been getting it lately, but

21 to read the Rocky Mountain News.

22 Q. Before you received instructions from his Honor?

23 A. Yes.

or just

24 Q. Have you now avoided reading the paper altogether

25 the information about this case?

3296

Juror No. 959 - Voir Dire

because I'm 1 A. I read the Sunday paper now, and it's partially

2 so busy. I just --

3 Q. Other things to do?

4 A. Yeah.

you

5 Q. Do you remember before you were first summoned or

you read

6 received your summons in the jury (sic), anything that

7 in the Rocky Mountain News about this case?

8 A. No. I'm sure I glanced at it, but I don't remember

9 anything specific.

10 Q. So there's been nothing about this case that you've

kind of

11 followed along that had -- that you'd retain in your
memory

12 about specifics?

13 A. I feel rather guilty that I'm not keeping up with
the news.

14 Q. Please don't take our questions that way. We're
not -- you

15 know, we're looking just for people who can be fair
and, if

16 they have followed some of that, can put it out of
their mind;

17 and if they can't, then that's one less thing that you
have to

18 do --

19 A. Okay.

20 Q. -- if you're going to be an impartial juror. So
that's the

21 only reason we're asking these type of questions.

22 A. Right.

23 Q. When you served on those two juries back in the
1970's, did

24 you have any trouble following the judge's instructions
as to

25 the law when you and your fellow jurors were
deliberating?

3297

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1 A. No.

from the 2 Q. And did you find that useful to have the guidance

3 court as to what you could and could not consider?

4 A. Yes.

5 Q. Do you recall in those cases whether the defendants
6 testified? I know it was a while back.

Flats, 7 A. I believe in the -- the issue involving the Rocky
8 they did testify.

9 Q. And did you understand from his Honor that if some
10 defendant doesn't testify, obviously, that's his right?

11 A. Right.

12 Q. It's a right that's been a cornerstone of our
system and
13 that you can't consider that in any way?

14 A. Right.

15 Q. We also asked you a question about accomplice
testimony,
16 and that's on page 27, if you could turn to that,
please. And

17 you said there that your opinion would be that it
depends on
18 the case. Do you see that up there at the top?

19 A. Yes. Uh-huh.

20 Q. Can you give me any more information as to what you
meant
21 by that?

22 A. I think you just probably have to weigh all of the

on that 23 information, so I couldn't give you a real good answer

24 question because I didn't have all the information.

the 25 Q. So that's similar to what you were telling us about

3298

Juror No. 959 - Voir Dire

hypothetical? 1 death penalty; that again, you couldn't answer a

2 A. Right.

3 Q. Because you'd need to hear all the facts?

4 A. Yes.

5 Q. And all the circumstances and --

6 A. Yes.

thing 7 Q. -- get as much information as you could? One last

8 I'd like to ask you about, since you are in the unusual

your 9 position of dealing with lawyers quite frequently for

about 10 work: Do you have any impressions or general opinions

11 lawyers?

12 A. No. I'm -- no.

13 Q. We're not going to tell them if you --

14 A. Some of my best friends are lawyers.

much for 15 MS. WILKINSON: All right. Thank you, very

16 answering my questions.

17 JUROR: Thanks.

18 THE COURT: Mr. Woods.

19 MR. WOODS: Thank you, your Honor.

20 VOIR DIRE EXAMINATION

21 BY MR. WOODS:

22 Q. Good morning.

23 A. Good morning.

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

Along

25 with Mike Tigar, we were asked by the Federal Court in

Oklahoma

3299

Juror No. 959 – Voir Dire

1 City two-and-a-half years ago to represent Terry

Nichols

2 shortly after the Government filed charges accusing him

of

3 being responsible for the Oklahoma City bombing.

4 The fact that he has appointed lawyers, could

not

5 afford his own lawyer, would that work as a
disadvantage to him

6 with you if you were on the jury?

7 A. No.

8 Q. Okay. In the two prior cases that you sat as a

juror in

the Rocky 9 the Federal Court here, do you know whether or not in

they 10 Flats case, they had court-appointed lawyers or were

11 retained lawyers?

12 A. I -- I can't remember.

13 Q. Okay.

14 A. I don't know.

or not it 15 Q. And in the immigration case, did you know whether

16 was a retained lawyer or court-appointed lawyer?

17 A. I don't know.

help me 18 Q. Okay. I'm not from around these parts. Can you

case that 19 out on the Rocky Flats case? Was that a high-profile

on the 20 was in the newspaper a lot before you got down to serve

21 jury?

that 22 A. I think it probably was high-profile, at least at

23 point.

involved 24 Q. Okay. And you mentioned to the Court that it

25 trespass?

3300

Juror No. 959 - Voir Dire

1 A. Yes. The -- they were sitting on the tracks of the

2 railroad, and so that's what we had to judge on,
whether or not

3 they were trespassing.

4 Q. Okay. Can you help me out as to what do you recall
about

5 what the defense was as to what the -- what the lawyers
and the

6 defendants were putting forth as the defense in the
case?

7 A. I can't really remember. It seemed to me like they
were

8 probably talking more about the reasons why they were
sitting

9 on the track rather than the fact that they were
sitting on the

10 track.

11 Q. Okay. Okay. I take it this was in the 70's, early
70's,

12 and it was more of a protest?

13 A. Yes.

14 Q. If that would be a characterization of it?

15 A. Yes.

16 Q. What about the immigration case? You mentioned
that you

17 thought it was somebody from Mexico who had been
deported and

18 then came back into the country.

19 A. Yes. And that's about all I can remember on it.
And I

20 think they did deport him again.

time? 21 Q. Okay. Can you recall what the defense was at that

22 A. No, I'm sorry.

23 Q. Okay. I appreciate that.

made 24 I want to make it clear to you and the Court

about the 25 clear to you, also -- but there's been so much talk

3301

Juror No. 959 - Voir Dire

1 punishment stage of this case that sometimes we
overlook the

2 first stage of the case. Mr. Tigar and I are not
conceding

3 that we're going to get to a punishment stage in this
case.

4 The Government has a theory that Mr. Nichols is
responsible for

5 that bombing. We disagree with that theory. And when
they

6 call all of their witnesses to the witness stand, we're
going

7 to be cross-examining those witnesses.

8 And as the Judge told you, we don't have to
call our

9 own witnesses, but we are. We're going to call a
number of

10 witnesses that will also contradict the Government's
theory of

11 the case. After all the evidence is in, then you

realize what

12 your role would be is to vote on the guilt or innocence
13 involving the case that the Government offers into
evidence

14 against Mr. Nichols. Even though we're all talking
about this

15 punishment stage, we're certainly not skipping over it,
nor do

16 we concede that we're going to have a punishment stage.
So I

17 just want to make that clear to you and make sure you
18 understand that that is the status of this case.

19 A. Yes. I understand.

20 Q. And the reason we have to talk about punishment now
is

21 because in the event there is a guilty verdict, we just
can't

22 stop and bring you all back in and talk about what your
23 feelings are on penalty ranges. So that's why we have
to do it

24 now before the trial. But guilt or innocence certainly
has not

25 been decided, contrary to what the press says.

3302

Juror No. 959 – Voir Dire

1 A. Yes.

2 Q. Okay. Now, you mentioned in your questionnaire and
the

of
3 prosecutor mentioned it to you also, about impressions
4 lawyers. In the questionnaire, you've read the Grisham
books.

5 Have you read all of them, some of them --
6 A. Just some of them. I can't even tell you which
ones. It
7 just passes time.

8 Q. Right. They all have a similar name, but they all
involve
9 lawyers. He's a lawyer, and all of his books involve
lawyers.

10 From those books, have you come away with any
impression about
11 prosecutors in the criminal justice system or defense
lawyers
12 in the criminal justice system?

13 A. No. I mean, they are just books.

14 Q. Okay. Just a good read?

15 A. Yeah.

16 Q. Okay. You mentioned, also, in your questionnaire
on the
17 question about the Branch Davidians and the Waco
situation --
18 and you checked off that it could have been handled
better by
19 both sides, I believe, is sort of the nature of your --
both
20 parties should have handled it better, I believe, was
your
21 response. Can you expand on that a little bit about
what you

22 mean about that?
23 A. I really don't know what they could have done
better, but
24 it does appear that there were mistakes on both sides.
Not
25 listening too much to all the press, but I think they
could

3303

Juror No. 959 - Voir Dire

1 have -- both sides could have tried a little harder to
make it

2 work.

3 Q. Okay.

4 A. Just a general impression.

5 Q. All right. Did you follow the news event of it
when it

6 happened in February of '93, when the ATF had the
original raid

7 on the compound?

8 A. I can remember some of that from the news.

9 Q. Okay. Did you have any opinion one way or the
other about

10 the way the Government handled that initial raid on the
11 compound?

12 A. No. I didn't have enough information.

13 Q. And then 51 days later, they had the event that
resulted in

you're 14 the fire and deaths of all the people. Is that what
by both 15 talking about, that it could have been handled better
16 sides at that time?
17 A. Yeah. The whole thing. Uh-huh.
that the 18 Q. Okay. You mentioned also in your questionnaire
something 19 firearms laws are not working and that we need to do
Do you 20 about that. There's a section there on firearms laws.
about 21 have any impressions or opinions one way or the other
shows or in 22 people that are involved in the sale or the -- gun
23 the business of selling and buying firearms?
that too 24 A. No. I think what I was saying is it just appears
any real 25 many people have easy access to guns, but I don't have

3304

Juror No. 959 - Voir Dire

1 strong opinions either way.
2 Q. Okay.
3 A. It just seems there's too many.
they 4 Q. I take it you wouldn't hold it against somebody if
5 were involved in the business of buying and selling

firearms at

6 gun shows?

7 A. No.

8 Q. Okay. On the publicity issue, you've indicated
that you

9 like to watch the news programs, "Dateline," "20/20,"
"60

10 Minutes"; and it appears that there's a different news
story

11 every night now during the week similar to "60
Minutes."

12 MR. MACKEY: Judge. Objection to the
insertion of

13 facts.

14 THE COURT: Overruled. Go ahead.

15 BY MR. WOODS:

16 Q. Assertion of facts. Okay. From those news shows,
do you

17 recall any specifics of what you've seen about the
case?

18 A. No.

19 Q. Do you recall from what you've seen, read, or heard
about

20 the case how many people were killed in the bombing?

21 A. I'm sure that I did know that at one time. I can't
22 remember the exact number right now.

23 Q. And again, as -- as the prosecutor said, we're not
trying

24 to test you. And as the Judge said, there are no right
or

25 wrong answers, there are only truthful answers; and
we're just

3305

Juror No. 959 – Voir Dire

1 trying to see what your feelings are and what your
knowledge is
2 before going into the case. Do you recall how the bomb
was
3 placed at the building?

4 A. In a van or something out in front is what I can
recall.

5 Q. Okay. Do you recall what the bomb was made of,
what the
6 allegations were?

7 A. No.

8 Q. Okay. Do you recall whether or not there were any
children
9 killed in the bombing?

10 A. Yes.

11 Q. And do you recall what the reason for that was?
Children
12 involved in a bombing of a federal building?

13 A. I believe there was a nursery.

14 Q. Okay. Do you recall approximately how many
children were
15 killed?

16 A. No.

17 Q. Okay. Do you recall seeing the images on

television during

18 that first several days of -- of children being carried
out of

19 the building or the rescue workers talking about the
children?

20 A. Yes.

21 Q. Okay. If you were chosen on the jury, I'm sure you
can

22 imagine that there will be testimony and photographs
that are

23 going to be very emotional, very sad, very heart-
wrenching.

24 And that's only natural that everybody will react to
that in

25 the same way, emotional and sadness. My question to
you is can

3306

Juror No. 959 - Voir Dire

1 you separate that -- everybody's going to have to look
at it

2 and sit, but can you separate that and then at the end
look

3 carefully at what the Government has offered into
evidence to

4 show that Terry Nichols was responsible for that
bombing

5 without letting the emotion interfere and enter into
your

6 deliberations?

7 A. Yes, I believe I can.

somewhat 8 Q. Okay. And would you agree that that's going to be

9 difficult to do?

10 A. Yes.

through 11 Q. Okay. Now, you mentioned to the prosecutor that

you've 12 your work in human resources at the large company, that

you have 13 had to make similar decisions, not to this case, but

misconduct 14 to look at situations where people have engaged in

assume, 15 and make a recommendation one way or the other to, I

decisions. 16 people who have the authority to make the firing

17 A. Yes.

you make 18 Q. Okay. Did -- is your recommendation -- I mean, do

recommendation 19 sort of an initial determination and then make a

somebody 20 to the person or do you just set out the facts and let

21 else make a recommendation?

would 22 A. We will discuss the facts and talk about what I

give them 23 recommend. They make the final decision, but I -- I

24 input.

25 Q. And you make an initial recommendation?

Juror No. 959 - Voir Dire

1 A. Yes.

2 Q. Okay. Are there some issues of misconduct, such
egregious

3 conduct, that is such that you set aside what the
personal

4 circumstances are of -- of the employee, if it's theft
or if

5 it's conduct that is so outrageous? Did you ever set
aside the

6 personal circumstances of the defendant and say because
of the

7 conduct, we've just got to do that?

8 A. I haven't had a situation like that. Usually, you
do take

9 in all sides of it, but I haven't had any --

10 Q. You haven't had any instances where there's been
actual

11 illegal conduct?

12 A. We've had some illegal conduct, but the penalty or
the --

13 you know, when we talk to the employee, we take in all
the

14 facts.

15 Q. Okay. Okay. Now, if you would, I'd like to --
well, still

16 on the publicity issue, you mentioned that you
understood that

17 the bomb was delivered there in a van. Do you recall

how

18 Mr. McVeigh was arrested from what you've seen, read,
or heard?

19 A. No.

20 Q. Okay. And you do not recall anything about how Mr.
Nichols

21 initiated contact with the federal authorities?

22 A. No.

23 Q. Okay. If you would, turn to page 28 on your
questionnaire.

24 When you got summoned out to the fairgrounds, did --
you

25 understood it was concerning the Terry Nichols case at
that

3308

Juror No. 959 - Voir Dire

1 time, the summons had told you that; is that correct?

2 A. Yes. That's correct.

3 Q. And did you anticipate that you'd be asked
questions about

4 the death penalty?

5 A. I wasn't sure what I would be asked at that point.

6 Q. Okay. At that point, you were aware of the verdict
against

7 Mr. McVeigh?

8 A. Yes, I was.

9 Q. That there had been a death penalty verdict?

10 A. Yes.

11 Q. And the questionnaire asked you in a hypothetical
manner if

12 you had the power to write the laws as to the death
penalty or

13 life imprisonment and asked you these four questions.
And I'd

14 like to go to C and D. And the questionnaire said, "In
what

15 kind of cases is it appropriate, if ever, to impose the
16 punishment of life in prison without the possibility of
ever

17 being released?"

18 And you wrote, "Death."

19 And then in D, "In what kind of cases is it
20 appropriate, if ever, to impose the punishment of
death?"

21 And you wrote, "Death."

22 Can you distinguish -- can you expand a little
bit on

23 that and make the distinction between life imprisonment
and the

24 death penalty on these two answers since you list death
as

25 both? What kind of cases are you speaking of in C,
death cases

3309

Juror No. 959 - Voir Dire

1 that would be appropriate for life imprisonment?

not
seem to
know,
to get
would have

2 A. I guess it would -- I can't really say since I'm
3 involved in any of the cases, but it would -- it would
4 me that they would have to be very heinous crimes. You
5 that would involve someone's death is what I was trying
6 across there without verbalizing too much on it. It
7 to involve a -- the taking of a life.

being

8 Q. All right. And that's for the appropriate penalty
9 life in prison without release.

10 A. Right.

11 Q. And you understand from the Judge that's what we're
talking
12 about when we talk about life in prison, there is no
release in
13 the federal system?

14 A. Right.

15 Q. Okay. Now, can you tell me then what kind of cases
you're
16 talking about in D where it says, "What kind of cases
is it
17 appropriate, if ever, to impose the punishment of
death?"

18 A. I would say the same type of cases. I don't know
of any of
19 the circumstances of any of these things, so it's hard
for me

20 to say.

21 Q. Okay. Well, is there a distinction in your mind,
then,

22 perhaps the more egregious cases would be those
resulting for

23 the death penalty?

24 A. Yes.

25 Q. More extreme?

3310

Juror No. 959 - Voir Dire

1 A. That's what I would think, yes.

2 Q. Now, by "extreme," do you mean more than one death;
where a

3 mass murder is committed?

4 MR. MACKEY: Objection, Judge.

5 THE COURT: Sustained.

6 BY MR. WOODS:

7 Q. You heard the Judge talk to you about the penalty
stage

8 where there would be aggravating and mitigating
circumstances

9 offered into evidence at the penalty stage if we get
there, and

10 you mentioned that you would consider all the
circumstances.

11 Can you tell me what you mean by "all the
circumstances"?

12 A. We would have to consider everything that was

brought forth

13 before you made any decision.

14 Q. All right. And what did you understand the Court
to mean

15 when it talked about mitigating circumstances?

16 A. Issues that may be related to why something
happened.

17 Q. All right. As to the facts of the case?

18 A. Right.

19 Q. Okay. Did you -- did you understand anything else
about

20 mitigating circumstances, what that could mean?

21 A. No. Not without hearing anymore. I mean, I just
realize

22 you have to consider everything.

23 Q. Okay. And by "everything," do you mean the facts
of the

24 crime?

25 MR. MACKEY: Objection, Judge.

3311

Juror No. 959 - Voir Dire

1 THE COURT: Sustained. I think that's an
unfair

2 question.

3 MR. WOODS: All right. I apologize.

4 BY MR. WOODS:

5 Q. Have you been reading about the execution of Gary

Davis in

6 the last several weeks in the Rocky Mountain News?
They have

7 had pro and con articles as to the death penalty.

8 A. No. I haven't been reading it.

9 Q. Okay. You mentioned that you believe the death
penalty is

10 an appropriate punishment in some cases. Can you give
me an

11 idea of when you first began to think about the death
penalty

12 and when you believe that it is an appropriate
punishment in

13 certain cases?

14 A. I haven't thought about the death penalty very much
until,

15 you know, you have to fill out a questionnaire like
this. And

16 I can't tell you exactly what cases I think it would be
17 appropriate. I haven't been involved in any up till
now.

18 Q. Okay. Did you feel that it was appropriate in the
Gary

19 Davis case?

20 A. I don't know. I didn't follow that case.

21 Q. Okay. The Tim McVeigh case, did you feel that that
was the

22 appropriate punishment in the McVeigh case?

23 A. I was not involved in that jury. I assume they
made the

24 right decision.

25 Q. Okay.

3312

Juror No. 959 - Voir Dire

1 A. But --

2 Q. Did you follow the O. J. Simpson case, the
publicity two

3 years ago, I guess, when it was going on?

4 A. Tried not to.

5 Q. Most -- most did. But it was hard to avoid. Did
you have

6 any impression about the way that case was handled?

7 A. No.

8 Q. Did you have any opinion as to the verdict?

9 A. No.

10 Q. Were you aware of whether or not the state was
seeking the

11 death penalty on Mr. McVeigh before they went into it
-- at the

12 start of the trial? Do you recall one way or the other
whether

13 the state was seeking the death penalty?

14 MR. MACKEY: Objection.

15 THE COURT: As to Mr. McVeigh, did you ask?

16 MR. WOODS: As to Mr. Simpson. I'm sorry.

17 THE COURT: I thought you misspoke.

18 BY MR. WOODS:

19 Q. As to Mr. Simpson?
20 A. No.
21 Q. Okay. In a hypothetical case where there's been a
jury
22 finding of a defendant guilty of premeditated murder of
several
23 individuals, more than one, do you feel that there is
an
24 appropriate verdict to assign to that particular crime
if you
25 were on the jury, considering all the circumstances
that would

3313

Juror No. 959 – Voir Dire

1 be offered into evidence by both sides?
2 MR. MACKEY: Objection.
3 THE COURT: Overruled.
4 Do you understand the question?
5 JUROR: You're asking me if I would go along
with the
6 verdict?
7 BY MR. WOODS:
8 Q. No, ma'am. I'm asking you if there is a
hypothetical case,
9 not this one, but a hypothetical case, where the jury
has found
10 a defendant guilty of premeditated, deliberate murder
of more

11 than one person, do you feel that there is an
appropriate
12 verdict, considering all the circumstances that would
be
13 offered into evidence -- do you feel that there's a
certain
14 appropriate verdict just for that offense but you've
been on
15 the jury and you've considered all the circumstances
offered by
16 both sides?

17 MR. MACKEY: Same objection.

18 THE COURT: Well, yeah. I think that question
is
19 internally inconsistent.

20 MR. WOODS: Okay. Let me rephrase it then.

21 THE COURT: All right.

22 BY MR. WOODS:

23 Q. In a situation where a jury has found a defendant
guilty of
24 premeditated murder of more than one individual, do you
feel
25 that there is an appropriate verdict for killing more
than one

3314

Juror No. 959 - Voir Dire

1 person after you've considered all the circumstances?

2 THE COURT: Well, that's the same question,

really,

3 Mr. Woods. I believe you're asking her whether she
thinks

4 there's an appropriate verdict regardless of the
circumstances,

5 mitigating and so forth.

6 MR. WOODS: I will ask it that way.

7 THE COURT: All right.

8 BY MR. WOODS:

9 Q. Do you feel that there's an appropriate verdict
where a

10 defendant has been found guilty after you've listened
to all

11 the circumstances, both sides, but regardless of the

12 circumstance that you heard about the defendant? Do
you think

13 that there is a certain appropriate verdict that should
be

14 assessed?

15 A. I don't think that there could be an appropriate
verdict.

16 I think you -- they will all have different situations
and

17 different circumstances.

18 Q. And the nature of the crime is just one of the

19 circumstances that you're mentioning?

20 A. That would be a major part of it, but yes.

21 Q. And would that major part, depending if it were
multiple

22 people being murdered -- would that influence your

decision or

23 affect your decision that you would give more weight to
that
24 than to the mitigating factors that would be offered
into
25 evidence?

3315

Juror No. 959 – Voir Dire

1 MR. MACKEY: Excuse me. Objection.

2 THE COURT: Sustained.

3 BY MR. WOODS:

4 Q. When you say that the nature of the crime would be
the
5 major part, what do you mean by that?

6 A. The crime, itself, you would have to take into
7 consideration.

8 Q. And would it be the major consideration?

9 MR. MACKEY: Objection.

10 THE COURT: Sustained. It's become
argumentative,
11 Mr. Woods.

12 MR. WOODS: Yes, your Honor.

13 BY MR. WOODS:

14 Q. If you're chosen on the jury, can you look Terry
Nichols in
15 the eye and say that you will give him a fair trial?

16 A. Yes, I can.
17 Q. And will you be in a position where you will look
at all
18 the circumstances that are offered into evidence, if we
get to
19 a penalty stage -- will look at all the circumstances
including
20 Mr. Nichols' personal background before making any
decision in
21 this case?

22 A. Yes, I can.

23 MR. WOODS: All right. Thank you.

24 THE COURT: Well, we're -- we've completed the
25 questions, so you're going to be free to leave after
all this

3316

1 time. And once again, we appreciate the time that
you've spent
2 with us and your efforts in answering all of these
questions.

3 But I can't answer your question of will I be on the
jury or

4 your question of when will I know. Please bear with
us.

5 There's going to be a continuing period of uncertainty
as to

6 who will serve on the jury. We're going to be talking
to a

bear with 7 good many people, and then choices will be made. So
8 us, if you will.

9 And as you leave now, if you have any -- you
know, if

10 you get called out of town on some emergency or
something like

11 that, you have the number to call to let us know about
your

12 situation. And we will let you know as soon as we can.
And in

13 the meantime, of course, you must recognize that you
may very

14 well have the responsibility for deciding in this case
as a

15 member of this jury, so conduct yourself accordingly.

16 JUROR: Yes, I will.

17 THE COURT: You're excused for now.

18 JUROR: Thank you.

19 THE COURT: 560.

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

21 take the oath from the clerk, please.

22 (Juror No. 560 affirmed.)

23 THE COURTROOM DEPUTY: Thank you.

24 THE COURT: Please be seated there in the
chair by the

25 microphone.

Juror No. 560 – Voir Dire

1 VOIR DIRE EXAMINATION

2 BY THE COURT:

United

3 Q. And you understand the case now on trial is the
4 States against Terry Lynn Nichols?

5 A. Yes, sir.

mail,

6 Q. And that some time back, you got a summons in the
7 notifying you that you had been selected by chance as

one who

8 may serve on the jury in this case; and we asked you to
9 a questionnaire, and you did that; right?

return

10 A. Yes, sir.

County

11 Q. And then we asked you to come out to the Jefferson
12 Fairgrounds' auditorium building on September the 17th,

and you

13 did that.

14 A. Yes, sir.

of the

15 Q. At which time I met with you and the other members
16 jury panel and introduced the people who were with us

at that

17 time, and they're with us again today, including some
18 additional people. So let me introduce the people who

are here

19 with us this morning.

20 We have Mr. Lawrence Mackey here at the first
table;

21 Ms. Beth Wilkinson. They were at the fairgrounds,
attorneys

22 for the Government. And we have also Mr. Geoffrey
Mearns,

23 Mr. James Orenstein, who were not there, but they are

24 additional attorneys for the Government.

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

3318

Juror No. 560 - Voir Dire

1 for Terry Nichols; and of course, Mr. Nichols was
present as

2 well.

3 And then I gave some explanation about the
background

4 of the case, asked you to complete a questionnaire, a
very long

5 one. You did that. We -- you have it there in front
of you

6 now. We also made copies of it and gave to the lawyers
in the

7 case and to me those copies so that we could use them
for this

8 purpose of asking you some questions in selecting the
jury, but

9 we're not going to give those copies out to anybody
else. It's

10 not public. We're not using your name here. We're
trying to
11 protect your privacy as far as we can, including the
way you go
12 and come to the courthouse so people can't take TV
pictures of
13 you or something like that. And we are now in a public
14 courtroom, and of course, what happens here is public.
You
15 understand these points?

16 A. Yes, I do.

17 Q. And I know that one of the things that you
mentioned, both
18 in your original questionnaire and in this response
here, that
19 you -- you have diabetes?

20 A. Yes, I do.

21 Q. And of course, that requires daily medication.
Now, did
22 you take your medication today?

23 A. No. I forgot all about it this morning.

24 Q. And how are you feeling?

25 A. Oh, feeling all right. A little -- a little
concerned,

3319

Juror No. 560 - Voir Dire

1 but -- a little worried, but I feel okay.

2 Q. Worried about the fact that you didn't take your

3 medication?

4 A. Yes.

5 Q. Do you take it by pills, or shots, or both?

6 A. I'm on pills.

7 Q. Okay. So are you a Type 2? Do you have Type 2
diabetes?

8 Have you ever heard that phrase?

9 A. Yes, I have.

10 Q. Okay. And so you take pills.

11 A. (Juror nods head.)

12 Q. Well, let us know if -- as we go along here, if you
don't

13 feel well. Okay?

14 A. (Juror nods head.)

15 Q. Do you understand?

16 A. Yes.

17 Q. Okay. You have to answer out loud. I saw you
nodding your

18 head, but --

19 A. Okay.

20 Q. -- you have to make the record, you know. You also
have

21 some other problems, health problems, as I gather it
here. One

22 is you have some arthritis.

23 A. Yes, sir.

24 Q. And does that affect your ability to sit for a
couple hours

25 at a time?

3320

Juror No. 560 – Voir Dire

1 A. Yes, it does.

2 Q. Do you take pills for that, too?

3 A. Yes, I do.

4 Q. Did you take those today?

5 A. No, I did not.

6 Q. Why didn't you take your medicine today? Just
forgot?

7 A. Oh, I got up at 4:30 this morning and I had my mind
on

8 this, and I just completely forgot to get my pills.

9 Q. Okay. And you have some problem with your vision,
too?

10 A. It varies, yes. There's times when my vision is
kind of

11 blurred and -- I blame it all on the diabetes.

12 Q. Yeah. Do you wear glasses usually?

13 A. Only to read.

14 Q. And with the glasses, are you able to read all
right?

15 A. Yes.

16 Q. Okay. Now, with this combination, you have Social
Security

17 disability; is that right?

18 A. Yes, sir, I do.

19 Q. And how long have you received Social Security?

20 A. Approximately six years.

21 Q. And is it for the things that we've just talked
about?

22 A. Yes.

23 Q. And I -- I think you were working for, what,
Colorado

24 University?

25 A. Yes. I was working at CU when I got sick.

3321

Juror No. 560 - Voir Dire

1 Q. Yeah. Okay. And so you went into disability --
that was

2 the last job you had before your disability situation?

3 A. Yes, sir.

4 Q. Now, you also -- well, let me just review a couple
of

5 things here. You -- as I understand it, you were born
in

6 Raton?

7 A. Yes, sir.

8 Q. And you came up to Colorado as a youngster to
Trinidad?

9 A. Yes.

10 Q. And then you lived -- you and your family lived in
11 Trinidad?

12 A. Yes. For a few years.

13 Q. And then on up here to the Denver area and now
you're in

14 Longmont?

15 A. Yes, sir.

16 Q. And -- I want to review a couple of things with you
about

17 the law. You understand that we're here to select a
jury to

18 try the evidence as it relates to Mr. Nichols.

19 A. Yes, sir.

20 Q. And out there at the Jefferson County building, I
explained

21 to you that this case arises as a result of an
explosion in

22 Oklahoma City on April the 19th of 1995 that destroyed
an

23 office building, a federal office building. People
were killed

24 and injured. The Government, through lawyers,
prosecutors,

25 filed charges by an indictment in Oklahoma City,
charging a man

3322

Juror No. 560 - Voir Dire

1 named Timothy James McVeigh, along with Terry Lynn
Nichols and

2 then the indictment says "other persons not named" with
a

3 conspiracy to bomb that building and additional charges
that
4 they carried it out, did bomb the building, and also
eight
5 charges of first-degree murder of law enforcement
agents who
6 were in the building and died in the explosion; that
after the
7 case was filed, the charges filed, the two named
defendants
8 pleaded not guilty, thereby creating the issues for
trial, and
9 the case was then moved to Colorado here, Denver,
because of a
10 concern about a fair trial in Oklahoma City, and that
then I
11 entered an order for separate trials that each
defendant be
12 tried separately because it wouldn't be fair for them
to be
13 judged by the same jury, and that happened.

14 And there has been a trial of the evidence as
it
15 related to Mr. McVeigh. A jury found him guilty and
then,
16 after a second hearing, recommended a sentence of
death. Do
17 you understand that?

18 A. Yes, sir, I do.

19 Q. And now, as I said, we're getting ready for the
trial of
20 Mr. Nichols, and nothing that happened in the McVeigh

case and

21 certainly not the outcome of that case can be
considered in any

22 way in judging the case as it relates to Mr. Nichols.
Do you

23 understand that?

24 A. Yes, sir, I do.

25 Q. And that Mr. Nichols, of course, as all defendants
in

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Juror No. 560 - Voir Dire

1 any -- in any criminal case, is presumed to be innocent
of the

2 charge, and the presumption of innocence carries
throughout the

3 trial and entitles him to an acquittal or not guilty
verdict

4 unless the jury decides that the evidence shows him to
be

5 guilty beyond a reasonable doubt. Do you understand
that?

6 A. Yes, sir, I do.

7 Q. And "beyond a reasonable doubt" means that it is up
to the

8 prosecution to come in with the evidence. The
defendant

9 doesn't have to prove anything. The defendant doesn't
have to

10 take the stand and testify or offer any explanations,
can

11 simply remain silent and challenge the case against
him,
12 challenge the evidence. And then at the end of the
trial, the
13 court gives instructions to the jury about what has to
be
14 proved, what are the elements of the crime as charged,
and then
15 the jury considers whether that's proved or not. And
if,
16 without considering whether a defendant testified, if
that
17 happened, the jury is not satisfied that the proof
shows guilt
18 beyond a reasonable doubt, the jury returns a not
guilty
19 verdict. Do you understand that?
20 A. Yes, sir, I do.
21 Q. Do you accept that and agree with it?
22 A. Yes, I do.
23 Q. And agree to follow it here if you were to serve on
this
24 jury?
25 A. Yes.

3324

Juror No. 560 – Voir Dire

1 Q. So you accept that Mr. Nichols sits here with us
this

2 morning presumed to be innocent of these charges?

3 A. Yes, sir, I do.

4 Q. Now, I want to turn to something here. And I'm not
trying

5 to cause you embarrassment or anything like that, but
you were

6 a defendant in a case.

7 A. Yes.

8 Q. How many years ago was that?

9 A. I believe I was in my 20's. I'm now 64.

10 Q. Okay. A long time.

11 A. Yes.

12 Q. Was that here in Denver?

13 A. Yes, it was.

14 Q. Did you have a trial?

15 A. Yes, I did.

16 Q. And you had a lawyer represent you?

17 A. Yes.

18 Q. And a jury found you guilty?

19 A. Yes.

20 Q. And then you were sentenced to some time and you
did that

21 time; is that right?

22 A. Yes, sir.

23 Q. And did you also then serve a par -- a period on
parole

24 when you got out?

25 A. Yes.

3325

Juror No. 560 - Voir Dire

1 Q. And you accomplished your parole successfully, or
did you
2 get sent back?

3 A. I got sent back. I got a parole violation.

4 Q. What was that for?

5 A. Oh, just -- just for not doing the things I was
supposed to
6 do.

7 Q. Well, there can be a lot of things that cause a
parole
8 violation. That's why I'm asking you. Sometimes it's
just
9 that you didn't report or you didn't keep your job or
you
10 committed a new crime. What was it?

11 A. I just didn't report to my parole officer the way I
was
12 supposed to.

13 Q. Okay. And you were in your 20's, you said?

14 A. Yes.

15 Q. And you did more time then?

16 A. Yes, I did.

17 Q. So how -- can you just tell us how much time in all
you

18 spent in the prison?

one
19 A. 15 months and 7 days for the first one, and then

was a
20 calendar year for the violation, and then I believe it

21 year for the other one.

22 Q. What other one? Was there another crime?

23 A. While the -- it was a -- child support.

support
24 Q. And when was that? When was that, the child

25 matter?

3326

Juror No. 560 - Voir Dire

That
1 A. I believe that was after I got out the first time.

2 was still when -- when I was in my 20's, I believe.

3 Q. Okay. And you served about a year for that?

4 A. Yes, I did.

take it?
5 Q. For the failure to make child support payments, I

6 A. (Juror nods head.)

7 Q. Okay. Is that right?

8 A. Yes.

that
9 Q. Okay. And you did -- you were married twice; is

10 right?

11 A. Yes.

12 Q. And both marriages ended in divorce?

13 A. My first marriage ended in divorce. I'm separated
now from
14 my second wife.

15 Q. Oh, you just -- yeah. Okay. You told us that.
You worked
16 on a farm somewhere before; is that true?

17 A. Yes.

18 Q. Where was that?

19 A. That was in the Longmont area.

20 Q. And how long ago about?

21 A. I was still in my teens when I worked on the farms.
And
22 then later on, I worked off and on during my 20 years,
you
23 know, when I was in my 20's.

24 Q. Yeah. And you were a farm worker, you got paid
wages for
25 what you did --

3327

Juror No. 560 - Voir Dire

1 A. Yes.

2 Q. -- on somebody else's farm; is that correct?

3 A. Yes.

4 Q. And you live alone now?

5 A. Beg your pardon?

6 Q. Now, do you live alone?

7 A. Yes, I do.

8 Q. And with your health and having to take all these
9 medications and things, that's kind of difficult to get
it all

10 done? Is that -- you said that's stressful. Is that
what
11 you're talking about?

12 A. Yes.

13 Q. Okay. Now, you were -- served in the Army during
the
14 Korean War, apparently?

15 A. Yes, sir, I did.

16 Q. And where were you stationed when you were in the
Army?

17 A. I took 14 weeks of infantry basic in Schofield
Barracks in

18 Hawaii.

19 Q. And then where were you assigned?

20 A. And then I was sent to Japan for about three days,
and then

21 they shot us over to Korea.

22 Q. And were you in infantry in Korea?

23 A. Yes, I was.

24 Q. What unit were you in?

25 A. I was with the 25th Infantry Division.

Juror No. 560 - Voir Dire

1 Q. And saw combat there?

2 A. Yes, sir, I did.

3 Q. And then I guess something happened here and you
got an

4 undesirable discharge?

5 A. Yes, I did.

6 Q. What -- what happened? I mean, what caused that?

7 A. Just going AWOL.

8 Q. Was that after you returned from Korea?

9 A. Yes.

10 Q. And where did they have you then when you came back
from

11 combat in Korea?

12 A. I got stationed in Camp Atterbury, Indiana, and
that's when

13 I took off with a friend of mine to New York, just
AWOL. I got

14 back, I got discharged.

15 Q. All right. Now, we asked you some questions in
here about

16 your opinions on some things about punishment, and
particularly

17 about the punishments of death and life imprisonment
without

18 release, and you answered these. I want you to turn,
if you

19 will, to page 28. And these -- these answers here on
28, just

20 take a minute and -- can you read them?
21 A. Yes, sir.
22 Q. Okay. I mean, I ask that because you didn't have
your
23 glasses. That's the only reason. And you say in here,
"I do
24 not believe in the death penalty." And then again, I
want you
25 to turn over to page 30. And you see at Question 129
there,

3329

Juror No. 560 - Voir Dire

1 the second one on the page? Are you with me?
2 A. (Juror nods head.)
3 Q. And you say do you agree -- the question is, "Do
you agree
4 or disagree that it is important to follow the Court's
5 instructions?"
6 And your answer is, "Other than death penalty
is
7 fine."
8 So you seem to have a -- a firm opinion
against the
9 death penalty; is that right?
10 A. Yes, sir, I do.
11 Q. And how long have you had that opinion?
12 A. Oh, I guess most of my life.

you did, 13 Q. Is it an -- in any way affected by the time that

14 the time you did in prison?

15 A. No. No, sir.

that 16 Q. Independent of that? I mean, you're not putting

17 into --

18 A. No, sir.

that 19 Q. Okay. Is there a religious view that you have here

20 affects your view about the death penalty?

21 A. No. It's not related to religion in any way.

you are 22 Q. Well, would you just explain in your own words why

say 23 saying that you're opposed to the death penalty as you

24 here?

life other 25 A. I just believe that no one should take anybody's

3330

Juror No. 560 - Voir Dire

1 than God.

what 2 Q. Regardless of what that person has done? Is that

3 you're saying?

4 A. Yes.

5 Q. And I take it in -- you know, thinking back, you've

been

6 around some people who've done some pretty bad things?

7 A. Yes, I have.

8 Q. And I'm not trying to put words in your mouth,
understand.

9 I'm just trying to help you tell us what you think.
And if I

10 don't say it right, you don't -- I don't want you to
hesitate

11 to explain your views. But you know that the crimes
that are

12 charged here are under federal law and we're dealing
with

13 federal law -- and of course, the law is different
among

14 different states as to whether there even is a death
penalty.

15 But under federal law, there is a death penalty for
certain

16 crimes. And in fact, for certain crimes involving
murder, the

17 law says that the punishment can be life in prison with
no

18 parole, no chance of ever getting out, or death or any
lesser

19 punishment. And then a jury has to make that decision
in such

20 a case.

21 A. Yes, sir.

22 Q. Now, in the normal case, like -- excuse me -- in
your case,

23 a judge gave you the sentences; right?

24 A. Yes, sir.

25 Q. And there was a sentence hearing and you had a
lawyer with

3331

Juror No. 560 - Voir Dire

1 you at the sentence hearing?

2 A. Yes, sir.

3 Q. And like a probation officer, too, he had got
information

4 from you to give to the judge?

5 A. Yes, sir.

6 Q. And so a judge made a sentence that was particular
for you

7 as -- as the defendant; right?

8 A. Yes.

9 Q. Now, when it comes to this life or death, we don't
have

10 judges making those choices. That's up to the jury.
So we ask

11 people to come in as jurors and first decide whether
the

12 evidence shows guilt beyond a reasonable doubt. And
obviously,

13 if it doesn't, that's the end of it, there's a not
guilty

14 verdict?

15 A. Yes.

16 Q. But if there's a guilty verdict, then the
sentencing is
17 done by the jury in cases in the Federal Court that
involve
18 this kind -- this type of punishment. And what happens
is that
19 there's a -- after the trial -- and of course,
punishment
20 doesn't come up during the trial. That's not relevant
or
21 considered during the trial. But if there's a guilty
verdict,
22 then there's a second trial on the issue of punishment,
and it
23 is at that time that the jury hears a lot more than
what it
24 heard at the trial, gets information not only about the
crime
25 and the circumstances of it, its effects on people and
the

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1 like, but also the things about the defendant as a --
an
2 individual human being. And that includes that
person's
3 background, life history, you know, employment history,
4 physical condition, attitudes in a way, marriage
relationships,
5 what jobs a person has had, all of those things that go
up to

uniquely 6 make each one of us different from all the rest of us,
7 individual characteristics. Do you follow me?
8 A. Yes, I do.

trial 9 Q. And then after all that is received, just like the
10 itself -- I mean, the Government lawyers put in
information 11 that suggests that death is the deserved punishment for
12 person and crime, and the defense brings in information
that 13 says no, this person should not be put to death
regardless of 14 the crime. And then the court instructs the jury about
what 15 it's heard, says, well, these are the things that tend
to 16 support the death sentence for this person, aggravating
17 factors. These are the things that suggest that death
is not 18 deserved for this person. You consider the crime, but
for -- 19 under all the circumstances, even though somebody else
guilty 20 of the same crime may be put to death, this person
doesn't 21 deserve it. Do you follow?
22 A. Yes, sir.

23 Q. And then the jury has to decide and they talk it
over, and

24 the court gives general questions to ask to sort of
help sort
25 it out and analyze it; but in the end, each juror has
to make a

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1 moral decision as to whether a defendant should live or
die.

2 Do you understand that?

3 A. Yes, sir, I do.

4 Q. Now, the -- the question that we have for you is
that

5 regardless of your opinion about whether there ought to
be a

6 death penalty, can you, if you were to serve on a case
where

7 the jury found a defendant guilty, consider and judge
whether

8 there should be a life-or-death sentence after hearing
all of

9 these aggravating and mitigating circumstances?

10 A. I'm sorry. I didn't quite understand the question.

11 Q. That's understandable. It's a long question. Can
you here

12 consider and decide between a sentence to death and a
sentence

13 to life or any lesser sentence after hearing these
aggravating

14 and mitigating circumstances and make -- actually make
a

15 decision that a person should live or die?

16 A. No, I cannot.

17 Q. And the reason is what?

18 A. The reason is because it wouldn't be up to me to
decide.

19 Q. Okay. Well, you know, what I'm -- and I'm not
arguing with

20 you. Don't worry about that. It's not up to you to
decide for

21 what you've just said? That it shouldn't be up to
anybody to

22 decide to put somebody to death in court?

23 A. Yes.

24 THE COURT: All right. Well, do you have any

25 questions?

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1 MR. ORENSTEIN: Just a few, Judge. Thank you.

2 THE COURT: All right.

3 VOIR DIRE EXAMINATION

4 BY MR. ORENSTEIN:

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

6 A. Just fine.

7 Q. As the Judge introduced me, my name is Jamie
Orenstein.

8 I'm one of the prosecutors in this case. Together with

my

9 colleagues, we'll be presenting the evidence in this
case

10 against Mr. Nichols.

11 A. Yes.

12 Q. Let me go right to the issue that you were just
discussing

13 with his Honor about the question of punishment. You
-- you

14 said in your questionnaire, I believe, that with
respect to

15 following instructions by the Court, other than the
death

16 penalty, it's fine. Is that right?

17 A. Yes.

18 Q. With respect to the death penalty, you would not
follow

19 instructions to consider with an open mind the penalty
of

20 death? You wouldn't be able to follow that
instruction?

21 A. Yes, I would.

22 Q. Would you ever be able to impose the death penalty
on

23 anybody in any case?

24 A. No. Not if it was up to me, no. I wouldn't.

25 Q. So no matter what facts you were presented with, no
matter

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were 1 what the crime, you would always choose life if you
2 presented with that choice?

3 A. Yes, I would.

all 4 Q. You know, lawyers have the ability to ask questions
5 sorts of different ways, but I take it no matter how I
ask that 6 question, it's going to be the same answer?

7 A. Yes.

8 MR. ORENSTEIN: Okay. Thank you very much,
sir.

9 JUROR: You're welcome.

10 MR. ORENSTEIN: Thank you, your Honor.

11 THE COURT: Any questions?

12 MR. TIGAR: Yes, your Honor. Briefly.

13 VOIR DIRE EXAMINATION

14 BY MR. TIGAR:

15 Q. Good morning, sir.

16 A. Good morning.

Michael 17 Q. We've -- I was introduced before. My name is

appointed by 18 Tigar; and together with Ron Woods here, we were

19 the United States District Court in Oklahoma to help
out Terry

20 Nichols. And I just have a very few questions.

21 In the case in which you were involved, did
you have a

22 public defender representing you?

23 A. Yes, I did.

24 Q. Okay. And were you satisfied with how that lawyer

25 represented you in the case?

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1 A. No, I wasn't.

2 Q. Okay. And if you were selected as a juror in this
case,

3 would we -- because I'm a court-appointed lawyer, would
we

4 start out with a disadvantage in your mind because
we're

5 appointed by the court and Mr. Nichols didn't have
money to

6 retain a lawyer?

7 A. No, sir.

8 Q. Okay. Let me also get to the -- these questions
about

9 punishment. If -- when you were in Korea, you
participated in

10 combat?

11 A. Yes, I did.

12 Q. Is that right? Okay. Now, in -- and again, I'm
not

13 challenging or arguing with you. We're just asking

everybody

14 to look inside themselves and -- and tell us what they
feel.

15 Did you feel that it was -- it was all right to -- for
yourself

16 to engage in combat where you stood the risk of being
killed

17 and somebody you fired at might be killed?

18 A. At the time, I was 17 years old; and I feel that I
didn't

19 know any better.

20 Q. Okay. And go ahead. Did I cut you off -- cut off
your

21 answer?

22 A. No.

23 Q. Okay. And in -- in the years that have gone by, do
you now

24 believe that if you were called again to military
service,

25 that -- that you would not want to be a combatant in
the

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1 military; that is, be in combat?

2 A. Yes, that's true.

3 Q. Okay. And would that be the case if, for example,
there

4 were some -- somebody invading the shores of the United
States?

5 Do you feel that you would not want to participate in
it as

6 a -- as a person in the combat part of that?

7 A. I think I would. If that was the case.

8 Q. You would what? I'm sorry, sir. I didn't
understand.

9 A. I would definitely want to defend my country if
they were

10 on our shores.

11 Q. Okay. And would that be the case even if you were
required

12 to take somebody's life? Under those circumstances?

13 A. Under those circumstances, I believe, yes.

14 Q. Now, in -- in a case like this -- and we're not
talking

15 about this case because none of us knows what the
evidence is

16 going to be. And I also want to be clear that we --
we, for

17 representing Mr. Nichols, don't even concede -- we
don't

18 concede that there will ever be a punishment phase in
this

19 case. Mr. Nichols is presumed innocent, and we're
going to put

20 the Government to their proof; and if there's a
reasonable

21 doubt, well, the jury will find that and find him not
guilty.

22 But we have to talk about this now because if there is
a guilty

23 verdict, we can't bring everybody back in and talk to
them
24 again. We have to do it now.
25 A. Yes, sir.

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1 Q. But on that assumption, under the federal law, if
there's a
2 verdict of guilty in a case -- in certain kinds of
cases, a
3 jury has to consider the question of punishment, and
they are
4 faced with options; that is, they can say life without
5 possibility of parole -- that means never get out --
they can
6 say, okay, the death penalty, and -- or they can say,
no, we
7 can't -- we don't -- we are going to send it back to
the judge
8 to impose some lesser punishment, which could include
life
9 without the possibility of parole. Those are the
options. And
10 before a jury is ever called upon to choose, they have
to hear
11 evidence. And it's not just a one-day thing or
argument.
12 They are really -- the Government would put on
13 evidence saying that there is aggravating factors in
the

14 particular case, the number of people that might have
been
15 killed or the circumstances, how -- how terrible the
crime was
16 and so on. Then the defense would put on their
mitigating
17 factors. They'd say there's something about this
person, their
18 background, their family history and so on, and then
the jurors
19 would choose. Now, as you sit there today -- first,
did you
20 understand that the jury is never required -- no juror
is ever
21 required to vote a death penalty? All right.
22 A. Yes, sir.
23 Q. Okay. Now, my question is, could you first -- take
it in
24 steps. Could you listen to all of the evidence about
how
25 terrible the crime -- a crime was or -- and all of the

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1 aggravating circumstances and then about the individual
2 defendant? Could you listen to that?
3 A. Yes, I could.
4 Q. Okay. And then if it came to deciding, could you
entertain

5 the idea -- could you approach with an open mind the
full range

6 of punishment? Could you consider all those three
options?

7 A. Yes, I could.

8 Q. Okay. And in considering all the three options,
could you

9 follow the Judge's instructions on how to do it?

10 A. Yes, sir.

11 Q. Okay.

12 MR. TIGAR: Thank you very much. That's all
we could

13 ask.

14 JUROR: Yes, sir.

15 VOIR DIRE EXAMINATION

16 BY THE COURT:

17 Q. Well, then, that follow-up question that I must ask
you --

18 and sort of repeating what I asked you before -- is
after

19 considering it and discussing it with the jury -- other

20 jurors -- and you know the decision comes down to each
juror

21 has to decide, make a judgment life or death -- can you
make

22 that decision?

23 A. I'm sorry. Again, I didn't quite understand the
question.

24 Q. After -- as Mr. Tigar was talking about and as I've
talked

25 about, if there's a guilty verdict, then there's a
sentencing

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1 trial and then there are instructions about considering
these
2 aggravating and mitigating factors, and then the court
asks the
3 jury to make a decision. That's the instruction. But
the
4 jury, each juror has to make a decision. Do you
understand

5 that?

6 A. Yes, I do.

7 Q. And that decision is either life in prison without
parole,
8 death, or something else less than that. But the life
or
9 death, each juror has to decide.

10 A. Yes, sir.

11 Q. Now, the question I come back to is can you make a
decision
12 about whether another person should be put in prison
for life
13 or be put to death?

14 A. Yes.

15 Q. And I thought that you said earlier that you would
always
16 decide against death. Now maybe I'm confused.

17 A. Well, I guess --

18 Q. We're not trying to back you into a corner here.

would
19 A. No. I understand. I -- I guess that -- I guess it
20 have to be the circumstances behind it.

not
21 Q. Sure. I mean, that's part of what has to be heard,
22 only the circumstances about the crime, but also, the
23 circumstances about the defendant, the things that are
24 individual to the defendant. Understand?

25 A. Yes, sir.

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a
1 Q. But the jury has to consider and be open to making
2 responsible decision on life or death and decide one
way or the
3 other based on what is heard. And, you know, you've
told us at
4 some length about your opinion about the death penalty.
You
5 must set that aside and then actually make a decision
whether
6 it should be life or death, and all we're trying to
find out
7 from you is whether you can make a decision on life or
death.

8 A. I think that I could.

9 THE COURT: Okay. Well, if there are more
questions
10 that you want to ask from the Government, counsel, you
can.

11 MR. ORENSTEIN: Thank you, your Honor. I'd
appreciate
12 that.

13 THE COURT: I'm going to permit them to.

14 MR. TIGAR: Your Honor --

15 THE COURT: Because they were operating under
an
16 assumption then.

17 MR. TIGAR: I understand. My objection is
noted and
18 overruled?

19 THE COURT: Yes.

20 MR. TIGAR: Thank you.

21 MR. ORENSTEIN: Thank you, your Honor.

22 VOIR DIRE EXAMINATION

23 BY MR. ORENSTEIN:

24 Q. Good morning again, sir. Let me start off with a
matter

25 that you discussed early on in your discussion with his
Honor

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1 about your health. You mentioned that you have

diabetes and

2 arthritis; is that correct?

3 A. Yes, sir.

4 Q. And you take medication for both of those?

5 A. Yes, sir, I do.

6 THE COURT: We've been through this. I'd like
you to

7 ask something that I haven't already asked.

8 MR. ORENSTEIN: I'm sorry, your Honor.

9 BY MR. ORENSTEIN:

10 Q. With respect to the issue of punishment, let me ask
you --

11 because I misunderstood your answer before. You
understand

12 that the -- a juror is never required --

13 THE COURT: We've already asked all the
questions

14 we're going to ask about punishment.

15 MR. ORENSTEIN: Yes, sir.

16 THE COURT: If you've got some other
questions, I'll

17 permit you to ask them.

18 MR. ORENSTEIN: Yes, sir.

19 BY MR. ORENSTEIN:

20 Q. Has it occurred before that you have forgotten to
take your

21 medications for your -- your various health problems?

22 A. Yes, I have.

23 Q. Have you experienced problems as a result of that?
24 A. Well, actually, I didn't have no problem except
other than
25 worrying about it, because I am -- the doctor said I
should

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1 take them every morning and every night.
2 Q. And is there anyone who is available to remind you
about
3 your medications on a daily basis?

4 A. No. I -- I keep my medication on my kitchen table
so that
5 I don't forget because I am pretty forgetful.

6 Q. But you live alone so there's no one to help you
with that?

7 A. No.

8 Q. You mentioned that you got up at 4:30 this morning.
Is

9 that because you had such a long trip?

10 A. Yes.

11 Q. Has that caused you any problems today in being
able to pay
12 attention, keep up with these proceedings?

13 A. No. I have not.

14 Q. Now, you -- you mentioned at page 30 -- if I could
ask you
15 to turn there, Question 132. Do you see the question,

sir, at

16 the bottom of the page?

17 A. (Juror nods head.)

18 Q. It was a question about your opinion on the -- the
incident

19 that occurred at Waco, Texas, a few years ago, and your
answer

20 was, "I think they had no choice other than what they
did."

21 I was wondering if you could explain that
answer a

22 little more. Who were you referring to?

23 A. I know very little about what went down in Waco. I
don't

24 generally keep up with the news, but I -- I believe
they did

25 what they had to do.

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1 THE COURT: I think he's asking you who you
mean by

2 "they." Are you asking the people in the compound or
the

3 Government people or who?

4 JUROR: The Government people.

5 THE COURT: Okay.

6 BY MR. ORENSTEIN:

7 Q. So you don't have any concerns with the propriety

of what

8 the Government people did?

9 A. No.

10 Q. You -- you mentioned to his Honor that you stopped
working

11 about six years ago; is that right?

12 A. Yes.

13 Q. What -- what caused you to stop working?

14 A. I just got sick and the doctor told me I had
diabetes and

15 arthritis, and he said I shouldn't go on working no
more.

16 Q. And you applied for Social Security disability at
that

17 time?

18 A. Yes.

19 Q. Have you ever had any problems or disagreements
with the

20 Social Security Administration concerning your
benefits?

21 A. No, I have not.

22 Q. Sir, the -- the other question I have for you is,
as you

23 discussed with his Honor, you've had occasions in your
life

24 when you've been a defendant; is that right?

25 A. Yes.

Juror No. 560 – Voir Dire

1 Q. And you've been to jail as a result of that?

2 A. Yes.

3 Q. And I -- I assume that in each of those occasions,
both the
4 initial conviction and the later times with the parole
5 violations, there were prosecutors asking the judge to
send you
6 to jail; is that right?

7 A. Yes.

8 Q. Now, you realize, of course, that my fellow
prosecutors and

9 I are all, like those earlier prosecutors, seeking a
criminal

10 conviction. Do you have any feelings towards
prosecutors or

11 towards law enforcement as a result of your
experiences?

12 A. No, I don't.

13 Q. All right. Nothing that would carry over in this
case?

14 A. No.

15 Q. So you can tell us that you would give both the
Government

16 and Mr. Nichols a fair trial?

17 A. Yes, I would.

18 MR. ORENSTEIN: All right. Thank you, sir.

19 JUROR: Thank you.

20 MR. ORENSTEIN: Thank you, your Honor.

21 THE COURT: I'll permit some additional
questions for

22 the defense, if you have them.

23 MR. TIGAR: No, your Honor. I did start, if
you'll

24 recall, by asking some personal questions.

25 THE COURT: Yes.

3346

1 MR. TIGAR: And so we're satisfied. Thank
you, very

2 much, your Honor.

3 THE COURT: All right. Good.

4 Well, we appreciate your coming in and doing
this.

5 I'm sorry that you missed your medication because you
had to

6 get up so early, but we can help you get back there and
get

7 your medication. You've been able to go through this
all

8 right, even without it, have you?

9 JUROR: Yes, I -- I've been fine.

10 THE COURT: Are you feeling okay now?

11 JUROR: Yes.

12 THE COURT: All right. Because we can also,
you know,

13 get you to a nurse or something if need be.

14 JUROR: No.

15 THE COURT: All right. Well, you tell the
folks who

16 you have been with if you need anything. But you're
excused

17 now. You're going to be able to go home. But we can't
tell

18 you whether you're going to be on this jury; so like it
was

19 when I excused you before from out there at the
fairgrounds, be

20 careful now about the things that you read, see, and
hear; and

21 stay away from anything relating to this case. Be
careful

22 about talking to other people about it. Be able to
come back

23 in here, if you are called on, and serve on the jury.
Will you

24 do that?

25 JUROR: Yes, sir.

3347

1 THE COURT: And we can't tell you when we're
going to

2 tell you because it's uncertain. You know it takes a
while.

3 JUROR: Yes, sir.

where
something, you
4 THE COURT: But if you have something happen
5 you, you know, have to get called out of town or
6 let us know.

7 JUROR: Yes, sir.

8 THE COURT: And take your medication; okay?

9 JUROR: Yes.

10 THE COURT: You're excused.

11 JUROR: Okay. Thank you, sir.

one who
take a
this
20
12 THE COURT: We have a supplement for the next
13 had run out of time, so Mr. Manspeaker should -- we'll
14 recess now; and he should give you -- he finished up
15 morning. We'll have those for you, and then we'll take
16 minutes now.

17 (Recess at 10:34 a.m.)

18 (Reconvened at 10:53 a.m.)

19 THE COURT: Be seated, please.

20 All right. This is 78.

take
21 Good morning. Will you raise your right hand,
22 the oath from the clerk, please.

23 (Juror No. 78 affirmed.)

24 THE COURTROOM DEPUTY: Thank you.

25 THE COURT: If you'll be seated, please, at

that chair

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And you 1 there by the microphone. Make yourself comfortable.
anywhere 2 don't have to talk right into the microphone. Just
3 near it, I think we'll be able to hear you.

4 JUROR: Okay.

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q. And you understand that the oath refers to
"defendant now 8 on trial," referring to the case of United States
against Terry 9 Lynn Nichols.

10 A. Yes, sir.

11 Q. And that you received a jury summons advising that
your 12 name had been -- had come out of a computer chance
process as a 13 person who may be serving on the jury in this case.

14 A. Yes, sir.

15 Q. And you sent back a questionnaire that we gave you
with 16 that summons, and then you were asked to come to the
Jefferson 17 County Fairgrounds' auditorium building with other

prospective

18 jurors to answer another questionnaire.

19 A. Yes, sir.

20 Q. And you did that. You ran out of time, and then
you picked

21 it up again this morning and completed it. Right?

22 A. Yes, sir.

23 Q. Okay. And you have your answers there in front of
you now,

24 I think.

25 A. Yes, sir.

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Juror No. 78 – Voir Dire

1 Q. And when you were out there, I was there as well,
2 introduced myself and introduced some other people with
me.

3 And they're with me again, so let me reintroduce the
people

4 here so you know who is with us.

5 Here at this first table are lawyers for the
6 Government, Mr. Lawrence Mackey and Ms. Beth Wilkinson.
They

7 were there with us. They're now joined by Mr. Geoffrey
Mearns

8 and Mr. James Orenstein, who were not previously with
us.

9 You do recall Mr. Michael Tigar and Mr. Ronald
Woods,

10 attorneys for Terry Nichols; and Mr. Nichols, of
course, was

11 with us as well.

12 And it is -- you know, it was at that time
that I

13 explained about the background of the case, how it
arises as a

14 result of an explosion that destroyed a federal office
building

15 in Oklahoma City on April 19 of 1995; that people were
killed

16 and injured in that explosion.

17 A. Yes, sir.

18 Q. That the Government lawyers then filed charges in
Oklahoma

19 City in the Federal Court there, charging that a man
named

20 Timothy James McVeigh, together with Terry Lynn Nichols
and

21 then other persons not named in the charges in the
indictment,

22 conspired to bomb that building, carried out such a
bombing and

23 the charges included eight charges of first-degree
murder of

24 law enforcement agents who were in the building and
died in the

25 explosion. You recall that, too?

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1 A. Yes, sir.

2 Q. And then I explained that the case was moved from
Oklahoma

3 City to Denver for trial because of a concern about
asking

4 people in Oklahoma City to be on the jury, since this
happened

5 right there -- that is, the explosion took place there
-- and

6 then when the case came to Denver, I separated the two

7 defendants named in the indictment for trial so there
would be

8 separate trials and the evidence be considered
individually as

9 to each one. You recall that?

10 A. Yes, sir.

11 Q. Now -- and then I said and told everybody that
there had

12 been a trial of the evidence as it relates to Timothy
McVeigh.

13 A jury was selected, heard that case, found him guilty;
and

14 then there was a second trial on the question of
punishment,

15 and that jury recommended the death sentence to Mr.
McVeigh. I

16 explained that now we're getting ready to try the case
as it

17 relates to Mr. Nichols, and nothing that happened in
the

18 McVeigh trial or certainly the outcome of that case can

be

19 considered as any kind of suggestion or evidence in
this case.

20 We start over, and -- because, you know, it wouldn't be
fair to

21 consider what happened in another trial in this trial.
That

22 would violate the very purpose of the order for
separate

23 trials. You understand that?

24 A. Yes, sir.

25 Q. And then I gave some additional explanation,
recognizing

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Juror No. 78 - Voir Dire

1 that most of the people there had never been on a jury
in a

2 criminal case, some things about the fundamental rules,
as it

3 were, that apply to criminal cases in the United
States,

4 beginning with -- because these are under the
Constitution,

5 these principles, the United States Constitution; that
any

6 person charged with any crime in any court in this
country is

7 presumed to be innocent; and that carries throughout
the trial,

8 entitles that person to an acquittal, a verdict of not

guilty,

9 unless a jury considering the evidence at the trial
decides

10 that the evidence proved him guilty and proved it
beyond a

11 reasonable doubt.

12 You heard me make that explanation?

13 A. Yes, sir.

14 Q. Do you understand that?

15 A. Yes, sir.

16 Q. And it isn't up to a defendant in any case to -- to
prove

17 himself to be not guilty or to prove anything at his
trial. He

18 doesn't have to call any witnesses or introduce any
evidence or

19 take the witness stand and answer any questions or give
any

20 explanations. The defendant can simply remain silent
and

21 require of the prosecution, the Government, to come in
with the

22 evidence, calling the witnesses, introducing the
exhibits, and

23 can simply challenge the Government's proof by cross-
examining

24 the witnesses, objecting to evidence, that kind of
thing. And

25 if a defendant does not testify at a trial, the jury is
always

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1 instructed that you may not consider that in any way,
can't
2 even talk about it. And the jury has to then decide
what they
3 did hear -- did it prove the crime beyond a reasonable
doubt?
4 If not, they must give the defendant the benefit of the
5 reasonable doubt and find him not guilty. Do you
understand
6 those points?
7 A. Yes, sir.
8 Q. And do you agree with them?
9 A. Yes, sir.
10 Q. And agree to apply them here if you were called on
in this
11 jury?
12 A. Yes, sir.
13 Q. So you accept that Mr. Nichols sits with us this
morning
14 presumed to be innocent of these charges?
15 A. Yes, sir.
16 Q. Okay. Now, I want to turn to some of the things
that you
17 told us about yourself in this questionnaire; and in
doing so,
18 I want to reassure you that we respect your privacy
here and

19 we'll try to do all that we can to protect your
privacy. We're
20 not using your name; and of course, we -- you know, in
court.
21 And we also have arranged for you to come and go to the
22 courthouse in a way that they can't -- TV photographers
or
23 somebody can't take your picture, you understand.
24 A. Yes, sir.
25 Q. That's why. Now, of course, we are in open court,
so what

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1 is said here is public. You understand that?
2 A. Yes, sir.
3 Q. Now, you came a long way to court here.
4 A. Yes, sir, I did.
5 Q. Yeah. You live over in Buena Vista?
6 A. Yes, sir.
7 Q. And you were born and spent your early years in
Ohio?
8 A. Yes, sir.
9 Q. And that was on a farm there?
10 A. Yes, sir.
11 Q. What kind of a farm was it?
12 A. It was a potato farm, tobacco.

13 Q. All right. And then your folks moved to Florida?

14 A. Yes, sir.

15 Q. And you with them, of course.

16 A. Yes, sir.

17 Q. To a place called Titusville?

18 A. Yes.

19 Q. Where is that? I'm not familiar with that.

20 A. It's close to Orlando. Titusville -- it's over
close to

21 Orlando. Cocoa Beach, around in there.

22 Q. And what was your family doing over there in
Florida?

23 A. We moved to Florida when I was 10 years old, and
they

24 bought a restaurant; and so I helped out in the
restaurant

25 later on when I got older. I went to school there and

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1 graduated in Titusville High School.

2 Q. And where did you live after that?

3 A. I went to Lakeland.

4 Q. All right.

5 A. And then I got married when I was 23 years old.

6 Q. And continued to live there in Florida?

7 A. Yeah. I lived there until I was 52.

8 Q. And then you came here to Colorado?

9 A. Yes, I did.

right
10 Q. Now, when you came to Colorado, was -- did you come
11 to Buena Vista?

places in
12 A. Well, we came to -- on vacation and seen several
13 Florida -- I mean Colorado.

14 Q. Uh-huh.

place to
15 A. -- and we decided that Buena Vista was the best
16 live; so we moved to Buena Vista.

17 Q. And you still think that's the best place to be?

18 A. Oh, yes. I love it.

19 Q. Okay. And you live there with your husband?

20 A. Yes, sir.

about on
21 Q. And you work in a shop over there that you told us
22 page 9.

23 A. Subway.

24 Q. Okay. And your husband works in a restaurant?

25 A. Delaney's.

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they're
1 Q. And you don't have to give us these names because

2 on there and --

3 A. Oh, okay. I'm sorry.

4 Q. No, no, don't be sorry. I'm just explaining that
we don't
5 want to identify you any more than need be.

6 A. Okay.

7 Q. And your husband has done other work over there
where you
8 live now, too, has he?

9 A. No. He's only worked there.

10 Q. All right. So this other -- he worked as a
security guard

11 when you were over in Florida?

12 A. Yes.

13 Q. And also worked for the post office there?

14 A. Yes. That's all in Publix.

15 Q. Pardon me?

16 A. It's a big supermarket, so he worked in all places.

17 Q. I see. It's all one place?

18 A. All oneplace.

19 Q. Now, you gave us some answers here that I'd like to
ask you

20 a little more about and including this morning's
answers. One

21 of the things that I asked you to do when we completed
this

22 questionnaire -- when you completed the questionnaire
and when

things in 23 you left the building was to be careful and not read
this 24 the newspapers or watch radio or television relating to
25 case. You recall that?

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1 A. Yes, sir.
2 Q. And also be careful as you talk with other people
to avoid 3 talking about the case?
4 A. Yes, sir.
5 Q. I suppose, though, you've talked to your husband
about the 6 possibility of your being over here on this jury in
Denver.
7 A. Yes, sir.
8 Q. And what's his reaction to that?
9 A. His reaction?
10 Q. Yeah. What did he say?
11 A. Oh, he brought me over here. My car isn't in good
shape,
12 so he brought me over here.
13 Q. Okay. But has he said, Look, that would be
something we
14 don't want, let's try to get out of it, or something
like that?
15 A. No, he has not mentioned anything to me about it.

that. I 16 Q. Okay. Well, I don't mean to suggest anything by

17 just wanted to know.

18 A. Yes, sir.

you'd 19 Q. And you did in your answers this morning -- and if

that 20 turn to what you wrote this morning, I think you have

there, 21 there. And on the page 36 at the bottom of the page

22 under the number 158 --

23 A. Yes, sir.

45 people 24 Q. -- you said, "The last I heard, they went through

25 for jury and selected" -- I don't know --

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1 A. "Two to serve."

2 Q. Where did you hear that?

call me 3 A. It was after -- on a Sunday night when they didn't

TV; that 4 for jury duty, so I started watching TV, and it was on

had went 5 the last time I heard on TV that it was 45 that they

6 through juror and there was only two that was serving.

7 Q. What TV had that wrong information on it?

8 A. It was on Channel 7. That's what I get.

us by 9 Q. So, what, you thought because you hadn't heard from

10 then that you wouldn't be hearing from us?

started 11 A. I figured that I wouldn't be hearing from you, so I

12 watching TV, yes.

13 Q. What else have you seen?

14 A. Excuse me?

case? 15 Q. What else have you seen on TV that relates to the

16 A. That's about it. That's the last I heard.

so don't 17 Q. Okay. Well, I'll just tell you that's not right,

18 be thinking that that's true.

19 A. Okay.

the 20 Q. Now, you said -- where you work there, you see --

21 public comes in there, you see a lot of people --

22 A. Yes, sir.

in 23 Q. -- day in and day out. And those people that come

24 there -- they've talked about this at all?

25 A. No, sir.

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Juror No. 78 - Voir Dire

1 Q. This case, I mean.

2 Have you let people know at the shop that
you've been

3 summoned over here for possible jury service?

4 A. Yes, sir.

5 Q. Have you also let them know that if you were to
serve on

6 this jury, you may be here for several months?

7 A. Yes, sir.

8 Q. And what did they say about that?

9 A. Well, they said that if I have to go, I have to go.

10 Q. Okay. And you'd have your job --

11 A. Yes, sir.

12 Q. -- when it was done. Now -- and you know that
because of

13 the distance involved here, we'd make arrangements to
put you

14 up here during the week, and then weekends you could be
back

15 over at home. You understand that?

16 A. Yes, sir.

17 Q. You were asked some questions here about your views
18 concerning the possibility of punishment by death or
life in

19 prison. You remember those questions?

20 A. Yes, sir.

21 Q. And your answers are on page 28.

22 Well, before I do that, let me ask you to go
on to

23 page 27, an earlier page. I want to ask you about
something

24 there.

25 A. Okay.

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Juror No. 78 - Voir Dire

1 Q. Are you on page 27 now?

2 A. Yes, sir.

3 Q. And under No. 122 --

4 A. Okay.

5 Q. -- you wrote an answer, "Let everyone have their
own

6 opinion, but when it affects this case, they shouldn't
be

7 here."

8 What are you saying here? I didn't understand
what

9 you meant.

10 A. Well, some religions have opinion that they
shouldn't be on

11 jury duty because they don't believe in the death
penalty or

12 anything.

13 Q. I see.

14 A. So this is a reason why I put it like that.

15 Q. I understand now. Thank you for the explanation.

16 Now turn to page 28 and also 29, because these

are the

17 questions that relate to your opinions and attitudes
about

18 punishment.

19 A. Okay.

20 Q. Right? And were you expecting when you answered
the

21 questionnaire that you'd get questions like this on it?

22 A. No, I never had questions like this.

23 Q. Have you ever thought about this subject of the
death

24 penalty and life in prison with no possibility of ever
being

25 released and whether that ought to be the law or not,
anything

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1 like that, before this?

2 A. No.

3 Q. And so you had to answer here because we asked you
to.

4 Have you thought any more about it since you made these
5 answers?

6 A. No.

7 Q. And can we take the answers that you wrote here as
being

8 your answers today, if we asked the same questions?

9 A. Yes.

10 Q. Now, when you say "he" in here, are you talking
about Terry

11 Nichols, or are you talking about anybody who is found
guilty?

12 Who is the "he"?

13 A. Anybody that is found guilty.

14 Q. All right.

15 A. No matter -- depends on what case you're on.

16 Q. Agreed. I understand. And you -- you seem to say
-- and

17 I'm not trying to put words in your mouth, so if I
don't say

18 what you intended to say, you correct me. All right?

19 A. Yes, sir.

20 Q. Don't hesitate. But you seem to say here in A and
B that

21 the death penalty should only be imposed "if there is
beyond a

22 shadow of a doubt, then I think there should be the
death

23 penalty."

24 A. That's on all accounts. If he is found guilty on
all

25 accounts.

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Juror No. 78 - Voir Dire

1 Q. And what do you mean by "all accounts"?

many
2 A. Well, whatever he is guilty of. I don't know how
3 counts there are, if there is -- if he is guilty on all
4 accounts, I believe in the death penalty. If he's not
guilty,
5 then I don't believe in it.

6 Q. Yeah. We're not going to put to death somebody who
is not
7 guilty.

8 A. That's right.

9 Q. And then under the last one down there, D, you say,
what,
10 bombing on planes, bombing on a federal building, bombs
killing
11 people.

12 A. Yeah. Also that little girl that got killed in
Boulder.

13 Q. Uh-huh.

14 A. And different ones. The little boy that went and
killed
15 his mom and then two or three children at the school
because he
16 got mad.

17 Q. So is it your view in all of those situations,
whoever is
18 guilty of it should be put to death?

19 A. If he's found guilty.

20 Q. And then you say something like that, I guess, on
the next
21 page, 29. Please look at that.

22 A. Oh.

23 Q. Then you say, "As long as you can prove to me that
he is
24 guilty, no doubts at all, then I will sentence him."

25 A. That's right.

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Juror No. 78 - Voir Dire

1 Q. Sentence him how?

2 A. If he is -- if he is innocent on all counts -- if
he is
3 innocent on any accounts, you wouldn't put him to
death. If he
4 is guilty on all accounts, yes, I would sentence him.

5 Q. Well, when you say "sentence him," are you saying
sentence
6 to death?

7 A. If he is guilty on all accounts. You'd have to
prove to me
8 that he is guilty on all accounts.

9 Q. Well, let me talk with you about it a little bit.
And I'm
10 not trying to argue with you, understand, just trying
to
11 understand what you're saying.

12 A. Okay.

13 Q. The first thing that a jury has to do is decide
whether the

is in a 14 evidence proves the person guilty of whatever the crime
15 criminal case beyond a reasonable doubt.

16 A. Right.

show 17 Q. If it hasn't been proved, if the evidence doesn't

is to 18 guilt beyond a reasonable doubt, the duty of the jury

19 find that person not guilty.

20 A. That's right.

21 Q. You clearly agree with that?

22 A. Yes, sir, I do.

me -- 23 Q. So there is no question of sentence -- excuse me --
24 unless -- I'm going to get a little water here. Excuse

guilt 25 unless there is a decision that the evidence does show

3363

Juror No. 78 - Voir Dire

1 beyond a reasonable doubt.

2 A. That's right.

punishment should 3 Q. Okay. Now, the question then of what the

other 4 be does not depend upon that; it depends upon some

5 things.

6 A. Right.

7 Q. And let me just explain that process. In a case --
first
8 of all, this death penalty does not come up unless it
involves
9 killing somebody intentionally.

10 A. Right.

11 Q. And then -- because in other kinds of cases, where
there is
12 no death penalty, the jury decides whether the evidence
proves
13 guilt; and if it doesn't, there is a not guilty
verdict. If it
14 does, there is a guilty verdict, and then it goes to
the judge
15 to decide a sentence.

16 A. Right.

17 Q. Understand?

18 Before a judge decides how to sentence
somebody, the
19 judge gets a lot more information than just what was
given by
20 the evidence at the trial, and that information
includes a lot
21 of things about the defendant as a human being, because
we
22 judge people as human beings, no matter what they've
done. And
23 then there is -- this other information includes almost
24 everything about the person's background, where he was
born and
25 raised, what the family relationships were, marriages,

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1 divorces, military record, employment record, any other
crimes
2 on record, all the kinds of things that are unique to
every one
3 of us, because we're all individuals.
4 A. Yes.
5 Q. You agree with that?
6 A. Yes, I do.
7 Q. And then there is a hearing and the judge listens
to all of
8 this and then decides that this is the -- and then
makes a
9 sentence of so many years and that that's what is the
right
10 sentence for that person and that crime; so it isn't
just the
11 crime, it's the crime plus the person.
12 A. Yes.
13 Q. Follow? Now, when under -- we're talking about
federal law
14 here because we're in Federal Court. In federal law,
if the
15 crime involves the possibility of the death sentence,
we don't
16 ask a judge, we don't leave it to a judge to make a
decision
17 between life or death. That's up to the jury, the same

jury

wasn't 18 that heard the trial. And of course, if that jury

penalty 19 satisfied that the defendant was guilty, there is no

20 hearing; there is a not guilty verdict.

the 21 So we only start with this question if all of

Follow 22 jurors are satisfied, yeah, he did whatever is charged.

23 me?

24 A. I follow you.

hearing; and 25 Q. Now there is -- now there is a second trial or

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Juror No. 78 - Voir Dire

the 1 it is at this time that all these other things about

2 defendant as a unique human being come in; also, some

circumstances 3 additional things about the crime, additional

lawyers 4 about the crime. So just like the trial itself, the

and 5 for the Government bring in information about the crime

to the 6 what happened to people and so forth that they suggest

punishment 7 jury should be considered in deciding that the just

8 for this person is death.

9 The defense presents all this information
about the
10 defendant as a person, his life story, what happened in
the
11 particular crime as well, but the things that suggest
to the
12 jury and to each juror, look, in spite of what he's
done, he
13 shouldn't be put to death because you have to take into
account
14 who he is, what his life is because you're talking
about taking
15 a life. So you need to know what life you're taking.
You
16 understand what I'm saying?

17 A. Yes, sir. The person himself.

18 Q. Yes. The person. Everything about him, because,
you know,
19 when -- when it comes down to making a life-or-death
decision
20 about another human being, you've got to know all you
can about
21 that human being.

22 A. That's right.

23 Q. You agree with that?

24 A. Yes, sir, I do.

25 Q. And what happens then after the jury gets all of
this

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1 information, the court, the judge, outlines for the
jury what
2 has been presented and says to the jury, well, now,
these are
3 the things that you've heard that you can consider as
4 aggravating factors that support the idea that a death
sentence
5 is a just sentence for this person; these are the
things that
6 you've heard that suggest as mitigating factors you
should not
7 put this person to death regardless of the crime. Do
you
8 understand what I'm saying?
9 A. Yes, sir.
10 Q. And then what we say to the jury, what the court
says to
11 the jury, is, well, here's -- here are some questions
you can
12 ask yourselves to sort of help sort it out and analyze
it,
13 weighing and considering all that you've heard for
aggravating
14 and mitigating, for and against, the death sentence,
really,
15 for this person; but in the end, each juror is going to
have to
16 decide whether the defendant should live or die. But
in making
17 that decision, you have to consider more than the crime

itself.

18 You'd have to consider all of these things that I've
just been

19 talking about. Do you follow?

20 A. Yes, sir.

21 Q. Any question about this explanation? Do you
understand

22 what I've said?

23 A. Yes, sir, I understand.

24 Q. And the question has to be, then, whether at the
end of it

25 all, you, as one of the jurors, could make an
individual moral

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1 judgment about whether a defendant should live or die
and

2 consider not only the crime and what you were shown
about the

3 crime but also all of the facts and circumstances about
the

4 defendant as a unique and individual human being. You
5 understand?

6 A. Yes, sir.

7 Q. Can you do that?

8 A. Yes, sir.

9 Q. And I'm not arguing with your answer, but I just
want to

10 make it clear that there is no automatic death
sentence. Just

11 because a person is found guilty of a crime, even if
another

12 person has been sentenced to death for the same crime,
the

13 person being considered now has to be judged as an
individual.

14 A. That's right. That's right.

15 Q. And you agree that you could do that?

16 A. Yes, sir.

17 THE COURT: Okay.

18 Mr. Orenstein, do you have some questions?

19 The lawyers, one for each side, have a chance
to ask

20 you some more, so bear with us a bit longer.

21 JUROR: May I have a glass of water, please.

22 THE COURT: Certainly.

23 VOIR DIRE EXAMINATION

24 BY MR. ORENSTEIN:

25 Q. Good morning, ma'am.

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1 A. Good morning.

2 Q. How are you this morning?

3 A. Doing fine.

4 Q. Ma'am, my name is Jamie Orenstein, as the Judge
introduced
5 me; and together with my fellow prosecutors, our job is
going
6 to be to present the evidence against Mr. Nichols in
this
7 trial.

8 As a juror in this case if you were to serve,
you
9 would have a job to do; and that would be to listen to
all of
10 the evidence with an open mind, both at the guilt phase
and, if
11 we were to get to it, at a penalty phase, listen with
an open
12 mind, consider it all, and come to a decision. Would
you be
13 able to do that?

14 A. Yes, sir.

15 Q. Ma'am, I'd like to, if I could, go right to the
issue that
16 his Honor was just discussing with you, which is the
issue of
17 punishment; and as I think you understand, that's not
even an
18 issue a juror has to deal with unless and until the
jury has
19 decided beyond a reasonable doubt that the charges are
proved.

20 You understand that?

21 A. Excuse me. I'm sorry. Would you repeat that,
please.

22 Q. Yes, I'm sorry if I was speaking quickly.
23 You understand that the issue that may face a
jury of
24 punishment, of life or death -- that's an issue that
doesn't
25 even arise unless the jury first decides that a
defendant is

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Juror No. 78 - Voir Dire

1 guilty of the charge in the case.
2 A. Yes, sir.
3 Q. Okay. You understand that?
4 A. Yes, sir.
5 Q. So in discussing the question of punishment, we're
starting
6 at the point of a jury having made the decision of
guilt. You
7 understand?
8 A. Yes.
9 Q. Okay. Now, you had some views that you wrote down
in the
10 questionnaire and that his Honor discussed with you
about cases
11 in which in your own personal view the death penalty
might be
12 appropriate. Correct?
13 A. Yes, sir.

are 14 Q. You understand that those personal views of yours

that? 15 different from what the law is. Do you understand

16 A. Yes, sir.

this 17 Q. And did you understand his Honor's description of

hear? 18 second trial that a jury might be in a position to

19 A. Yes, sir.

trial? 20 Q. What's your understanding of what happens at that

found 21 A. The understanding is the person is innocent until

all 22 guilty; that this is a whole complete trial and it's

23 different.

McVeigh 24 Q. Well, and that's different from, for instance, the

25 trial --

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Juror No. 78 - Voir Dire

1 A. Right.

2 Q. -- that you've heard about, I'm sure.

case 3 So you don't bring any assumptions into this

Is 4 based on what you may have heard about a previous case.

5 that correct?

6 A. That's right.

7 Q. Now, his Honor talked to you about the possibility
of a
8 second part of the trial, if the defendant is found
guilty.

9 And I'm not talking specifically about this case, but
anytime
10 the death penalty is a possibility. Do you understand
that

11 first there is a trial in which the jury decides if the
12 defendant is guilty or not? Do you understand that?

13 A. Right.

14 Q. Did you understand after that first trial, if there
is a
15 decision of guilty, there could be a second trial?

16 A. Right.

17 Q. What is your understanding of what would happen at
that
18 second trial?

19 A. If he is found guilty on the first trial?

20 Q. Right. And you have to decide the issue of
punishment. Do

21 you have an understanding what you'd be hearing at that
second
22 trial?

23 A. No.

24 Q. Okay. As his Honor explained, there would be a
second
25 proceeding.

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1 A. Uh-huh.

2 Q. And at that second proceeding, the Government would
come

3 forward with evidence. Now, the jury at that point
would have

4 already decided guilt, but the Government would come
forward

5 with evidence about the crime and about other
information that

6 would support its argument that the penalty should be
death.

7 The defense would then have an opportunity to
come

8 forward with other evidence about the defendant and his
9 background, what he's done to help other folks in
society, all

10 sorts of things about the defendant as an individual
that would

11 support their argument that the defendant should not be

12 sentenced to death and that he should, in fact, be
given a life

13 sentence or perhaps some lesser sentence. Do you
understand

14 that?

15 A. Yes. That depends on the person himself and his
background

16 and everything.

17 Q. Right.
18 A. Right.
19 Q. And you understand that's a completely separate
process
20 from deciding whether the defendant is guilty or
innocent.
21 A. Right.
22 Q. So do you understand that there is no need for that
process
23 if, upon a decision of guilt, the sentence is
automatic?
24 A. If he is found guilty, you mean automatically
guilty?
25 Q. No, no, no. No. Once there is a decision of
guilt, you

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1 understand there won't be a need for that second
hearing if the
2 law allowed an automatic penalty? Do you understand
that?
3 A. Yes.
4 Q. So the decision is, of course, very much open under
the law
5 about life or death at that point, no matter what the
crime is.
6 There is still a decision to be made by 12 jurors
coming to a
7 moral decision about what should happen with that
defendant.

8 A. Right.

9 Q. Would you be able to listen to all of that evidence
at that
10 second hearing?

11 A. Yes, sir.

12 Q. And that includes evidence about the crime;
correct?

13 A. Right.

14 Q. Would you also be willing to listen to all of the
evidence
15 about the defendant as an individual person?

16 A. Yes.

17 Q. And would you be able to consider all of that
evidence both
18 pro and con about what penalty should be imposed?

19 A. Yes.

20 Q. So you understand that you couldn't go into a
proceeding
21 like that having made up your mind already about what
the
22 proper sentence should be no matter what the crime is?

23 A. I haven't made up my mind.

24 Q. Even about penalty; is that correct?

25 A. About either one.

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the
--
1 Q. Okay. Now, I think this morning when you finished
2 questionnaire -- if I could ask you to turn to page 30

3 A. Okay.

4 Q. There is a question there, Question 129. Do you
see that?

5 A. Oh, I'm on the wrong page.

6 Q. Sorry. Page 30.

7 A. Okay.

8 Q. Do you see Question 129? It's the second one on
the page.

9 A. Yes.

10 Q. You wrote there that you agree strongly that it's
important

11 to follow this court's instructions; and then you gave
an

12 explanation, "Because our lives might be at stake."

13 Could you expand on that a little bit, what
you had in

14 mind with your explanation?

15 A. Yes. I was thinking about the jury itself, and I
do agree

16 strongly on the juror being in here, driving in here so
nobody

17 would know who they are.

18 Q. Uh-huh. And so you're interested in obviously your
19 privacy?

20 A. Right.

21 Q. Of course. And his Honor explained that to you.

Do you

22 understand that the instructions that govern a trial
that his

23 Honor would provide apply to all facets of the trial,
every

24 part of it?

25 A. Yes, sir.

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1 Q. And perhaps one of the most important parts --
well, every

2 part is important. The determination of guilt or
innocence.

3 A. Right.

4 Q. And, of course, if there is a guilty verdict, the
5 procedures that would happen in determining what the
punishment

6 should be.

7 A. Right.

8 Q. And there would be instructions there.

9 A. Right.

10 Q. And as his Honor explained, part of that
instruction would

11 be that the law requires that only jurors who can keep
an open

12 mind about punishment --

13 A. Right.

it's 14 Q. -- and who go into it not having decided, well, if
jurors who 15 that crime, it must be a certain punishment -- only
you be 16 are open as to all of the options should serve. Would
17 able to follow that instruction?

18 A. Yes, sir.

your 19 Q. So I guess the bottom line, the question isn't what
opinions are 20 own opinions are, not knowing the law, what your
but 21 about what a penalty should be for any particular crime
the 22 whether you can keep an open mind and listen to all of
case. 23 evidence before coming to a decision in a particular

24 A. Yes, sir.

25 Q. Can you do that?

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Juror No. 78 - Voir Dire

1 A. Yes, sir.

much for 2 MR. ORENSTEIN: Okay. Ma'am, thank you very
3 answering my questions.

4 VOIR DIRE EXAMINATION

5 BY THE COURT:

6 Q. I just wanted to follow up on something before
asking for

7 Mr. Woods.

8 You said in response here just a minute ago,
and you

9 read from an answer about instructions "because our
lives may

10 depend on it," or something like that.

11 A. Yes, sir.

12 Q. And then you were talking about the importance to
you of

13 coming and going so your picture couldn't be taken and
all of

14 that. Do you have some concern about risk on being on
the

15 jury? Are you worried about --

16 A. No, sir.

17 Q. -- some risk to you?

18 A. No, sir.

19 Q. Okay. So --

20 A. I just think it's a good idea.

21 Q. Okay. Well, you're not -- there isn't any reason
for you

22 to be concerned about something happening to you on
being on

23 the jury. It is just a matter of protecting your
privacy from

24 the media. That's what we're talking about.

25 A. Okay.

Juror No. 78 - Voir Dire

1 Q. You accept that?

2 A. Yes, sir.

3 THE COURT: Okay.

4 All right, Mr. Woods.

5 MR. WOODS: Thank you, your Honor.

6 VOIR DIRE EXAMINATION

7 BY MR. WOODS:

8 Q. Good morning.

9 A. Good morning.

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

Along

11 with Mike Tigar, we were asked by the United States

District

12 Court in Oklahoma City to help Terry Nichols, who the

bombing.

13 Government has charged with being responsible for this

the

14 The fact that Mr. Nichols could not afford a lawyer and

Will he

15 court had to appoint a lawyer: Will that affect you?

16 be at a disadvantage with you if you were on the jury?

17 A. No.

farm and

18 Q. Okay. You mentioned that you had grown up on a

19 that the farm -- was this in Ohio?

20 A. Yes, sir.

21 Q. And that you raised potatoes and tobacco? Is that correct?

22 A. Yes, sir.

23 Q. Were there any other crops raised on the land?

24 A. Corn, beans.

25 Q. Okay. How many acres was it? Do you recall?

3377

Juror No. 78 - Voir Dire

1 A. Now, that's been a long time ago. I'd say maybe 10 acres.

2 Q. Okay. Did you use commercial fertilizer on the crops?

3 A. That, I couldn't tell you, because I was young at the time.

4 I was born on the farm, and I left there when I was 10 years

5 old.

6 Q. Okay. Do you recall working on the farm?

7 A. Yes, sir.

8 Q. But you don't -- you didn't recall how the crops were

9 fertilized at all?

10 A. No, sir.

11 Q. Okay. When you went down to Titusville and your parents

12 had bought a restaurant, were you living in the country outside

13 of Titusville, or did you live in the city?

14 A. We lived in the back of the restaurant.

15 Q. Oh, okay.

16 A. It's about maybe 12 miles on the outskirts of
Titusville.

17 Q. Okay. So out in the country on the highway?

18 A. Yes, sir.

19 Q. Did you do any farm work at all down there then?

20 A. In Titusville?

21 Q. In Florida at all.

22 A. No, sir.

23 Q. Okay. Is that farming country around there outside
of

24 Titusville?

25 A. Farming country?

3378

Juror No. 78 – Voir Dire

1 Q. Yes, ma'am.

2 A. No, not really. It is mostly oranges and
grapefruit and

3 stuff.

4 Q. Okay. Orchards?

5 A. Uh-huh.

6 Q. Okay. Now, the job where you're working now in
Buena

not from 7 Vista: How far is it from Buena Vista to Denver? I'm

8 this area.

9 A. From my house to here is about 144 miles.

correct? 10 Q. Okay. And your husband brought you today; is that

11 A. Yes, sir.

you 12 Q. Okay. What's the situation with your employment if

Have you 13 were to get on a jury that lasted for several months?

14 talked about that with your employer?

15 A. Yes, sir.

16 Q. And what did they tell you?

serve. 17 A. Well, they said if I have to serve, I have to

your salary 18 Q. Okay. Do you know whether or not they will pay

19 during those days?

20 A. They're supposed to pay half.

21 Q. Okay. For the whole period of time?

22 A. Yes, sir.

and your 23 Q. All right. Will that affect you financially, you

24 husband?

25 A. No, I don't think so.

Juror No. 78 – Voir Dire

1 Q. Okay. Now, you mentioned that you live in the
middle --

2 was it a national park that you're surrounded by?

3 A. A game trail. It's a game reserve there.

4 Q. Okay. And are you isolated there, or are there
neighbors

5 nearby?

6 A. There is about 65 houses in the woods.

7 Q. Okay. And you're there in the woods outside Buena
Vista?

8 A. Yes, sir, about 5 miles.

9 Q. Okay. Okay. And your husband is working there in
the

10 city?

11 A. Yes, sir.

12 Q. Now, have you thought about how you would get here
in the

13 event that you were chosen on the jury?

14 A. Yes, sir. My husband would bring me.

15 Q. All right. What are his hours of working?

16 A. 8 in the morning till about 4 in the afternoon.

17 Q. Okay. And had you planned on him coming every
morning to

18 bring you --

19 THE COURT: Well, to make it clear, she would
stay

20 here during the week.

21 MR. WOODS: Yes, your Honor.

and 22 THE COURT: So you wouldn't have to drive back
23 forth every day. We'd put you up here in a hotel.
24 JUROR: Okay.
25 BY MR. WOODS:

3380

Juror No. 78 - Voir Dire

during 1 Q. Would that be inconvenient if you were staying here
2 the week and then going back home on the weekend?
3 A. That would be fine.
4 MR. WOODS: Okay. Thank you, your Honor.
5 THE COURT: Yes.
6 BY MR. WOODS:
7 Q. If you would, turn to Question 122.
8 A. What page is that on?
you 9 Q. That's going to be on the first questionnaire that
10 completed, and it's going to be page 27.
11 A. Okay.
everyone is 12 Q. The question is, "The Constitution says that
no 13 entitled to their own political and religious opinions
14 matter how unpopular these opinions may be. How do you
feel

15 about this?"

16 And your answer was -- could you read that for
me?

17 A. "Let everyone have their own opinion, but when it
-- when

18 it affects a case, they shouldn't be here."

19 Q. And could you expand on that a little bit?

20 A. Some religions don't believe in -- in capital
punishment.

21 Q. Okay. And what do you mean by that they shouldn't
be here

22 if that is their belief?

23 A. Well, some of them don't want to serve because
their faith

24 don't believe in it.

25 Q. Okay. And you're talking about serving on the jury
or

3381

Juror No. 78 - Voir Dire

1 serving -- I'm not following you.

2 A. Serving on the jury.

3 Q. Okay. Now, you also mentioned on the new part of
the

4 questionnaire, on page 36, Question No. 158 -- and you

5 explained to the Court that you started watching
television on

6 Sunday. Which Sunday was that?

7 A. It was the Sunday before they started jury duty --

started

8 selecting for jury.

9 Q. Okay.

10 A. Calling people. Uh-huh.

people

11 Q. And at that time you understood that there were 45

12 for jury and that two were selected?

13 A. That's the last I heard, yes.

Sunday to

14 Q. Okay. And have you watched television since that

15 keep up with the number of jurors selected?

16 A. No, sir, I haven't.

the Sunday

17 Q. Okay. And so as I understand it, the Sunday was

18 before jury selection?

have to

19 A. Yes. They didn't call me, so I figured I wouldn't

20 come.

21 Q. Okay. And that -- the jury selection started on

22 September 29. You remember that?

23 A. Yes.

before

24 Q. And you were watching television then on the Sunday

25 that? September 29 was a Monday.

3382

Juror No. 78 - Voir Dire

1 A. That was on a Sunday night.

of what 2 Q. Okay. And at that time, what's your recollection

3 they said on television?

4 A. They didn't say much.

5 Q. Okay. But what did they say that you remember?

juror and 6 A. Only that there was -- they had 45 selections of

7 there was only two served. That's all I heard.

43 were 8 Q. Did you have some understanding about how the other

9 processed and what happened to those?

10 A. No.

11 Q. Had they been questioned?

12 A. That, I couldn't tell you.

and the 13 Q. Was there any discussion about death penalty views

14 religion that you mentioned back on 122?

15 A. No.

called, 16 Q. Okay. And since you didn't think that you would be

17 have you been watching television, reading the

newspaper since 18 that day?

19 A. If I got a chance to watch TV, yes.

20 Q. Okay.

21 A. It depends on how late that I work. And when I

come home, 22 I have a cup of coffee and get supper ready, so I watch

TV

23 about 7:00.

24 Q. Okay. What are your hours that you work there at
the shop?

25 A. Different hours. Usually it's 8 to 2 -- 8 to 4.
Sometimes

3383

Juror No. 78 - Voir Dire

1 it's 12 to 6.

2 Q. And so you're able to -- sometimes watch the 6:00
news and

3 then the 10:00 news. Do you stay up for that?

4 A. Well, usually about 6:00 -- 5:30, 6:00 is when I
start

5 supper.

6 Q. And you have the television on as sort of
background

7 information to listen to while you're working?

8 A. No. I usually try to fix supper, and I don't turn
on TV

9 until about 6:30, 7:00.

10 Q. Okay. And then do you watch it at 10:00, the 10:00
news?

11 A. I watch a little bit on 10:00 news.

12 Q. And have you heard on the 10:00 news about how many
jurors

13 now have been selected?

14 A. I haven't heard anything.

15 Q. I'm sorry?

16 A. I haven't heard anything lately.

17 Q. As to the number of jurors?

18 A. Right.

19 Q. Concerning the publicity that you've seen and heard
over

20 the last two years, do you remember how many people
were killed

21 in the bombing?

22 A. No, I don't.

23 Q. Can you give me an estimate?

24 A. I heard, but I don't know how many. I think it was
138 is

25 the last, I thought.

3384

Juror No. 78 - Voir Dire

1 Q. All right. And you recall from what you've seen,
read, or

2 heard if there were any children killed?

3 A. Yes, there was children killed.

4 Q. And do you recall why that was, if it was a bombing
of a

5 federal building?

6 A. It was a day-care center that was there.

7 Q. Do you remember how many children were killed?

8 A. Either 12 or 15. I don't remember.

9 television of

10 bodies being

will be

(sic)

killed.

sad?

that

final

the facts

of being

9 Q. Do you recall when it happened the images on

10 the bombed building and the rescue workers and the

11 carried out?

12 A. Yes, sir.

13 Q. That's a pretty powerful image. Would you agree?

14 A. Yes, sir.

15 Q. If you were on the jury, it's likely that there

16 testimony concerning emotional, sad, heart-rendering

17 facts, such as rescue efforts, such as children being

18 Would you agree that that would be very emotional and

19 A. It would be, yes.

20 Q. If you were on the jury, would you be able to keep

21 separate and look at solely when you're making the

22 decision -- keep the emotional part separate, look at

23 that the Government claims proves Terry Nichols guilty

24 responsible for the bombing without letting the emotion

25 interfere?

Juror No. 78 – Voir Dire

1 A. They'd have to prove that he was guilty.

2 Q. Okay. And would the emotional fact of the case
affect your
3 deliberations?

4 A. No.

5 Q. Okay. Now, you know, there is a lot of talk. The
6 prosecutor talked to you a lot about the punishment, as
did the

7 Judge. I want to make sure you understand that Mr.
Tigar and I

8 are not conceding that there is going to be a penalty
phase of

9 this case. The Government has a theory that Mr.
Nichols is

10 responsible for the bombing, but we disagree with that
theory.

11 When they bring their witnesses into court, we're going
to

12 cross-examine them very thoroughly about their
allegation.

13 Also, the Judge told you that we didn't have
to --

14 we're not under any obligation to present witnesses or
15 testimony ourselves; but I want to assure you that we
will be

16 calling witnesses ourselves that will contradict the
17 Government's theory of the case. Do you understand
that this

18 isn't just a foregone conclusion that you're going to
be in a

19 penalty stage?
20 A. They'd have to prove that he's guilty.
21 Q. All right. And do you understand, then, what our
role is?
22 A. Yes, sir.
23 Q. And what is that?
24 A. It's to prove that he is innocent.
25 Q. Okay. And we're going to contest the Government's
theory.

3386

Juror No. 78 - Voir Dire

1 And do you understand then at the end of that evidence,
you'll
2 have to make a decision one way or the other?
3 A. Yes, sir.
4 Q. Now, you mentioned that there are various counts in
the
5 indictment. Is that your understanding of the charges
brought
6 by the Government?
7 A. Yes, sir.
8 Q. Back to the publicity issue, we talked about the
children.
9 Do you recall how the bomb was delivered to the
building?
10 A. No, sir, I don't.
11 Q. Do you recall what the bomb was made of, according
to the

12 Government's allegations?

13 A. No, sir.

14 Q. Do you recall how Mr. McVeigh was arrested?

15 A. No, sir.

16 Q. Do you have any recollection from what you've seen,
read,

17 or heard how Mr. Nichols initiated contact with the
federal

18 authorities?

19 A. No, sir.

20 Q. All right. Do you remember the McVeigh verdict?

21 A. Excuse me?

22 Q. Do you remember whether or not Mr. McVeigh was
convicted?

23 A. McVeigh?

24 Q. Yes, ma'am.

25 A. The one that was before?

3387

Juror No. 78 - Voir Dire

1 Q. Yes.

2 A. No, sir. I wasn't watching TV at the time. All I
seen was

3 the people outside, and they was waiting on the
verdict.

4 Q. Okay. And do you remember what the verdict was?

5 A. Guilty.

6 Q. Okay. And do you remember what the sentence was?
7 A. Death.
8 Q. Okay. Did you agree with that verdict?
9 A. That, I don't know. I didn't follow the case.
10 Q. Did you ever hear anybody that disagreed with that
verdict?
11 A. No, sir.
12 Q. Okay. Did you follow the O. J. Simpson case when
it was on
13 television two years ago?
14 A. No, sir.
15 Q. Did you see any coverage on television at all about
it?
16 A. Very little.
17 Q. Did you have any opinion as to the way that trial
was
18 conducted?
19 A. No, sir.
20 Q. Did you have an opinion as to the verdict?
21 A. No, sir.
22 Q. Did you agree with the verdict?
23 A. I don't know what the verdict was.
24 Q. Okay. Okay. Now, you mentioned the little girl
killed in
25 Boulder when the Judge asked you about certain cases --

Juror No. 78 - Voir Dire

1 A. Yes, sir.

what

2 Q. -- for the death penalty. What do you recall from
3 you've seen, read, or heard about that case?

that

4 A. That she got killed; and the last that I had heard,
5 her father found her.

cases that

6 Q. Now, you mentioned that case in connection with
7 deserve the death penalty. Is that correct?

8 A. Yes, sir.

convicted of

9 Q. And is it your opinion that if somebody is
10 that offense that they should get the death penalty?

11 A. Yes, sir.

opinions

12 Q. Okay. Now, the questionnaire on page 27 -- the
13 questionnaire explained to you that there are various
14 on the death penalty; and the questions on page 28 had
15 with what your personal opinions were. Do you recall
that?

to do

16 A. Yes, sir.

if you

17 Q. Asking you for what your personal opinions are and
18 could write the statute, how you would write it. Have
you had

time?

19 some views on the death penalty for some period of

20 A. No, sir.
21 Q. Have you not thought about it until you were
confronted
22 with this questionnaire?
23 A. Yes, sir.
24 Q. You understood when you came out to the fairgrounds
there
25 that you were going to be asked questions about the
Terry

3389

Juror No. 78 - Voir Dire

1 Nichols case, didn't you?
2 A. Yes, sir.
3 Q. Because that was -- they announced that in the
summons that
4 you got; is that correct?
5 A. Yes, sir.
6 Q. And at that time you knew that Mr. McVeigh had
received the
7 death penalty verdict, did you not?
8 A. Yes, sir.
9 Q. When you filled these questions out, you were
giving what
10 you felt was your personal opinion on the death
penalty. Is
11 that correct?
12 A. Yes, sir.

13 Q. Had you thought about it at all before that day?

14 A. No, sir.

15 Q. Had you followed any cases in the past?

16 A. No, sir.

17 Q. Okay. Have you been reading about the Gary Davis
case,

18 where a man was executed two days ago?

19 A. No, sir.

20 Q. Were you aware of that execution two days ago?

21 A. They said on the news that he was supposed to die,
what was

22 it, Monday night at 8:00.

23 Q. Right. Okay. And do you know whether or not that

24 occurred?

25 A. I didn't see it on TV, so I don't know.

3390

Juror No. 78 – Voir Dire

1 Q. Okay. Do you have any opinion one way or the other
on that
2 case?

3 A. I don't have any opinion.

4 Q. Okay. Now, on these questions, the first one was
on page

5 28.

6 A. Okay.

7 Q. "What is your view as to whether the penalty of
life in
8 prison without the possibility of release should ever
be
9 imposed as a punishment for any crime?"

10 And you wrote here, "If he is found guilty of
a few
11 counts but not all account, then he should have life."

12 A. Yes.

13 Q. Now, this was after the Court explained to you that
14 Mr. Nichols was charged with the same thing that Mr.
McVeigh
15 had been charged with. You understood that; is that
correct?

16 A. Yes.

17 Q. And that there were several counts in the
indictment.

18 A. Yes.

19 Q. Okay. And then B, "What is your view as to whether
the
20 penalty of death should ever be imposed as a form of
punishment
21 for any crime?"

22 And you mentioned here, "If he is found guilty
on
23 every account without" -- is that "shadow of a doubt"?

24 A. Yes, sir.

25 Q. Okay -- "then I think he should have the death
penalty."

Juror No. 78 - Voir Dire

1 Now, are you drawing a distinction there about
the

2 number of counts that a person is charged with?

3 A. Yes, sir.

4 Q. Okay. And as I understand your answer -- and
again, the

5 Court says this isn't a test. There are no right or
wrong

6 answers, just truthful answers. We're trying to get
what you

7 feel and you believe.

8 A. Right.

9 Q. Okay. As I understand the way you phrased this, if
a

10 person is found guilty of all the counts that he's
charged

11 with, he should get the death penalty; but if there are
some

12 counts where he's found not guilty, then he should get
life

13 imprisonment?

14 A. Yes.

15 Q. Okay. And then in C, "In what kind of cases is it
16 appropriate, if ever, to impose a punishment of life in
prison

17 without the possibility of ever being released?"

18 And you list, "Killings in banks and rapists."

19 A. Yes.
20 Q. And you feel those type of crimes, the appropriate
penalty
21 is life in prison. Is that correct?
22 A. Yes.
23 Q. Now, can you tell me what you mean by killings in
banks as
24 distinguishing that from the next category?
25 A. People going in and robbing banks.

3392

Juror No. 78 - Voir Dire

1 Q. Okay. And a killing occurring?
2 A. Yes.
3 Q. And you feel in those cases, the appropriate
punishment is
4 life in prison?
5 A. Well, yes and no.
6 Q. Okay. And then on D, the last question there on
that page,
7 28, "In what kind of cases is it appropriate, if ever,
to
8 impose a punishment of death?"
9 And you list, "Bombings on planes, bombings in
federal
10 buildings, and bombs of killing people." Is that
correct?
11 A. Yes.

12 Q. And then the final one on the next page. It's a
long
13 question about your beliefs on the death penalty. "As
long as
14 you can prove to me that he is guilty, no doubts at
all, then I
15 will sentence him. He is not guilty until proven
guilty."

16 When you say that "I will sentence him," what
did you
17 mean by that?

18 A. Well, as a juror, if we find him guilty on all
accounts,
19 then I will sentence him, yes.

20 Q. All right. And as you said earlier that if it's
guilty on
21 all accounts, you believe the appropriate penalty is
the death
22 penalty. Is that correct?

23 A. Yes.

24 Q. All right. Now, on the -- back to the prior page,
page 28,
25 the bombing of planes, bombing of federal building,
bombs of

3393

Juror No. 78 - Voir Dire

1 killing people: In a hypothetical case, say a bombing
on a
2 plane --

3 A. Uh-huh.

4 Q. If a jury -- and you understand the Judge
instructed you on

5 this that we don't get to that penalty phase unless a
jury has

6 found someone guilty of premeditated murder --
intentional,

7 premeditated murder of killing another person?

8 A. That they did it intentionally?

9 Q. Right.

10 A. Okay.

11 Q. That's the only time we're going to be getting to a
penalty

12 phase, where you're faced with a question of death or
life

13 imprisonment. And bombings on planes, I assume you
mean where

14 more than one person is killed. Is that correct?

15 A. Yes. Where the plane blows up.

16 Q. Okay. Okay. And in a type of case such as that,
after

17 you've heard the evidence that is offered into evidence
at the

18 penalty phase, you've heard the mitigating circumstance
-- what

19 did you understand the Judge to mean about mitigating

20 circumstances?

21 A. I'm sorry. Would you explain that to me.

22 Q. Yes, ma'am. The Judge told you that at the penalty
phase

-- at 23 of the hearing after the jury has found somebody guilty
circumstances 24 the penalty phase, there will be aggravating
about 25 offered into evidence concerning what is horribly wrong

3394

Juror No. 78 - Voir Dire

interrupt 1 the case and then -- I'm sorry. I didn't mean to
2 you.

3 A. I'm sorry.

there 4 Q. And then mitigation, the Judge instructed you that
What 5 would be mitigation evidence offered in by the defense.

6 did you understand that to mean?

himself, his 7 A. As Mr. Nichols, you would have -- the person
8 personality.

9 Q. Okay.

consider 10 A. His family, stuff like this here. You'd have to
11 that in with the sentence.

has been 12 Q. All right. And in a hypothetical case where there
of people 13 a bombing on a plane, the bomb has exploded, a number
14 have been killed --

15 A. Uh-huh.
16 Q. -- do you think that the appropriate verdict for
that
17 offense, taking everything into consideration, is the
death
18 penalty?

19 A. Yes.

20 MR. MACKEY: Objection.

21 THE COURT: Overruled.

22 BY MR. WOODS:

23 Q. Okay.

24 A. That is deliberate.

25 Q. Yes, ma'am. And I take it that given those
circumstances,

3395

Juror No. 78 - Voir Dire

1 that your vote would be the death penalty regardless of
what
2 was offered about the individual, when it's intentional
and
3 deliberate and a number of people have been killed.

4 A. Yes.

5 MR. WOODS: Okay. Well, I thank you for your
answers.

6 THE COURT: Thank you.

7 BY MR. WOODS:

8 Q. I take it in that same circumstance that where
there is a
9 deliberate murder where a number of people have been
killed
10 that you would not feel that life imprisonment would
ever be
11 the appropriate verdict on a case like that.

12 MR. MACKEY: Judge, objection without --

13 THE COURT: Overruled.

14 You may answer that question.

15 JUROR: As long as you find him guilty. You
have to
16 prove that he was part of it.

17 BY MR. WOODS:

18 Q. Yes, ma'am.

19 A. And he is guilty.

20 Q. Yes, ma'am. And I take it on a hypothetical case
like that

21 where a number of people have been killed and you found
the

22 defendant guilty that you did not feel that life
imprisonment

23 would ever be the appropriate verdict in a case like
that.

24 A. As long as you could prove that he was there.

25 Q. Yes, ma'am.

1 A. And that he was part of it and it was deliberate.

2 THE COURT: Well, I don't think you answered
the
3 question.

4 JUROR: Oh, I'm sorry.

5 THE COURT: Maybe there is a misunderstanding.

6 VOIR DIRE EXAMINATION

7 BY THE COURT:

8 Q. I think what Mr. Woods was saying was that assuming
all
9 that, yes, it's proven -- no doubt -- would you ever
consider

10 life in prison as a sentence for that kind of a crime?

11 A. Yes. You'd have to consider the person himself.

12 Q. Well, you know, what confuses us here is that you
said a
13 little bit earlier, I think in answer --

14 A. Well, the death penalty, yes.

15 Q. Yeah. And --

16 A. But you was talking about the person himself, and
you'd
17 have to consider that, also.

18 Q. But what you said a few minutes ago -- we're not
trying to
19 argue with you.

20 A. Oh, okay.

21 Q. What you said a few minutes ago was that you think
for

22 certain kinds of crimes like these bombings, the only
sentence
23 would be death and you wouldn't sentence to life.
24 A. Right.
25 Q. Now, is that what you're telling us?

3397

Juror No. 78 - Voir Dire

1 A. Yes.
2 THE COURT: Okay. We understand.
3 MR. WOODS: Thank you, your Honor.
4 Thank you very much for your time, ma'am.
5 THE COURT: Yes. And the long trip that you
made. I
6 hope the scenery was good and the weather was good
today.
7 JUROR: It is good.
8 THE COURT: And we do appreciate your being
with us
9 and your answering all these questions.
10 Now, you're not going to hear from us for a
while
11 about whether you're going to serve on this jury, so
don't make
12 any assumptions about it. All right?
13 JUROR: All right.
14 THE COURT: And don't talk about it with
anybody, so

15 that if you were selected you could come in and serve.
16 JUROR: Okay.
17 THE COURT: So what I'm being real clear about
is that
18 don't talk with anybody about what's happened here and
don't
19 watch television about how we're progressing.
20 JUROR: Okay.
21 THE COURT: Agreed?
22 JUROR: Yes, sir.
23 THE COURT: We'll be back to you when we can,
giving
24 you a decision about whether you're going to be asked
to serve.
25 JUROR: Okay.

3398

1 THE COURT: You can go home. You're excused.
2 JUROR: Thank you.
3 (Juror out at 12:00 p.m.)
4 THE COURT: This is Wednesday. I need to take
a
5 little longer than usual, so we'll make it 1:25.
6 (Recess at 12:00 p.m.)
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REPORTERS' CERTIFICATE

2 We certify that the foregoing is a correct
transcript from

3 the record of proceedings in the above-entitled matter.
Dated

4 at Denver, Colorado, this 15th day of October, 1997.

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Paul Zuckerman

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Carpenter

Bonnie

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