

21

22

23

24
Transcription
Street,
629-9285

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

3402

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.

9

* * * * *

10

PROCEEDINGS

11

(Reconvened at 1:24 p.m.)

12

THE COURT: Please be seated.

13

May I see counsel for a moment at the bench.

14 (At the bench:)

15 (Bench Conference 29B1 is not herein transcribed by
court

16 order. It is transcribed as a separate sealed
transcript.)

17

18

19

20

21

22

23

24

25

3406

1 (In open court:)

2 THE COURT: Will you please raise your right
hand and

3 take the oath from the clerk.

4 (Juror No. 721 affirmed.)

5 THE COURTROOM DEPUTY: Thank you.

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

7 microphone. And you don't have to lean over to the
microphone.

able to 8 You can talk in the position you're in. And we'll be
9 hear you, I'm sure.

10 VOIR DIRE EXAMINATION

11 BY THE COURT:

juror, 12 Q. Well, you know that you were summoned here as a
13 possibly a juror in the trial of the case of the United
States 14 against Terry Lynn Nichols?

15 A. Yes.

questionnaire, 16 Q. You got a summons, you returned a short-form
17 and you were asked to come out to the Jefferson County
answered 18 Fairgrounds' auditorium building about a month ago and
19 a lot longer questionnaire. And also, at that time, I
met with 20 you and other members of the jury panel and introduced
people 21 who were with us at that time, and I want to introduce
them 22 again because you should know who's here with us now.

for the 23 So here at this first table are the lawyers
24 Government in the case, Mr. Lawrence Mackey, Ms. Beth
addition 25 Wilkinson. They were present. And now, we have in

Juror No. 721 – Voir Dire

not
1 Mr. Geoffrey Mearns and Mr. James Orenstein. They were
2 there before, but they joined us.

3 Mr. Michael Tigar and Mr. Ronald Woods,
attorneys for
4 Terry Lynn Nichols. They were all present at that
time.

5 And I, of course, at that time explained more
about
6 the case and what would be involved in jury service,
including
7 the fact that the trial may take several months. And
you, in
8 your original questionnaire, when you sent it back to
us, where
9 we asked you if there's any reason that may prevent you
from
10 serving, said you were pregnant and appear to be so.

And now,

11 you're what, about four and a half, five months?

12 A. Yeah.

13 Q. So do you have an expected date for the --

14 A. March 29.

15 Q. March 29.

16 A. Yeah. That's when I'm due.

17 Q. Pardon me?

18 A. That's when I'm due, March 29.

19 Q. My math is not so good. Well, we don't want to
interfere

20 with that, of course, and we don't want you to be
21 uncomfortable, either. You have -- you already have a
child;
22 right?
23 A. Yes, I do.
24 Q. So you've been through this one time before?
25 A. Yes.

3408

Juror No. 721 - Voir Dire

1 Q. And did everything go sort of according to a normal
2 progress there?
3 A. Yes, it did.
4 Q. Are you having any trouble with this pregnancy?
5 A. No, I'm not.
6 Q. It isn't always too comfortable, though, to sit,
I'm told.
7 I haven't had this experience. It's not always very
8 comfortable to sit there for extended periods of time,
and it
9 gets less so as time goes on and the baby grows. If we
were in
10 this for several months, it would -- would it be a
problem for
11 you, do you think?
12 A. I don't -- I don't think it would be a real big
problem.

13 It might be a little problem.
14 Q. Well, we don't -- you know, we want you to -- you
don't
15 have to come in here and -- and do your duty and serve
and so
16 forth if it's going to affect your health, obviously,
or if
17 it's going to be a concern for you. You know, we hope
that
18 everything continues; that you can continue to be
healthy and
19 everything goes according to a normal schedule. But I
think we
20 can excuse you if it -- if you feel that it may be a
problem.

21 A. I don't think it would be a real big problem.
22 Q. Okay. So I'm trying to figure out -- how far along
are you
23 right now?
24 A. I'm about four months.
25 Q. Four months. Okay. And you think you could put up
with us

3409

Juror No. 721 - Voir Dire

1 during this time?
2 A. Yeah.
3 Q. Okay. Well, you -- you're the one to judge that.
We're
4 not. But I just wanted to make it clear to you that

you didn't

5 have to do it if it would be a matter that would -- you
know,

6 in real terms, whether it's going to be a distraction,
whether

7 you're going to -- for you and whether it would affect
your --

8 what happens here is if you are on the jury, we would
be in

9 session 9 to 5 --

10 A. Yeah.

11 Q. -- every day. You'd be seated in one of these
chairs where

12 you are now in the jury box, and we take breaks
midmorning,

13 mid-afternoon, and a lunch break, of course, but
there's a lot

14 of sitting. And we want to make sure that you could
pay close

15 attention to the evidence at trial and direct your
attention

16 here without distraction. Do you expect to be able to
do that?

17 A. Yeah.

18 Q. Okay. Well, you remember -- you haven't been on a
jury,

19 have you?

20 A. No, I have not.

21 Q. Okay. And you remember I told you some things
about jury

22 service out there at Jefferson County. Well, first, I

23 explained about the background of the case, how this
arises as
24 a result of the explosion in -- in Oklahoma City on
April the
25 19th of 1995 in which a federal office building was
destroyed,

3410

Juror No. 721 - Voir Dire

1 people were killed and injured. Then charges were
filed in
2 Oklahoma City in the Federal Court there in the form of
an
3 indictment charging two named persons, Timothy James
McVeigh
4 and Terry Lynn Nichols -- and then the indictment says
"and
5 other persons not named" -- with a conspiracy to bomb
that
6 building and to kill and injure the people in it, and
that the
7 conspiracy -- the allegations of the indictment go on
to say
8 that then they did accomplish that objective, did bomb
the
9 building. And there are charges, eight murder charges
that
10 they with premeditation murdered eight law enforcement
agents
11 who were in the building and who died in the explosion.
Do you
12 recall my explaining that?

13 A. Yes, I do.

14 Q. And that both of the named defendants pleaded not
guilty to

15 the charges and thereby caused the case to develop to a
trial,

16 at which the issue is whether the Government can prove
what

17 it's charged. The case was moved to Colorado from
Oklahoma

18 because of a concern about having people in Oklahoma
sit on the

19 jury. So it was brought here to Colorado; and then
after it

20 was, I ordered separate trials so that Timothy McVeigh
would

21 come to trial before a jury separated from any trial of
Terry

22 Nichols and that the reason for that is that it
wouldn't be

23 fair to both -- for both men to be in trial at the same
time

24 because of differences -- expected differences in the
evidence.

25 And of course, the evidence has to be judged
individually as to

3411

Juror No. 721 - Voir Dire

1 each named defendant in all cases. And I decided that
couldn't

2 fairly be done, so we did order separate trials; and

there has

3 been a trial of Timothy McVeigh. You're aware of that?

4 A. Yes, I am.

5 Q. And I told you about the outcome of that; but you
probably

6 knew it already, did you?

7 A. Yeah.

8 Q. Which was that a jury heard evidence in that case
and came

9 in with a guilty verdict, and then also, the jury was
required

10 to hear more. There was a second trial on the subject
of what

11 the punishment should be, and the jury came in with a

12 recommendation for a death sentence as to Mr. McVeigh.

As I

13 explained, nothing about that case can influence or
affect this

14 case. We start over. And whatever the evidence may be
-- may

15 have been with respect to Mr. McVeigh, that can't be
considered

16 as evidence against Mr. Nichols. To do so would
violate the

17 very purpose of the separate trial order. You follow
me on

18 that?

19 A. Yes, I do.

20 Q. And appreciate the reasoning behind that, I hope?

21 A. Yes.

criminal 22 Q. And then I explained some more things about our
the 23 justice system in the United States as required under
course, 24 Constitution of the United States, which include, of
country, 25 that each person who is accused of any crime in this

3412

Juror No. 721 – Voir Dire

are, is 1 regardless of who that person is or what the charges
carries 2 presumed to be innocent. That presumption of innocence
acquittal, 3 throughout the trial and entitles that person to an
the jury 4 a finding of not guilty, unless each person serving on
saw as 5 and all 12 of them then agree that what they heard and
doubt. 6 evidence proved guilt and proved it beyond a reasonable
You 7 Anything short of that, the verdict must be not guilty.

8 appreciate that?

9 A. Yes, I do.

of 10 Q. And no person who is accused has any burden or duty
There's 11 proving himself not guilty or indeed proving anything.

12 no requirement that a person who is accused of a crime
take the
13 jury; and witness stand and testify or explain anything to a
14 in also, there's no requirement that those persons bring
15 rests to witnesses. It is upon the Government that the burden
16 witnesses and bring in the witnesses and the testimony of those
17 and a exhibits and whatever is relied upon as the evidence,
18 evidence defendant can simply remain silent and challenge that
19 and so by cross-examination of the witnesses and by objections
20 testify, forth. And in a case in which a defendant does not
21 That's not a the jury is told you can't even talk about that.
22 sort of basis for making any finding, and you can't draw any
23 doesn't he inference, well, you know, if he's innocent, why
24 tell us that. That's not the law.

25 Do you -- you followed me closely as I've
explained

3413

Juror No. 721 - Voir Dire

1 just these things, and you probably knew them before; but I

2 want to start with sort of a foundation so we
understand. Do

3 you have any question about the things that I've gone
over with

4 you?

5 A. No, I don't.

6 Q. Do you accept those principles and agree to follow
them if

7 you were to serve on this jury?

8 A. Yes, I do.

9 Q. So you understand by that that Mr. Nichols sits
with us

10 this afternoon presumed to be not guilty of these
charges and

11 could not be found guilty unless a jury, considering
only the

12 evidence at trial, determines beyond a reasonable doubt
that

13 the evidence proves guilt. And if there is a
reasonable doubt,

14 he must get the benefit of that doubt. Understand?

15 A. Yes, I do.

16 Q. Okay. Now, you were born here in Denver?

17 A. Yes.

18 Q. And you -- you've, I guess, lived here ever since;
is that

19 right?

20 A. Yes, I have.

21 Q. Pardon?

22 A. Yes, I have.
23 Q. And now you're living in a community west of
Denver?
24 A. Yeah.
25 Q. And you have a three-year-old boy?

3414

Juror No. 721 - Voir Dire

1 A. Yes.
2 Q. And you're a single mom.
3 A. Yes.
4 Q. Someone is living with you now. And you have a --
is that
5 the person that's the father of the --
6 A. Yes, sir.
7 Q. -- baby you're expecting?
8 Okay. And was he also the father of the other
child?
9 A. No, he's not.
10 Q. All right. Some other person was. You know, this
is
11 personal. We're not trying to embarrass you, make you
12 uncomfortable. That's why we don't refer to you by
name here,
13 and that's why -- and I want to make sure you
understand, the
14 answers that you've given us here are private. We made
copies

15 for these people who are involved in this process, but
they
16 don't go any farther than that, and they are only used
for
17 this. And -- but what we do say here in court is open
because
18 this is a public proceeding. And it is because of our
concern
19 about your privacy that we also make what may seem to
you the
20 unusual arrangement of the way in which you're brought
in and
21 out of the courthouse so that people like press people
and
22 television people can't take your picture and publicize
it. Do
23 you understand we're trying to do that?
24 A. Yes.
25 Q. And if there's anything about any of the
questioning that

3415

Juror No. 721 - Voir Dire

1 you feel is too invasive of your privacy, you can let
me know
2 and we can hear from you a little further without being
public,
3 if necessary. All right?
4 A. Okay.
5 Q. So you know, you're not on trial in any respect.
And there

6 aren't -- and this isn't a test. You're young enough
to be

7 thinking about this as a test out of school, but it
isn't like

8 that at all. It's a matter of simply getting some
information

9 from you; and all we're concerned about is your
truthful

10 answers, not what the answers are. Okay?

11 A. Okay.

12 Q. Excuse me. You -- I think -- let's see. You're
working

13 part-time?

14 A. Yeah.

15 Q. Are you still working part-time?

16 A. Yes, I am.

17 Q. In a bakery?

18 A. Yes.

19 Q. And you've been there a couple of years?

20 A. Yes.

21 Q. During -- has it been your intention to continue to
work

22 there until it comes time to have your child?

23 A. Yes.

24 Q. But, of course, you know that if you got on this
jury, that

25 wouldn't happen; you'd be working here as a juror
instead of at

Juror No. 721 - Voir Dire

1 the bakery?

2 A. Yeah.

3 Q. And would you be able to handle that financially,
losing

4 that income? Well, let me ask you this -- I -- I
shouldn't

5 assume that you'd lose the income. Did you talk to
anybody

6 there at the bakery about your possibly being on this
jury?

7 A. Yes, I have.

8 Q. And what did they say?

9 A. If I have to be on this jury, they are going to let
me go.

10 Q. But did they say anything about paying you?

11 A. We have not talked about that.

12 Q. And are you sharing expenses, the household
expenses and

13 food and so forth, with your live-in partner now?

14 A. Yes, I am.

15 Q. And he's working in a business in which he is a
partner?

16 Is that right? What is his work?

17 A. He works in a grocery store.

18 Q. Yeah. Well, somewhere, I got the impression that
he had

about 19 some interest in it, ownership interest. Am I wrong

20 that? What does he do for the store?

21 A. He just stocks things and --

here 22 Q. Oh, I see. Yeah. I'm sorry. I made a mistake

apologize. 23 because I got you mixed up with somebody else. I

24 Well, he's worked at that job how long?

25 A. About 10, 11 years.

3417

Juror No. 721 - Voir Dire

1 Q. At the same store?

2 A. Not at the same store.

3 Q. But for the same --

4 A. The same --

can you 5 Q. -- same store chain. Well, if you don't get paid,

here 6 handle that financially on, you know, what you get paid

7 for jury service?

8 A. It would be tough, but I think I could.

the 9 Q. And do you have -- for covering your pregnancy and

10 delivery and so forth, do you have health insurance?

11 A. Yes, I do.

12 Q. And I assume -- but you should know and find out

for

13 sure -- that your health insurance would continue to
cover you.

14 Did you ask about that?

15 A. It covers me up till three months, I think -- I
believe.

16 Q. No. I mean --

17 A. Oh.

18 Q. I mean, if -- your employer can't fire you. I
mean, that's

19 federal law. They've got to take you back. But you
should

20 make sure, as I would hope would be the case, that even
if they

21 can't pay you during the time that you're on jury duty,
that

22 you still have your insurance.

23 A. Yeah. I still have my insurance.

24 Q. But that comes out -- does the employer pay for
your health

25 insurance?

3418

Juror No. 721 - Voir Dire

1 A. Yes, he does.

2 Q. Okay. Now, we have something here that I want to
be

3 careful about how I ask you because this is personal.

Page 22,

then
4 and Question 101. Read that to yourself, please. And
5 over on page 23 at 103, and perhaps page 24 at 108. Is
this
6 all the same thing?
7 A. Yes, it is.
8 Q. All relates to the same incident?
9 A. It's all the same thing, yeah.
10 Q. And that was back in May of 1995?
11 A. Yeah.
12 Q. And again, I -- you know, I want to be cautious
about this,
13 but this is -- was something between you and your
mother?
14 A. Yes, it was.
15 Q. Were there injuries?
16 A. No, there wasn't.
17 Q. But you were made to answer for that in court;
correct?
18 A. Yes, I was.
19 Q. And as I understand it, what you said on page 24
was that
20 you were given probation.
21 A. Yes.
22 Q. Have you completed that?
23 A. Yes, I have.
24 Q. Did that require also some -- like going to class
or
25 courses or counseling?

Juror No. 721 - Voir Dire

1 A. Yes, it did.

2 Q. Did it?

3 A. Yes, it did.

4 Q. And have you done that?

5 A. Yes, I have.

6 Q. And looking back on that, you know, now, do you think what

7 happened to you in the court process and everything was fair?

8 A. Yeah. I think -- I think it was fair.

9 Q. You think you deserved what you got, to put it plainly?

10 A. Yeah.

11 Q. And was anything done here with respect to -- well, where

12 does your mother live?

13 A. In Aurora.

14 Q. Do you see her now?

15 A. Yeah. Every once in a while.

16 Q. Is this matter closed between the two of you?

17 A. Yeah. It has.

18 Q. If it isn't, tell me. I mean, I'm not --

19 A. It has.

20 Q. I'm not trying to sugar coat --
21 A. It has. Me and my mom have never had a really good
22 relationship.
23 Q. All right. From the time you were little?
24 A. Yeah.
25 Q. Is your father here?

3420

Juror No. 721 - Voir Dire

1 A. Yes, he is.
2 Q. Does he live with your mother?
3 A. No, he does not.
4 Q. And are they divorced, separated or --
5 A. They are divorced.
6 Q. Okay. And do you see him from time to time, your
father?
7 A. Yes, I do.
8 Q. So -- and I'm guessing -- and I shouldn't. But
would it be
9 fair to say that your relationship with him is a lot
closer
10 than it is with your mother?
11 A. Yes, it is.
12 Q. Okay. I don't want to dwell on this. This is your
own,
13 you know, life. My concern about it is whether there's
any

14 carryover from your personal experience that would
affect you
15 in dealing with issues in a court because this issue
that you
16 had went to court.
17 A. Yes.
18 Q. So do you see that -- would it be fair to say and
for all
19 of us to understand, did you see that as quite
different and
20 separate from what is involved here?
21 A. Yes, I think it is different.
22 Q. And you did express an opinion about the criminal
justice
23 system. We asked you as broad a question as we could,
I
24 suppose, on page 22, Question 100, "What do you think
about the
25 effectiveness of the court system? Criminal justice?"

3421

Juror No. 721 - Voir Dire

1 And you -- I gave -- I guess gave it a C grade
there
2 that it's adequate. And then you made a comment, which
I would
3 ask you to explain a little. Do you have that
reference? Do
4 you see where I'm reading it?
5 A. Yeah. 22, on 100.

And 6 Q. Page 22. Yeah. Where it says, "Please explain."
7 you -- okay?
8 A. Yes.

9 Q. And your impression here was that "Sometimes people
who are 10 guilty get off scott-free, and other times innocent
people are 11 put away."
12 A. Yes.

13 Q. Which means the system doesn't work --
14 A. Not always.

15 Q. -- when that happens. Are you thinking of anything
in 16 particular there?
17 A. No. Not really.

18 Q. I mean, any cases that you've read or heard about
-- let me 19 just put the open question: Why did you say this?
20 A. I really don't know. I don't know.

21 Q. Okay. I -- I'm not going to press you, but I just
thought 22 that maybe you had some particular cases or incidents
in mind. 23 What I understand you to be saying now is that's kind
of a 24 general impression that you have?
25 A. Yeah.

Juror No. 721 - Voir Dire

1 Q. Is there one case in your mind where you think
somebody got
2 off scott-free but was guilty?
3 A. Not that I can think of right now.
4 Q. I didn't hear.
5 A. Not that I can think of.
6 Q. Okay. You also, in these general questions at page
-- at
7 page 30, excuse me, under 129, where you were asked,
"Do you
8 agree or disagree it is important to follow this
court's
9 instructions?"
10 You said you agreed somewhat but then say,
"It's
11 something I have to do as a citizen of the United
States, so I
12 should follow instructions." Can you offer us a little
13 explanation of that beyond that?
14 A. Because I think, you know, it's something I should
do.
15 Q. As your duty as a citizen?
16 A. Yes.
17 Q. And is this in the sense that whether you agree
with the
18 law or not, you -- you know what "instructions" means
here --

19 and maybe this question confuses people, but we are
talking
20 about not only the instructions that I have already
given to
21 you and other jurors about not reading newspapers or
magazines
22 or watching television or anything about the case,
staying away
23 from publicity, but the question also is intended to
mean that
24 instructions are given to a jury before the trial
begins,
25 during the trial at different stages, depending upon
what's

3423

Juror No. 721 – Voir Dire

1 happening, and then at the end of the trial,
instructions about
2 the law that the jury must apply. So that's what we're
meaning
3 here by this question.
4 Do you agree that you have to follow all the
5 instructions if you're on a jury?
6 A. Yes, I do.
7 Q. Did you understand it that way?
8 A. Yes.
9 Q. Okay. Now, we also asked you something about your
views

10 regarding punishment. And do you remember -- I'm going
to be
11 turning to page 28. It actually starts at page 27 with
the
12 explanation, and then there's some questions on 28 and
29.

13 Please take a moment to look there.

14 Okay. Do you remember encountering this part
of the
15 questionnaire?

16 A. Yes, I do.

17 Q. And taking you back to when you did this on
September the

18 17th, and had to answer these questions, is that the
first time

19 you've thought about questions of life and death as
punishment

20 for crime?

21 A. That's like the first time I really thought about
it, yeah.

22 Q. And of course, you realize there are people who
have widely

23 differing opinions about this point of law. There are
those

24 who say never should there be a death penalty. And in
fact,

25 that's the way the law is in some of the states of the
United

time
it,
life-
express it,
1 States. And then there are people who say, well, every
2 that somebody kills a person, that -- and intends to do
3 that person ought to die as well, sort of an automatic
4 for-life or death-for-death, however you want to
5 punishment, and then there's a lot in between.

about the
your
as to
of the
getting
the way
would
was it
16 And I'm going to explain to you something
17 law as it is in a moment, but we wanted to get some of
18 views coming in here before talking about the law just
19 what you think, in a general way, the -- about the use
20 punishment of life in prison with no chance of ever
21 out, no release, and death. So you understood that's
22 we asked these questions, in -- in a general way. What
23 you say the law to be if you could write the law? And
24 in that understanding that you wrote these answers?

15 A. I think a little bit.

I'm not
you is,
16 Q. Well, you seem somewhat doubtful. And I -- maybe
17 making myself clear, but -- what we were trying to ask
18 you know, forget about what the law is and what your

duty is to

19 follow the instructions about the law, as we've just
said.

20 What do you think it ought to be? And that's what we
intended

21 to ask you, and I just wanted to ask you now if these
answers

22 are in that same spirit.

23 A. Yeah, they are.

24 Q. All right. And have you thought about this matter
some

25 more since you completed these answers?

3425

Juror No. 721 - Voir Dire

1 A. Not a lot.

2 Q. All right. Well, would you change any of these
answers on

3 this question -- or these questions now, or is this
still

4 pretty much the view you have?

5 A. I -- I still feel the same.

6 Q. Okay. And you seem to be saying that it makes a
difference

7 as to what the crime is.

8 A. Yes.

9 Q. And here, I'm -- I'm looking now down to C and D
where we

10 talk about the punishment of life in prison and you

include

11 murder, that you could have life -- if you could write
the law,

12 you could assign a penalty of life imprisonment for
murder.

13 Yes?

14 A. Yes.

15 Q. And then in D, you would talk about death if the
murder was

16 such that a lot of people got killed. That's what I
understand

17 you to be saying.

18 A. Yes.

19 Q. Is it?

20 A. Yes, it is.

21 Q. And is it a lot of people killed in the same
criminal act,

22 in the same event, or are you talking about cases where
-- like

23 sometimes you heard of serial murders, where the same
person

24 goes out and on different times kills different people,
or

25 both?

3426

Juror No. 721 - Voir Dire

1 A. Both.

2 Q. All right. Including a lot of people killed with

one crime

would see 3 or a number of people killed at separate times, you

factor 4 the number of murders, the number of people killed as a

what 5 that would distinguish between life and death. Is that

6 you said?

7 A. Yes, it is.

and you 8 Q. Now, you know, just because I sit here in a robe

it 9 sit over there and I'm putting these questions to you,

me. You 10 doesn't mean that I'm trying to get you to agree with

think. 11 can -- the point here is not what I ask, but what you

don't 12 So if I ask this in a way that you don't agree with, I

to paint 13 want you to hesitate to tell me that. I'm not trying

that. I'm 14 you into that corner where you are or anything like

thinking 15 just trying to get more of an understanding of your

anything 16 because it's helpful to us. Now, do you want to add

17 to what we've said here?

18 A. No, I don't.

actually 19 Q. Okay. Well, let me now turn to explain what is

20 involved in the process in Federal Court where the

crime

21 charged is one that involves the possibility of capital
22 punishment; that is, death. And as I've already
mentioned,
23 there are differences among the states, but we're not
concerned
24 about that now. We're in Federal Court, federal law,
and we
25 have charges here that involve the possibility of a
life

3427

Juror No. 721 - Voir Dire

1 sentence without ever being released or a death
sentence, or
2 the other choice that can be made is something less
than either
3 of those. And it -- and what happens in the cases that
are not
4 capital cases but something different from that,
there's a
5 trial. The jury decides the evidence proves it or not.
The
6 evidence doesn't prove it beyond a reasonable doubt,
verdict's
7 not guilty, case is over. Right?
8 A. Yes.
9 Q. On the other hand, if the evidence proves the
charge to the
10 satisfaction of the 12 jurors beyond a reasonable
doubt, the

11 verdict is guilty. Now, in cases that don't involve
this
12 life-or-death issue, we say the judge decides what the
13 punishment should be, and there's a hearing on that.
And
14 before a decision like that gets made, the judge gets a
lot
15 more information than just what was heard at the trial
in
16 evidence, so that information includes things about the
crime,
17 circumstances of the offense, what the effect has been
on
18 people and so forth. And then, there's a lot of
information
19 gathered about the defendant, who that person is in
individual
20 terms, what's the life story of that person, how is he
or she
21 raised, what were the family relationships, parent
relation --
22 relationships with parents, whether the person has had
any
23 marriages and relationships with others there,
employment
24 history, military service, almost everything the person
has
25 done or had done to him or her. You understand what
I'm

Juror No. 721 – Voir Dire

1 saying?

2 A. Yes.

3 Q. You have to answer out loud.

4 A. Yes, I do.

5 Q. And something like that happened with respect to
your case,

6 I take it. Is that right?

7 A. Yes.

8 Q. You were asked a lot of information. And then
there's a

9 hearing, and the judge hears from both sides, the
prosecution,

10 defense, and says, All right, this is the punishment
for this

11 person and this crime. So it isn't just a matter of
what the

12 crime was, but the individual is taken into
consideration, too,

13 and all of these things about her or him. And, you
know, I'm

14 not again dwelling on your own situation, but did you
have a

15 lawyer?

16 A. Yes, I did.

17 Q. And there was a -- there was something put in a
report all

18 about your background and that sort of thing. Do you
remember

19 that?

20 A. I don't really remember.

21 Q. Okay. And your -- it's something you don't try to
remember
22 too much, I suppose, because it wasn't a very pleasant
23 experience.

24 A. Yes.

25 Q. But anyway, apart from what happened with you, that
is the

3429

Juror No. 721 - Voir Dire

1 normal thing. And -- and then at that -- as I say, at
the end

2 of that hearing, a judge says, All right, I've thought
about

3 the offense, I considered everything that's been
presented here

4 about the defendant, and now here's what is the just
punishment

5 for this person; and it's a very individual thing. And
in

6 cases where more than one person is involved in the
same crime

7 and been found guilty, the sentences with respect to
those

8 people may be quite different. One may be sentenced to
a

9 certain number of years and the other get probation or
10 whatever. So it depends on two things, the crime and

-- and

11 the defendant. Agreed?

12 A. Yes.

13 Q. I mean, you understand what I've said?

14 A. Yes.

15 Q. You have to answer out loud.

16 A. Yes, I do.

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

18 make sentences like that in Federal Court. And the
procedure

19 is that the jury that decided the case, the 12 people
who heard

20 the evidence and came in with a verdict of guilty --
and of

21 course, this only happens if there's a verdict of
guilty. If

22 there's a verdict of not guilty, there isn't any
sentence.

23 It's all over. But in the event of a guilty verdict in
such a

24 case, there's another trial with the same jurors
sitting; and

25 at that trial, these same kinds of things that I've
talked

3430

Juror No. 721 - Voir Dire

1 about on judge sentencing get presented to the jury,

2 information about the circumstances of the crime, its
effects

of 3 on people and so forth, and also, all of the evidence
an 4 circumstances of the defendant, the things about him as
jury is 5 individual human being; because in the end, what the
way, the 6 asked to do is to judge another human being and in a
7 value of his life. Do you follow me on this?

8 A. Yes, I do.

9 Q. Now, you know, it's very heavy. We're talking
about an 10 enormous responsibility placed on people to decide
whether 11 another human being should live or die. You certainly
agree 12 with that, I take it.

13 A. Yes.

14 Q. All right. And it is because of the importance of
that and 15 the nature of that, which is really a moral judgment
about a 16 person, that we don't have judges do it; that we have
jurors 17 come in out of the community and exercise their
judgment on 18 this. And at the end of that sentencing hearing, the
court 19 does give the jury some instructions about how they may
instructions 20 consider what they have heard. And generally, the

21 divide up the information into aggravating factors or
22 circumstances and mitigating ones. So the judge will
say,
23 Well, you've heard these points and you may consider
this in
24 aggravation, or really, it means to support that death
is
25 deserved. And at the same time, this is what you heard
on the

3431

Juror No. 721 - Voir Dire

1 other side, mitigating circumstances. These are the
things
2 that you should consider in deciding that death is not
a just
3 punishment for this person, even though the crime would
-- in
4 itself, would support a death sentence. You have to
consider
5 more than the crime. You have to consider the -- the
person
6 being judged. Do you understand what I'm saying?
7 A. Yes, I do.
8 Q. And the Court can ask the jury and can give the
jury some
9 suggestions of questions to ask themselves about it;
but at the
10 end of it all, the jury has to make a choice. And it
is not a
11 formula, it's not something you can put an equation,

it's so

12 many points this way and so many that way. It comes
down to a

13 very individual judgment about another person. And the
jurors

14 talk about it, exchange their views. But finally, each
person

15 on the jury has to make her own judgment. Do you
follow me?

16 A. Yes, I do.

17 Q. Now, what I want to ask you and we're all
interested in

18 knowing is that if it should come to that, in a case
with you

19 sitting as a juror, and you've gone through the trial
and

20 there's a verdict of guilty and then you've gone
through all of

21 this sentencing hearing, whether you would be able to
make the

22 choice of life-or-death sentence and be open to
consider and

23 decide on the basis of not only the circumstances of
the crime,

24 but all of the things you've heard about the
circumstances of

25 the defendant as well, the life history, the individual

3432

Juror No. 721 - Voir Dire

1 characteristics of this human being. Do you understand

the

2 question?

3 A. Yes.

4 Q. What is your answer?

5 A. Yes, I will be able to do that.

6 Q. I'm --

7 A. Sorry.

8 Q. Soft voice. I have a little trouble hearing.

9 A. I'm sorry. I would be able to make a decision on
life or

10 death.

11 Q. Okay. And consider everything that you've heard?

12 A. Consider everything.

13 Q. Without any prejudgment?

14 A. Yes.

15 Q. Is that what you're telling me?

16 A. Yes.

17 THE COURT: Okay. Now, we have some questions
from

18 lawyers, yet, so bear with us a while.

19 JUROR: Okay.

20 THE COURT: Do you want some water?

21 JUROR: No.

22 THE COURT: All right. Mr. Mearns.

23 MR. MEARNS: Thank you, your Honor.

24 VOIR DIRE EXAMINATION

25 BY MR. MEARNS:

3433

Juror No. 721 - Voir Dire

1 Q. Good afternoon.

2 A. Hi.

3 Q. As the Court told you before we broke for lunch, my
name is
4 Geof Mearns; and I'm one the prosecutors in this case,
and I
5 will be assisting the other lawyers in presenting our
evidence
6 against Mr. Nichols in this trial.

7 You've been asked a lot of questions, a lot of
them
8 personal and a lot of them very serious. And I just
have a few
9 that I'd like to follow up on with you.

10 And we'll start with some of the less serious
ones. I
11 see from the questionnaire there are certain questions
about
12 what you like to do with your free time, and I see you
have a
13 lot of outdoor recreation activities. You indicate
there that
14 you go to the mountains and swimming and jet skiing.

15 A. Yes.

16 Q. I guess given your present condition that you're
curtailing

17 some of those more active outdoor activities?

18 A. Yes, I am.

19 Q. You also indicate there that you like to read.
What kind

20 of books do you like to read?

21 A. I just usually read anything that interests me.

22 Q. And what kind of things interest you?

23 A. I don't know. Like if I'm interested in something
at one

24 time, I'll read up on it.

25 Q. You indicated in the questionnaire that -- that at
some

3434

Juror No. 721 - Voir Dire

1 point, you'd like to go back to college or go to
college?

2 A. Yes, I would.

3 Q. And I think you told us on the questionnaire that
you

4 hadn't decided yet what you'd like to study.

5 A. No, I have not.

6 Q. Do you have any -- what kinds of things would you
be

7 thinking about?

8 A. I decided -- well, I've been thinking about like
going into

9 law or medicine.

fields? 10 Q. What's -- what interests you about those two

I would 11 A. I don't know. I like helping people, so that's why
something. 12 want to go to medicine, like doctor or nurse or

I 13 Q. I -- the reason I ask the question about the law is
point 14 noticed there on the question that you said at some
15 you -- "I was interested in becoming a lawyer." I was
16 wondering whether there was something that changed your
17 interest or whether that's still an active one.

I don't 18 A. It's still active. It's just that like right now,
19 have the time.

member of 20 Q. I see. You're presently working at a bakery. You
21 indicated on -- on page 15 that you, I think, were a
work? 22 Local 7. Is that -- is that a union related to your

23 A. Yes, it is.

24 Q. How long have you been a member of the union?

25 A. Two years.

3435

Juror No. 721 - Voir Dire

active 1 Q. Do you have -- are you active in it or -- play any

2 role in the union, the leadership of the union?

3 A. No. I'm not real active in it.

4 Q. You indicated towards the end of the questionnaire

that you

5 had some general knowledge or -- or information about

the

6 explosion in Oklahoma City. This is back on page 36,

Question

7 1 -- I guess it was 158, down there at the bottom.

That the

8 information, what you'd seen, read, or heard was just

basically

9 that a bomb went off and that a lot of people were

injured and

10 killed. Have you heard -- do you have a general sense

of how

11 many people were killed in the explosion?

12 A. It was like 100 or --

13 Q. Have you heard or read any publicity about whether

any

14 children were killed in the bombing?

15 A. Yes, I did.

16 Q. Do you have any idea about how many -- how many

children

17 were killed?

18 A. I don't have -- I think it was like -- I really

don't know

19 the number.

20 Q. Okay. Do you -- do you understand that if you are

a juror

21 in this case, you may hear testimony, some graphic
testimony

22 about children? Do you understand that?

23 A. Yes, I do.

24 Q. Do you think you will be able to avoid being
emotionally

25 motivated to render a decision based upon that
testimony or

3436

Juror No. 721 - Voir Dire

1 will you be able to render a decision, an objective
decision, a

2 fair decision based upon the evidence?

3 A. I'll be able to render a decision based on the
evidence.

4 Q. I just wanted to follow up. The Court touched upon
your --

5 your question about the criminal justice system over on
page

6 22. Did you follow the O. J. Simpson criminal trial?

7 A. A little.

8 Q. Did you ever watch any of the proceedings on TV?

9 A. No. I just watched what was on the news.

10 Q. Watched the news or read about it in the newspaper?

11 A. Yeah.

12 Q. Did you have an opinion one way or another about
the

13 outcome of that case?

14 A. Yeah.

15 Q. What -- what's your opinion or your view?

16 A. I thought he was guilty.

17 Q. I'm sorry?

18 A. I thought he was guilty.

19 Q. Finally, I'd like to follow up with some of the
questions

20 about -- about possible punishment as the Court
indicated a

21 moment ago. Those questions are on 27 -- page 27 and
your

22 answers are on page 28 of the questionnaire. As the
Court

23 explained a few moments ago, the questionnaire asked us
-- or

24 asked you to tell us a little bit about what you
thought the

25 law should be, your general views on capital punishment
and

3437

Juror No. 721 - Voir Dire

1 punishment in general. You indicated in response to
the

2 question at B that "I think it should be thought out."

3 Do you believe that the issue of punishment,
capital

4 punishment or life in prison, is a serious matter?

5 A. Yes, it is.

would
enough.
by if
I
D there,
little bit
views or
Court
was
was?
necessarily
the

6 Q. You indicated there that in -- in some cases, you
7 consider the penalty of death if the crime is severe
8 Could you tell us a little bit more about what you mean
9 the crime were serious enough.
10 A. Like when a lot of people were killed. That's what
11 meant.
12 Q. And that's essentially what you say again in -- in
13 at the bottom?
14 A. Yes.
15 Q. Okay. The Court has told you, though, that -- a
16 about what the law actually is as opposed to what your
17 your general views are. Did you understand that the
18 was -- was drawing a distinction or telling you what
19 different about what your views were and what the law
20 A. Yes.
21 Q. And do you understand that your views are not
22 what the law is?
23 A. Yeah.
24 Q. Okay. The Court also explained a little bit about

told you 25 process and gave you some preliminary instructions,

3438

Juror No. 721 – Voir Dire

to 1 about that there will first be a trial on the charges

is 2 determine whether or not the jury believes the evidence

guilty 3 proven beyond a reasonable doubt, that the defendant is

4 of the charges. You understand that?

5 A. Yes.

and only 6 Q. And that if the jury returns a verdict of guilty

this 7 if the jury returns a verdict of guilty, then we get to

8 second trial about punishment?

9 A. Yes.

automatic death 10 Q. Do you understand that -- that there is no

is 11 penalty? That under federal law, that if a defendant

the death 12 convicted of a crime that carries the possibility of

that the 13 penalty, that the jury cannot automatically determine

14 death penalty is appropriate?

15 A. Yes.

evidence 16 Q. The Court told you a little bit about the kinds of
get to 17 and kinds of instructions that the jury may get if we
little 18 this -- to this penalty phase, and the Court told you a
facts that 19 bit about aggravating factors; that is, additional
that? 20 may be offered about the crime. Did you understand

21 A. Uh-huh.

evidence, 22 Q. And the Court told you that you also may hear
23 facts about the individual defendant. Do you
understand that?

24 A. Yes, I do.

any 25 Q. And that the sentence in any particular case, in

3439

Juror No. 721 - Voir Dire

kinds 1 capital case depends upon a consideration of both those
about the 2 of evidence, evidence about the crime and evidence
3 individual defendant.

4 A. Yes.

be able 5 Q. If we get to a penalty phase in this case, will you
open mind? 6 to consider both of those kinds of evidence with an

7 A. Yes, I will.

8 Q. Do you understand that -- that you have to be able
to

9 consider that kind of evidence no matter how heinous
the crime

10 or how many victims there were in a particular case?

11 A. Yes, I do.

12 Q. And can you keep an open mind in that second phase
if we

13 get there?

14 A. Yes.

15 MR. MEARNS: Thank you, your Honor.

16 Thank you, ma'am.

17 THE COURT: Mr. Tigar.

18 VOIR DIRE EXAMINATION

19 BY MR. TIGAR:

20 Q. Good afternoon again.

21 A. Hi.

22 Q. We're in the home stretch. My name is Michael
Tigar. And

23 Ron Woods, sitting right there, and I are lawyers. We
were

24 appointed by the United States District Court in the
Western

25 District of Oklahoma shortly after the bombing to help
out

Juror No. 721 - Voir Dire

1 Terry Nichols. And I'd like to follow up on some of
the things

2 that were asked and spend a little time with you.

3 You work part-time, is that right, at the
bakery?

4 A. Yes, I do.

5 Q. What do you do at the bakery?

6 A. Just --

7 Q. I mean, do you bake things or put them on the
shelves?

8 A. Put them in the shelves.

9 Q. Put them out so that -- help-yourself things where
we have

10 the plastic tongs on the little plastic ropes and we
reach in

11 and --

12 A. Yeah.

13 Q. People reach in and get their own stuff?

14 A. Yeah.

15 Q. Like that. Okay. And you're a member of Local 7?

16 A. Yes.

17 Q. Now, were you -- was Local 7 one of the locals that
was out

18 on strike --

19 A. Yes.

20 Q. -- last year? So you were out on strike at the
time?

21 A. Yes, I was.
22 Q. Now, under your contract, do you have enough hours
per week
23 so that you're covered by the benefit package?
24 A. Yes, I do.
25 Q. Okay. And is that why, if you were selected as a
juror and

3441

Juror No. 721 - Voir Dire

1 the trial went several months, those benefits would
continue?
2 A. Yes, I would.
3 Q. Because under your contract?
4 A. Yes.
5 Q. Now, do you know -- did you talk to your supervisor
at
6 work -- I forget -- as to when you got your jury
summons and
7 what might be happening?
8 A. We've talked a little bit.
9 Q. Okay. Can you tell me what -- what you talked
about? You
10 understand it's okay to do that; right? This is not
like
11 watching television and keeping up on it, but everybody
that --
12 would expect that you would, so . . .
13 A. I just told her that, you know, I might be called

for jury

14 service and I'm going to need a couple days off.

15 Q. Oh, okay.

16 A. She's worked with me.

17 Q. Uh-huh.

18 A. She just wants me to let her know --

19 Q. Okay.

20 A. -- when things happen, so --

21 Q. Uh-huh. Now, did you tell her what case it was?

22 A. Yes.

23 Q. Okay. No problem. No problem. And did -- did she
give

24 you any advice on what you want to say or say something
like,

25 Well, you should try to get off that jury, or anything
like

3442

Juror No. 721 - Voir Dire

1 that?

2 A. No, she didn't.

3 Q. Okay. And is it your -- do you know what your
contract

4 provides then if you are actually selected on the jury
and the

5 trial goes several months as to what they do about your
pay?

6 A. Yeah. I read through it. A little bit, but not

too much.

7 Q. Okay. Pretty big document, isn't it?

8 A. Yes.

9 Q. What's your understanding about how that would
work?

10 A. They pay for -- like, what I understood is that
whatever I

11 make on jury duty they'll deduct from what I would be
paid --

12 or take that from what I would be paid.

13 Q. Uh-huh.

14 A. And then give me the rest or something.

15 Q. Okay. So is -- is it your understanding then that
if you

16 were selected as a juror and the trial went several
months,

17 that -- that there would not be a real bad financial
hardship

18 from that?

19 A. There would not, yes.

20 Q. Okay. And you mentioned that -- let me turn here
-- that

21 in your spare time, you like to read. And you mention
that you

22 had read The Firm and Interview With a Vampire. That's
over on

23 page 16, Question 70. Also, you mentioned that you had
a book

24 or books by John Grisham, the person that wrote The
Firm?

25 A. Yeah.

3443

Juror No. 721 - Voir Dire

John

1 Q. Now, have you read then other books by this fellow,
2 Grisham, other than The Firm?
3 A. That's just it.
4 Q. Well The Firm -- The Firm -- did you see the movie?
5 A. Yes, I did.
6 Q. Well, The Firm was about lawyers; right?
7 A. Yes.

Tom Cruise

8 Q. And there was a good lawyer, you know, played by
9 and then there was a bad one played by Gene Hackman. I
don't
10 remember anything else about it. Did you get a view of
the
11 legal profession from that or what lawyers are like?
12 A. No.
13 Q. Okay. Just entertainment?
14 A. Yeah, it was just entertainment.

about

15 Q. Okay. Did you come away with any unfavorable view
or about
16 lawyers who are appointed to represent people in cases
17 prosecutors or anything like that?
18 A. No, I didn't.

19 Q. Okay. And now, I'd like to talk very briefly about
this
20 situation where you had some personal experience of
what the
21 criminal justice system was about. And my -- the
purpose is
22 not to embarrass you. It's just to ask about things
that might
23 affect your views if you were selected as a juror. Did
you
24 have a lawyer in that case?
25 A. Yes, I did.

3444

Juror No. 721 - Voir Dire

1 Q. Now, was that a lawyer appointed by the court, or
was it
2 someone who was retained, or how did that --
3 A. My dad got him.
4 Q. Okay. And was that -- were you satisfied that --
with the
5 lawyer, that -- the services of that lawyer?
6 A. Yes, I was.
7 Q. Okay. Did you feel that the system, you know, that
as you
8 saw it, treated you unfairly in any way?
9 A. A little bit because they don't fully hear my side
of it.
10 Q. Okay.

11 A. But I admit I was wrong, so --
12 Q. No. I understand. I understand. But let me just
dwell on
13 that a little bit if I can. Was there actually a
trial?
14 A. No, there wasn't.
15 Q. Okay. So it was some kind of a bargain?
16 A. Yeah, it was.
17 Q. Now -- and the bargaining or the negotiation, I
guess, is a
18 better way. Who did the negotiating?
19 A. It was like the lawyers.
20 Q. Okay. So -- and were -- did they do some
negotiating when
21 you weren't there?
22 A. No, they didn't.
23 Q. Okay. So -- and was -- what was it about that that
led you
24 to feel that, gee, you didn't get to put in your whole
side of
25 it?

3445

Juror No. 721 - Voir Dire

1 A. I don't know. I just felt that they really didn't
listen.
2 Q. Okay. Who really -- and again, I'm sorry to press
on this;
3 but who did you feel really didn't listen?

4 A. Like everybody.

5 Q. Everybody.

6 A. Yeah. Like both lawyers and --

Well, as
7 Q. Okay. In other words, the lawyers -- all right.

8 you -- as you sat here today, have you been watching

9 Mr. Nichols and Mr. Woods and I?

10 A. A little bit.

of
11 Q. A little bit. Sure. And, you know, it is the job

and
12 lawyers because -- to sit there and -- and consult with

it's
13 talk to the person that they're representing, just as

themselves
14 maybe the job of the prosecutors to talk amongst

bother
15 with the people they are working with. Does that idea

16 you?

17 A. No, it doesn't.

18 Q. Do you think that's a good idea that they do that?

19 A. Yes.

20 Q. Okay. And in the end, the sentence, you received
21 probation; right?

22 A. Yes, I did.

to spend
23 Q. And now, was there a -- a risk that you might have

liberty
24 some time in some kind of work release or that your

25 would be impaired or something?

3446

Juror No. 721 - Voir Dire

1 A. No, there wasn't.

2 Q. You didn't feel that was a real risk?

3 A. No.

4 Q. Okay. And did you feel that the sentence that was
imposed

5 was fair?

6 A. Yes, I did.

7 Q. Okay. You also talked more generally about the
criminal

8 justice system, you know, sometimes it works, sometimes
it

9 doesn't. I know you used that example of the O. J.
Simpson

10 case. Would it surprise you that everybody here
practically

11 has heard of that and has an opinion? Well, do you
disagree

12 with what that jury did? It's okay. You can say it.
Whatever

13 you think.

14 A. I -- I don't know.

15 Q. Okay. Do you -- can you think -- well, let me ask
you

16 this, did you hear about the verdict that the jury
reached in

17 the case of Timothy McVeigh?

18 A. Yeah, I did.

19 Q. Okay. And do you also remember the -- the decision
that
20 they made in that second part after that guilty verdict
about
21 punishment?

22 A. Yes.

23 Q. Did you hear about that?

24 A. Yes, I did.

25 Q. Okay. And what did you think of that decision when
you

3447

Juror No. 721 - Voir Dire

1 heard it?

2 A. I don't know. I thought it was -- I don't know.

3 Q. Okay. Did you think it was fair or unfair or
right, wrong?

4 Just --

5 A. I think it was pretty fair.

6 Q. Okay. Now, can you remember talking the -- talking
over
7 with your family or anybody in your family about the --
the
8 McVeigh case?

9 A. I really didn't talk about it.

10 Q. Okay. Your -- you watch TV news?
11 A. Sometimes.
12 Q. Sometimes. And do you get -- I think you said you
get most
13 of your news from newspapers; right?
14 A. Yes.
15 Q. What newspapers do you read, or newspaper?
16 A. We get The Denver Post.
17 Q. The Post. Now, would you turn, please, to page 33
of your
18 questionnaire, Question 144. You mention there on
Question 144
19 that if you -- you heard or read about the Oklahoma
City
20 bombing, and then you checked TV news, radio news,
newspaper,
21 and heard other people discussing the case. Right?
22 A. Yes.
23 Q. Now, TV news, we talked about. What's your usual,
if you
24 have one, TV news program that you watch?
25 A. Nothing really. I mean --

3448

Juror No. 721 - Voir Dire

1 Q. Yeah.
2 A. They just give information. That's --
3 Q. Right. Okay. And radio news, do you listen to

some radio

4 programs regularly and get the news or --

5 A. No. Not really. I just --

6 Q. Okay.

7 A. Like if it's on, I hear it.

once an

8 Q. So you listen to some particular radio station; and

9 hour, they have the news, that sort of thing?

10 A. Sometimes.

heard

11 Q. Okay. And newspaper we talked about. How about

talked

12 other people discussing the case? Who -- who have you

Oklahoma

13 about with or heard other people talking about the

14 City case?

15 A. Like at work in passing.

16 Q. Okay. Talked about it with your dad?

17 A. No. Actually, I haven't.

18 Q. Okay. Talked about it with your significant other?

19 A. A little bit. Not much.

about it

20 Q. And at work, on breaks and so on, do folks talk

21 there?

22 A. Yeah.

now, you

23 Q. Okay. And do you all have at your workplace --

hours;

24 get a break of so-many minutes every certain number of

25 right?

3449

Juror No. 721 – Voir Dire

1 A. Yes.

2 Q. Do you have a place where the workers get to take
their
3 breaks, like a little coffee room or something?

4 A. Yes, we do.

5 Q. Okay. And is that where folks talk things over
that are
6 current events in the news?

7 A. Yeah. Usually.

8 Q. Okay. Now, as a result of what you've read and
heard and
9 so on, do you remember seeing pictures of the -- the
building
10 there in Oklahoma City with the front exploded off of
it?

11 A. Yes, I do.

12 Q. Okay. And do you remember from what you've seen,
read, or
13 heard how the explosive device was delivered there?

14 A. Yeah.

15 Q. Okay. What do you remember about that?

16 A. It was delivered in a U-Haul truck.

17 Q. Okay. Well, again, I'm not supposed to provide
information

of a 18 back and this is not a test, but you remember some kind
Timothy 19 truck. Do you remember hearing, seeing, reading how
custody? 20 McVeigh came to be in the law enforcement hands? In
21 A. No.
22 Q. Okay. Do you remember seeing, hearing, reading how
enforcement? 23 Mr. Terry Nichols first made contact with law
24 A. No.
25 Q. Okay. Do you remember seeing -- what do you
remember about

3450

Juror No. 721 - Voir Dire

read. It 1 Terry Nichols? Just from what you've seen, heard, or
Jeffco? 2 was the first time you ever laid eyes on him was out at
3 A. Yes, it was.
you'd 4 Q. Okay. What do you remember as of that time that
5 seen, heard, or read about him?
6 A. Just that he had -- he was an accomplice in it.
7 Q. Uh-huh.
8 A. And -- that was it.
about 9 Q. Okay. Do you remember seeing or hearing anything

10 where he was at the time of the bombing?

11 A. I remember he was not around.

12 Q. Okay. Do you know where he lives?

13 A. No, I don't.

14 Q. Okay. But he wasn't in Oklahoma City? Is that
what you

15 mean?

16 A. Yeah.

17 Q. At that time. And what does "accomplice" mean?
When you

18 said you thought he was an accomplice, where had you
read that?

19 A. Well -- well, he helped with the bomb. That's
about it.

20 Q. That's what you heard?

21 A. That's about it.

22 Q. Okay. Now, we -- I should start -- you were asked,
I

23 think, as you remember, a lot of questions about
punishment,

24 you know, what does a jury do and so on. Let me be
clear.

25 First, Terry Nichols, as he sits there, right now, he's

3451

Juror No. 721 - Voir Dire

1 presumed innocent.

2 A. Yes.

3 Q. Okay by you?

4 A. Yes.

5 Q. And, you know, that for the last two years and some
months,

6 it's been hard not to hear something and read and see
with all

7 the media in this case; right?

8 A. Yes.

9 Q. Do you recognize that?

10 A. Yes, I have.

11 Q. Okay. And in your life, have you ever had the
experience

12 that the media doesn't get it right?

13 A. Yeah.

14 Q. You've seen that happen?

15 A. Yes, I have.

16 Q. Okay. And so as -- as you sit there, do you have
any

17 problem with the idea that there he sits, clean slate,
nothing

18 against him?

19 A. Right. No.

20 Q. Okay. Now, next, even though we talked to you
about --

21 even though -- everybody has about the question of
punishment,

22 we do not concede -- that is, Ron Woods and I and Terry

23 Nichols -- we don't concede that we'll ever get to a
punishment

24 part, because the Government lawyers, these people
here, they
25 have the burden to prove this case with evidence they
bring to

3452

Juror No. 721 - Voir Dire

1 court beyond a reasonable doubt. And if after they,
you know,
2 put the evidence on, there's a reasonable doubt, the
jury has a
3 sworn duty. And you know what that is?

4 A. Yes.

5 Q. What is it?

6 A. You have to tell the truth and -- I mean, not tell
the
7 truth, but we have to --

8 Q. Go a -- was that -- did I ask that the wrong way?

9 A. I think so.

10 Q. If there's a reasonable doubt, the juror is
required to say

11 not guilty; right?

12 A. Right.

13 Q. And do you have any problem with that?

14 A. No, I don't.

15 Q. Because when the Government puts on evidence and
they go

16 first, we cross-examine every single witness they put

on; and

17 even though we don't have to, when they're done, then
we'll put
18 on evidence. So that at the end, the jurors make that
decision

19 and if they -- there's that reasonable doubt, the
jurors say,

20 well, there is, that's it. It's the end of the case.
Now,

21 with me so far?

22 A. Yes.

23 Q. Okay. Now, if there's a guilty verdict, then the
juror --

24 jurors have another job, and -- but if there's a guilty
25 verdict, we can't haul everybody back in and ask them
their

3453

Juror No. 721 - Voir Dire

1 attitudes. There's only one chance to do this. That's
2 probably good news to you. You only have to do this
once, so

3 that's why we ask. And that's -- could you turn,
please, to

4 page 28 of your questionnaire. Now, before you looked
at these

5 questions and answered them, was that the first time
you'd

6 thought about this question of the death penalty?

7 A. It was the first time I really thought about it.

8 Q. I beg your pardon? I'm sorry?

9 A. It was the first time I really thought about it.

10 Q. Have you had discussions about it or casual
conversations

11 before that?

12 A. Maybe.

13 Q. Okay. And were there any cases that you could
think about

14 that before you came out to Jefferson County, where the
death

15 penalty had been an issue, that had caused you to
think, well,

16 gee, that's a death penalty case?

17 A. I don't remember.

18 Q. Okay. Well, do you remember seeing or hearing or
reading

19 at any time in the last few months before or after
Jefferson

20 County about a man named Gary Davis?

21 A. Yes, I do.

22 Q. Okay. And you remember -- do you -- do you know
about that

23 he was executed?

24 A. Yes.

25 Q. Now, did you have an opinion about that, about
whether that

Juror No. 721 - Voir Dire

1 was right or wrong, or --

2 A. No, I didn't.

3 Q. Okay. And how about the McVeigh -- the verdict
that the

4 jury gave in the McVeigh case, you know, their
recommendation

5 of a sentence of death? Did you have an opinion about
that?

6 A. No, I didn't.

7 Q. Okay. It would be okay if you did.

8 A. No.

9 Q. But you didn't. Okay. Well, as you were answering
these

10 questions, were you thinking about -- these questions
on page

11 28, were you thinking about this particular case or
what you

12 read or heard, or were you thinking more about -- more
13 generally about all cases? What -- what was your focus
here?

14 A. I was thinking about any case.

15 Q. Any case. All right. And of course, you -- this
is not

16 the first time you thought about punishment; right?

17 A. Yeah.

18 Q. Just generally; correct?

19 A. Yeah.

20 Q. Meaning -- in the situation where you were
involved, I

21 guess there was some debate about what are the
conditions, what

22 does probation mean, should there be counsel, should
there not,

23 all that sort of thing; right?

24 A. Right.

25 Q. And you have a three-year-old child?

3455

Juror No. 721 - Voir Dire

1 A. Yes.

2 Q. So you've thought about punishment in your home;
right?

3 A. Yes, I have.

4 Q. And on that, you favor, what, time-outs, spanking,
5 reasoning? How do you approach that?

6 A. I usually favor time-outs, but it depends on what
he does.

7 Q. Okay. Like what?

8 A. Like --usually, I just do time-outs. He goes to
his room
9 or something, but there have been a couple times when
I've had

10 to spank him.

11 Q. Okay. Well, turning back here to page 28, you said
that

12 life imprisonment is appropriate for certain crimes.
What

13 crimes -- again, by the way, put a context on this.
This
14 question asks if you were elected to the Colorado
legislature
15 or to the United States Congress, you could make the
laws;
16 right?
17 A. Yeah.
18 Q. You're -- you're the Speaker of the House or the
president
19 pro tem of the Senate, whatever. If you could make the
laws,
20 what should the law be? And when you say, "I think
it's
21 appropriate for certain crimes," referring to life
without any
22 possibility of release, what kinds of crimes did you
mean?
23 A. Like murder and -- rape and stuff like that.
24 Q. Repeat offenders, would you think, too?
25 A. Yeah.

3456

Juror No. 721 - Voir Dire

1 Q. Okay. And then you say that on B, "I think it
should be
2 thought out -- that is, the penalty of death -- but in
some
3 cases, the crime is severe enough for it." Right.
Now, what

severe 4 were you thinking of there in severe -- a crime that's

5 enough?

6 A. Multiple murders. But I think it should be thought
out.

7 Q. Okay. It should be thought out.

8 A. Yeah. Before you make the decision.

9 Q. Okay. And then on D, where you say a lot of people
have

10 been killed, that's the multiple murders, you talked
about that

11 with the Judge; correct?

12 A. Yes, I did.

13 Q. Okay. In -- you understand that in federal law,
that is

14 the law we are under right now, that if a jury finds a
verdict

15 of guilt, then there's a second hearing or -- or
another trial,

16 really. And at that, the Government lawyers present
evidence

17 of -- about aggravating factors and the defense
presents

18 evidence about mitigating factors, the judge gives

19 instructions, jurors make a decision, and they make a
decision

20 with three options. One option is life imprisonment
without

21 the possibility of release, and that's what that means
in the

22 federal system. If it says "without parole," that
means that's

option is to 23 it, you go to prison, you never get out. Another
then can 24 say, well, we'll let the judge decide, and the judge
of 25 give some lesser sentence or life without possibility

3457

Juror No. 721 - Voir Dire

three 1 release, and then the third is death. Those are the
2 options.

factors, 3 Now, when the Judge talked about mitigating
about? 4 what -- how did you understand what he was talking

sorry. 5 Should I -- was that not a fair question? I'm

6 A. Yeah.

here, 7 Q. Okay. Well, let me come at it a different way

trying to 8 because it's not some kind of a test. We're just

-- and 9 find out, if you were a juror on a case and you were a

and 10 the defendant was found guilty of bombing an airplane

of a 11 that -- therefore, the premeditated, intentional murder

the 12 large number of people, would you be able, if you were

just 13 juror in that case, to listen to and give effect to not
14 the fact that that had happened, okay, but also to the
about a 15 defendant's personal background in making up your mind
16 punishment?
17 A. Yes. I'd be able to.
sentence to a 18 Q. Okay. Would you feel open to giving a life
19 defendant that you had found beyond a reasonable doubt
had 20 committed those multiple premeditated murders?
21 MR. MACKEY: Objection, Judge.
22 THE COURT: Overruled. Do you understand the
23 question?
24 JUROR: Yes. I think I would be able to.
25 BY MR. TIGAR:

3458

Juror No. 721 - Voir Dire

1 Q. Pardon me?
2 A. I think I would be able to.
3 Q. Okay. And you understand why we're asking; right?
4 A. Yeah.
5 Q. Because -- have you ever heard the expression
"Everybody is 6 better than the worst thing they ever did"?

7 A. Yeah.

8 Q. You have? Now, what do you think that means?

9 Okay. I'll ask you another one. Okay. I'm
not
10 trying to put you on the spot. In your own life
experience,

11 somebody accused you of doing something bad; right?

12 A. Yeah.

13 Q. Did you know in your heart that you were better
than the
14 worst thing that somebody said about you?

15 MR. MACKEY: Objection, Judge.

16 THE COURT: Overruled.

17 JUROR: Yeah. I guess.

18 BY MR. TIGAR:

19 Q. Would you want -- did you believe that in figuring
out what
20 should happen to you, that whoever was deciding should
think

21 about you, the human being, your background, your
experiences,

22 you as an individual person, what life lay ahead of you
and so
23 on as well as the facts about what that person said you
did?

24 A. Yes.

25 Q. Pardon?

Juror No. 721 - Voir Dire

1 A. Yes.

2 Q. Okay. And if you were a juror and you looked at
somebody

3 and you found, gee, they did a terrible thing, would
you still

4 be able to look at who they were beyond this worst
thing that

5 they ever did, what they individually were about, and
really

6 give effect to that evidence in your decision-making?

7 A. Yes, I would.

8 MR. TIGAR: All right. Thank you very much.

9 THE COURT: Well, you're done for now. You
can

10 breathe a sigh of relief. And we're excusing you now;
for the

11 day, that is. But we're not going to be able to tell
you

12 whether you're going to serve on this jury because, as
you

13 appreciate, that takes time. We're talking to a lot of
people,

14 asking questions like this with a lot of people, and so

15 there'll be yet days before we can select the jury.
Please

16 bear with us. Be patient. We'll get back to you and
let you

17 know. But in the meantime, if anything should happen
at all

change 18 and -- and, you know, with your life circumstances, any

19 at all, you let us know.

20 JUROR: Okay.

21 THE COURT: Will you?

22 JUROR: Yes.

anything 23 THE COURT: And, you know, particularly

are -- we 24 concerning your health or that, let us know, if there

there 25 certainly hope there are no problems develop; but if

3460

1 should, you get -- you let us know.

2 JUROR: Okay.

out of 3 THE COURT: And let us know if you get called

unavailable 4 town or if there's something happens where you'd be

5 for a time.

6 JUROR: Okay.

know where 7 THE COURT: And you have our number so you

bear with 8 to call, or you'll get it again. So in the meantime,

radio, 9 us. Be careful watching television, listening to the

10 and talking to others.

11 JUROR: Okay.

12 THE COURT: So that you could come back in
here and do

13 the things that you said you could do, and that's
fairly decide

14 on the evidence and the law as it is given to you.
Thank you

15 very much for your time and patience. You're excused.

16 JUROR: Okay.

17 THE COURT: 182.

18 Good afternoon, sir.

19 JUROR: Good afternoon.

20 THE COURT: Would you raise your hand, please,
and

21 take the oath from the clerk.

22 (Juror No. 182 affirmed.)

23 THE COURTROOM DEPUTY: Thank you.

24 THE COURT: Please be seated there in that
chair next

25 to the microphone. And you can move that around
whatever way

3461

1 is comfortable. You don't have to talk right into the
2 microphone. You can be alongside of it. It'll pick
you up,

3 I'm sure. We can hear your answers.

4 VOIR DIRE EXAMINATION

5 BY THE COURT:

6 Q. Now, you understand that the -- when we refer to
the
begin
against
7 defendant now on trial, we're referring to the trial to
8 after jury selection of the case of the United States
9 Terry Lynn Nichols.

10 A. Yes, sir.

11 Q. And you knew that from the time that you got a
summons that
name
12 perhaps surprised you -- but the summons said that your
13 had come up in a chance process as possibly a juror for
this
14 case, and you responded to that promptly with your
15 questionnaire, a short questionnaire; and then you were
16 notified to go out to Jefferson County Fairgrounds'
auditorium
17 building about a month ago, did that. And you and
others were
18 present, I was there, talked about the case and
introduced some

19 people. Do you recall that day?

20 A. Yes, sir.

21 Q. And I -- we have the -- some of these same people
and more
22 here today. So I want to introduce to you now who's
here with

23 us so that you understand that.

24 Here at this table directly in front of you
are

25 Mr. Lawrence Mackey and Ms. Beth Wilkinson, who you met
them.

3462

Juror No. 182 - Voir Dire

1 I introduced them as attorneys for the Government when
we were

2 together. They are now joined by Mr. Geoffrey Mearns
and

3 Mr. James Orenstein, who were not there, but are
additional

4 lawyers for the Government now.

5 Mr. Michael Tigar and Mr. Ron Woods were there
as

6 attorneys for Terry Nichols; and of course, Mr. Nichols
was

7 there.

8 Now, I want to just review for a moment what I
told

9 you that day. And it isn't because I don't think you
remember

10 it, but it is important for us to sort of establish a
base for

11 our conversation here.

12 And our conversation is going to be in the
form of

13 some more questions, if you can believe it. But --

because you

14 did, after I explained these things, fill out a very
long

15 questionnaire. And we have it and you have it.

16 A. Yes, sir.

17 Q. And I took it and made copies of it for these
people who

18 are participating in this process. But knowing that we
asked

19 you private information, we're trying to keep it
private. And

20 therefore, your name is not used here. Our copies have
not

21 been given to anybody else. It'll just be used for
this

22 purpose. And we also arranged for you to come and go
to the

23 courthouse so that you wouldn't be subject to press

24 photographers or anything like that. And you also have
to

25 understand that the answers that you give now in the
courtroom

3463

Juror No. 182 - Voir Dire

1 are open. This is different, because now we are in a
public

2 proceeding. And I wanted you to appreciate and
understand

3 that.

4 A. Yes, sir.

5 Q. But as I told you, all of this goes back to April
the 19th

6 of 1995, when there was an explosion in Oklahoma City,
7 destroying a federal office building, resulting in
deaths and

8 injuries to people in that building; that thereafter,
charges

9 were filed, an indictment was filed in the U.S.
District Court

10 in Oklahoma City, charging a man named Timothy James
McVeigh

11 and also Terry Nichols and then the indictment says
"and other

12 persons not named" with a conspiracy, a plan to bomb
that

13 building and to kill and injure people in it. And in
the

14 charges, also, Mr. McVeigh and Mr. Nichols were accused
of

15 carrying out the plan and with the murder, first-degree
murder

16 of eight law enforcement agents who were in the
building and

17 died in the explosion. To these charges, each of the
named

18 defendants entered their pleas of not guilty, thereby
creating

19 the issues for trial.

20 The case was then moved from Oklahoma City
here to

21 Denver because of a concern about asking people in
Oklahoma

22 City to serve on a jury. And then after the trial came
here to
23 Denver, I ordered separate trials for Mr. McVeigh and
--
24 finding that it would not be fair, it would be
fundamentally
25 unfair to have the case heard at the same time against
both men

3464

Juror No. 182 - Voir Dire

1 with the same jury. So we did that, ordered separate
trials,
2 so that the evidence as it relates to or related to Mr.
McVeigh
3 would be considered separately from the evidence as it
may
4 relate to Mr. Nichols.

5 The trial was held on the evidence concerning
Timothy
6 McVeigh. A jury heard that and returned a verdict of
guilty.
7 And then another trial was held for Mr. McVeigh on the
question
8 of punishment. And a jury returned a recommendation
for a

9 death sentence. You remember those things?

10 A. Yes, sir.

11 Q. And you probably knew them without my telling you
--

12 A. Yes, sir.

13 Q. -- anyway. But of course, I have to review these
things so

14 it's all clear on the record.

15 And then I also gave some sort of preliminary
16 instructions about the law that applies in criminal
cases. And

17 you've not ever had any direct experience with a
criminal case,

18 have you?

19 A. No, sir, I haven't.

20 Q. So I wanted to -- I want to review those points
with you

21 again. Of course, this is very preliminary, because
the

22 detailed instructions about a case, about what the jury
should

23 do, come at the end of a trial and -- and they can't
come at

24 the beginning, because we don't know what the evidence
may be.

25 But there are certain things that apply across the
board to all

3465

Juror No. 182 - Voir Dire

1 trials in our country -- criminal trials. And they are
that

2 any person who is accused, any defendant, begins with a
clean

3 slate, with no evidence against him, and with the
presumption
4 of innocence. And no person who is charged has any
burden or
5 responsibility of proving himself not guilty, doesn't
have to
6 prove anything, doesn't have to call any witnesses or
introduce
7 any exhibits, doesn't have to get on the witness stand
and
8 answer any questions, doesn't have to explain anything
or say
9 anything at his trial. Do you understand that?

10 A. Yes, sir.

11 Q. And it is because it's up to the government
bringing the
12 charges to come in with the witnesses and the proof to
try to
13 support the charges made. And the defendant can simply
remain
14 silent and challenge the government's proof, making
objections
15 to evidence that's offered under evidentiary rules,
16 cross-examining the witnesses, and all of these things
that go
17 on in the trial. And then, when the trial is over and
the
18 evidence is complete, the jury is asked to decide on
19 instructions that the court gives in some detail about
what has
20 to be proved. These are the elements of the crimes
charged,

21 and so forth -- and then says to the jury: All right;
tell us
22 whether the prosecution proved the case beyond a
reasonable
23 doubt. And if not, the duty of the jury is to find the
24 defendant not guilty.

25 And "beyond a reasonable doubt" means just
what it

3466

Juror No. 182 - Voir Dire

1 says; that is to say that if there is, after
considering it
2 all, reasonable doubt, the defendant gets the benefit
of the
3 doubt. Agree?
4 A. Yes, sir.
5 Q. You understand?
6 A. Yes, sir.
7 Q. Do you have any hesitation about those principles
and
8 following them in this case?
9 A. No, sir, I don't.
10 Q. And you know, again, repeating this matter of no
defendant
11 has to testify in cases where that happens -- that is,
the
12 witness -- the defendant is not a witness, what we tell
a jury

any 13 is that you can't even talk about that, you can't draw

14 inference from that that he's hiding something or like
that.

15 You -- you may not even talk about it in deciding
whether the

16 evidence shows guilt beyond a reasonable doubt.
Follow?

17 A. Yes, sir.

18 Q. All right. Now, I want to go over a few of the
things in

19 your questionnaire. We're not going over each
question. Don't

20 worry about that. And when -- and I want to then
review some

21 other legal principles with you. And then when I've
completed,

22 a lawyer on each side will have a chance to ask you
some

23 additional points and questions.

24 As I have it from what you've told us here,
you were

25 born and you were raised on a farm in Ohio.

3467

Juror No. 182 - Voir Dire

1 A. That is correct, sir.

2 Q. What part of Ohio is this?

3 A. Galion. It's about 50 miles north of Columbus,
sir.

and your 4 Q. Okay. And what kind of a farm did you have, you
5 folks?

on it, 6 A. We had a 10-acre farm. At that time, we had horses
7 farming with horses rather than tractors. Tractors
were coming 8 in about the time we left the farm.

9 Q. Okay. And what kind of crops did you raise?

10 A. Had wheat, corn, oats, soybeans, bean crops.

college? 11 Q. And you -- you left the farm when you went to

12 A. No. I left the farm and went to work in town at a
13 telephone company until I entered the service.

14 Q. Oh, that's right. You went into the Air Force?

15 A. Yes, sir.

16 Q. And you served in the Air Force, what, five years?

17 A. Five years, yes, sir.

the Lowry 18 Q. And is that when you first came out to Colorado,
19 Air Force Base?

20 A. Yes, sir.

21 Q. And then you became an instructor out there?

22 A. That is correct, sir.

were on 23 Q. And was that your principal assignment when you
24 active duty in the Air Force?

was 25 A. Yes, sir. I was instructor for four years, and I

Juror No. 182 - Voir Dire

service.

1 instructor supervisor the last year I was in the

your

2 Q. What kinds of things were you -- subject matter of

3 instruction?

4 A. Electronics and radar.

before

5 Q. And had you had any experience with those things

6 being in the Air Force?

7 A. No, I didn't, sir.

went

8 Q. So you got a lot of training and education and then

9 into aerospace work, apparently.

10 A. That is correct, yes, sir.

11 Q. And that was here?

12 A. Yes, sir.

and

13 Q. And then you completed some, like 28, years of that

14 retired?

15 A. That is correct, sir.

16 Q. And you're married?

17 A. Yes, sir.

18 Q. Wife worked also at a firm here in Colorado and has

19 retired, as well?

20 A. That is correct, sir.

21 Q. You have indicated that you're very active in your
church.

22 A. That is correct, yes, sir.

23 Q. And you also do part-time volunteer work?

24 A. Yes, sir.

25 Q. What do you do in that regard?

3469

Juror No. 182 - Voir Dire

1 A. Habitat of Humanity for one.

2 Q. Building --

3 A. Building houses.

4 Q. -- houses?

5 A. Yes.

6 Q. About how much time do you put in on the Habitat
work?

7 A. On Habitat work, I haven't done any on that within
the last

8 year; but I've helped in about, I think, four or five
of the

9 houses we built in our community.

10 Q. Okay. And have you done some other volunteer work
in

11 recent times?

12 A. Probably not -- I do volunteer work for some
neighbors and

13 a lot of it also for church, also, sir.

14 Q. Okay. And you have a health condition that you
refer to on

15 page 4. If you'll turn to that at page (sic) 18. And
as I

16 understand it, from what you said with your regular
medication,

17 it's -- you have good control?

18 A. I sure do, yes, sir.

19 Q. Doesn't present any problem then?

20 A. None whatever, sir.

21 Q. And did you -- you went to Denver University after
the Air

22 Force?

23 A. No, I was in the Air Force at that time, sir.

24 Q. So they paid for you to go to -- to Denver
University?

25 A. Yes, sir.

3470

Juror No. 182 - Voir Dire

1 Q. To improve your knowledge and information about the
things

2 you were teaching?

3 A. Yes, sir.

4 Q. Okay. Now, I noticed you've got three older and
one

5 younger brother.

6 A. Yes, sir.

three of 7 Q. And that a couple of them still live in -- I guess

8 them still live in Ohio.

9 A. Three of them are in Ohio.

10 Q. Is anybody still on the farm?

11 A. No. They are all retired and in town.

12 Q. Is the farm still in the family?

13 A. No, it is not, sir.

14 Q. What happened to it?

15 A. After my mother passed away, my dad remarried and
moved to 16 town; so he sold the farm at that time.

17 Q. Okay. Had your oldest brother been farming it?

18 A. No. He worked in the dairy in town, processing
milk, 19 making ice cream and things like that.

20 Q. Okay. Had he stayed on the farm until your father
sold it? 21 A. Yes. He probably would have. That was in --

probably '44 22 or '45 when he sold the farm, so my brother was out of
school. 23 Q. Goes back a ways?

24 A. Yes.

25 Q. Okay. I wanted to ask you about a couple of your

Juror No. 182 - Voir Dire

1 responses. On page 22, if you'll turn with me to that
page, at
2 Question 100, we asked you this broad question about
well, what
3 do you think about the criminal justice system. And
you gave
4 it a medium grade here, I guess, of "adequate." And
then you
5 gave your explanation. And I'm not sure I understand
what you
6 said or meant, and I'm not criticizing your answer.
I'm just
7 asking you to expand on it a little, because you say,
"In most
8 cases it works well," but then you seem to separate out
this
9 O. J. Simpson trial.
10 A. I guess my feelings on that are that, first of all,
the
11 jury heard all of the testimony and they made a
decision. And
12 I think our confidence in the judicial system is --
they made
13 the right decision on the evidence that was presented.
As far
14 as the trial was concerned and the hearings, some
comments in
15 the paper from lawyers and other ones throughout the
country
16 that was in the paper, I feel that the trial degraded,
to me,

17 what the judicial system was all about, to the extent
that I do
18 not feel that the judge controlled the trial, which I
feel that
19 the judge is definitely the main person in charge of
the entire
20 trial. And I think the lawyers, in effect, took over
the trial
21 and the judge was a secondary, rather than the primary.
22 Q. Did you watch that on television as it happened?
23 A. No, I did not.
24 Q. That was a televised trial.
25 A. Only what came on news clips. That was about it.
As far

3472

Juror No. 182 - Voir Dire

1 as full-time coverage, watching it, I certainly did
not.
2 Q. Would you like some water?
3 A. I just have a dry throat.
4 Q. I sensed that. That's why I suggested that. We
can give
5 you some water.
6 A. No, sir, I'm fine. As long as you can hear me.
That's
7 good.
8 Q. Yeah. We can hear you. We don't want you to be
9 uncomfortable.

10 A. I'm very comfortable. Thank you.

11 Q. So what -- what I just understood you to say was
you don't

12 quarrel with the jury and what the jury did, but with
the

13 process of the trial.

14 A. With the process of the trial, yes, sir, I do.

15 Q. Okay.

16 A. My personal feelings.

17 Q. That's what we asked for. And that's what we're
asking for

18 in all this, personal information and your feelings and
19 opinions. No right or wrong answers. Not a test in
the sense

20 that those young airmen were taking tests when you were

21 instructing.

22 A. All right, sir.

23 Q. And you also emphasized, I think, a point on page
30: that

24 it is necessary for jurors to follow instructions --

25 A. Yes, sir.

3473

Juror No. 182 - Voir Dire

1 Q. -- of the court. And of course, we're talking
there, you

2 appreciate, I trust, that not just instructions about
staying

3 away from publicity but all the instructions that may
be given
4 in a case, beginning of the trial, during the trial,
and at the
5 end about the law that the jury must follow. Is that
your
6 understanding?

7 A. Yes, sir.

8 Q. Okay. And, of course, you say, "For fairness,
that's the
9 way it has to be"; right?

10 A. Absolutely, yes, sir.

11 Q. Okay. And the engineering -- and that's one more
thing

12 that I wanted to just check with you on, page 31,
Question 135.

13 You worked with engineering, of course, in your Air
Force time,

14 but then in your civilian career, a lot of work with
various
15 kinds of engineers, including design engineers.

16 A. Yes, sir.

17 Q. And learned a good bit about engineering, yourself,
I take
18 it.

19 A. Yes, sir.

20 Q. Would we say that it's mostly in the area of
mechanical
21 engineering?

22 A. It was mechanical and electrical combined, sir.

23 Q. And electric. Okay. Now, we asked you some broad
24 questions in here about punishment. And I'm referring
to the
25 questions about life -- punishment by sentences to life
in

3474

Juror No. 182 - Voir Dire

1 prison without release, without parole, and death. And
that's
2 page 27 is where we gave some explanations for it, and
then the
3 questions were put to you on 28 and 29; so please turn
to
4 those. Take a moment to review that.

5 A. All right.

6 Q. All right. Were you expecting questions like this
when you
7 came out there and we handed out this questionnaire?

8 A. I had no idea what you were going to present, sir.

9 Q. Okay. And of course, the reason that we asked that
is that
10 in the event of a guilty verdict, in a case with
charges of
11 this type, under the statute, there can be such
punishments
12 imposed: life in prison with no release, death, or a
lesser
13 punishment. So what we wanted to know from you is
well, what

14 do you think about those punishments, without
understanding
15 what the law is or being told what the law is; just
what do you
16 think about it, if you could make the law. And that's
what we
17 tried to explain here before the questions were given
to you;
18 that essentially, if you could make the law, what would
you say
19 about when such punishments would be imposed. And is
that your
20 understanding when you wrote your answers?

21 A. Yes, sir.

22 Q. And is this -- is this the first time you've
thought about
23 that?

24 A. I guess it probably is the first time I was ever in
a
25 situation where I had to think about it.

3475

Juror No. 182 - Voir Dire

1 Q. Obviously, the death penalty is something much
disputed in
2 our public and even in the legislatures. You know
there are
3 some states that do not have a death penalty; there are
other
4 states that do. The way in which it's considered

varies among

5 certain states. Over time, it's -- it's debated a lot.

People

6 And there are some extreme views out there:

should be

7 who say, Well, any time a life is taken, somebody kills

8 somebody, that person forfeits his life, too, and

man to

9 killed. Others say, No way can a court ever sentence a

in

10 death. It should not happen. And then there's a lot

11 between. You understand?

12 A. Yes, sir.

between.

13 Q. Okay. And we take it that you're somewhere in

much

14 A. I think on my answer that I gave you on that pretty

15 tells it. If you have no objection if I read that --

that first

16 Q. Well, I've read it. And everything is rooted in

17 answer; right?

18 A. Yes, sir.

and each

19 Q. And it's got to be based solely on the evidence,

20 situation must be based on its own merits.

21 A. That is correct, sir.

a bit is

22 Q. Fair enough. Now, what I want to explore with you

something

23 when you say "the situation," are you talking about

24 more than the crime itself?

25 A. Looking at all the testimony, both from the
prosecutor and

3476

Juror No. 182 - Voir Dire

1 the defense and evaluate all of that before a decision
can be

2 made as to which type of punishment you want to
administer, if

3 any.

4 Q. Okay. Now, we're talking -- let me review with you
how the

5 process actually plays out or works. In cases that
don't

6 involve punishment like this but some lesser punishment
-- and

7 we're talking now about federal courts. I mentioned
about

8 differences among the states; but here, we're in
Federal Court,

9 so it's the same across the country. These are
national

10 statutes passed by the Congress. In federal courts,
when a

11 person has been found guilty of a charge, any crime,
then

12 that's it. I mean, the jury hears the evidence at the
trial,

13 decides this question of has it been proved beyond a
reasonable

14 doubt. If not, the verdict is not guilty and it's all
done.

15 If yes, the verdict is guilty; and then the jury's
role, the

16 jury's function, has been satisfied, because it's the
judge

17 then who makes the sentencing decision.

18 And before judges make a decision like that,
there has

19 to be more heard, and there is a separate hearing. And
in

20 between the time that the jury returns its verdict and
this

21 sentence hearing, a lot of information gets collected;
a lot of

22 things about the defendant, some things about the crime
and the

23 circumstances of it and the effects on people but then
also a

24 lot about the defendant himself; the individual

25 characteristics, the thing about that person's life
history.

3477

Juror No. 182 - Voir Dire

1 And it truly does sort of lay out the whole person's
life, born

2 and raised, what -- you know, family relationships,
marriage

3 relationships, divorces, employment, military service,
almost

4 everything that's happened in that person's life.
Because the
5 law recognizes that each one of us is different from
all
6 others. We all have our own unique characteristics and
our own
7 unique life experiences, and that kind of forms who we
are.

8 Right?

9 A. Yes, sir.

10 Q. And so the judge, having received all that
information,
11 then hears from both sides, lawyers from both sides,
and then
12 says this is the sentence for this person, not just for
this
13 crime, but for this crime and this person combined
together.
14 And that's the decision, a very individualized
decision.

15 Do you understand these points?

16 A. Yes, sir.

17 Q. Now, when it comes to -- in Federal Court, a
question of
18 life or death as the sentencing, we don't have judges
make
19 sentences like that. We don't leave decisions like
that to one
20 person, a judge. That is something that we ask jurors
to
21 decide, because the jurors come to us, 12 people out of
the

22 community, exercising their judgment. But before a
jury that
23 has decided guilt can decide punishment, you know, they
don't
24 decide it just on the basis of the evidence that came
in at the
25 trial and on which they decided guilt or not; they have
to hear

3478

Juror No. 182 – Voir Dire

1 more. And it's sort of like what I've just described
about how
2 judges make sentence decisions. It has to be
individual.

3 And so there is a second trial, a penalty
phase
4 hearing, at which the prosecutors bring in more
information
5 about the crime and its circumstances and its
consequences.

6 And the defense will bring in all of this kind of
information
7 that I've just described about the defendant as an
individual
8 and unique human being. And then -- and you know, that
can
9 take days of further information being submitted to the
jury;
10 witnesses, exhibits. It isn't just a matter of
describing it
11 all. People come in here as witnesses and talk about

these

12 things, including who the defendant is and what he's
done in

13 his life and sometimes what has been done to him;
attitudes and

14 all these things.

15 And then, after it's all in, the court again
turns to

16 the jury with some instructions and says, All right,
here's

17 what we've heard; here's what we've heard in
aggravation,

18 aggravating factors that support the notion that this
person

19 should be put to death; here's what we've heard as
mitigating

20 factors, those things that suggest that even though the
person

21 has committed this crime, he does not deserve to die
for it.

22 You understand?

23 A. Yes, sir.

24 Q. And then says to the jury -- you know, gives some
questions

25 for the jury to ask themselves in terms of how they
might

3479

Juror No. 182 - Voir Dire

1 analyze this evidence. But there's no formula.
There's no

2 equation. There is, in the end, judgment to be
exercised by
3 jurors, applying their reason to all that they have
heard and
4 then make a moral decision about whether a person
should live
5 or die, this particular human being.

6 Do you understand this process?

7 A. Yes, sir.

8 Q. So I must ask you about your ability to participate
in such
9 a process by asking you that if you were to serve on a
jury
10 that found a defendant guilty and then went on to hear
the
11 sentencing factors that I've described, would you be
able to
12 make a decision about life or death based not only on
the
13 circumstances of the crime but also on everything that
you've
14 heard about the circumstances and the individual
15 characteristics and the personal life of the defendant?

16 A. Yes, sir.

17 Q. And be open to consideration of those things in
making a
18 final decision as to whether the person lives or dies?

19 A. Yes, sir.

20 THE COURT: Okay. Well, we have some
questions from

21 counsel, if you'll please listen to them and respond to
them as

22 you have to me.

23 Ms. Wilkinson.

24 MS. WILKINSON: Thank you, your Honor.

25 VOIR DIRE EXAMINATION

3480

Juror No. 182 – Voir Dire

1 BY MS. WILKINSON:

2 Q. Good afternoon, sir.

3 A. Good afternoon, ma'am.

4 Q. My name is Beth Wilkinson, as the Judge told you;
and I'm

5 one of the prosecutors who will be presenting the
evidence in

6 this case against Mr. Nichols.

7 And I know you've answered a lot of questions;
but I'm

8 a lawyer, so I have a few more questions for you. I
hope you

9 don't mind.

10 A. Go right ahead.

11 Q. Thank you.

12 You told us that you do quite a few things
even though

13 you're retired; is that right?

14 A. Yes, ma'am.

15 Q. You like to work outside and inside?

16 A. Yes.

17 Q. You like to read?

18 A. Yes.

19 Q. And I see you're reading a book about one of my
heros.

20 Have you finished it?

21 A. No, I haven't as yet.

22 Q. Are you enjoying the book?

23 A. You bet.

24 Q. And what do you like about General Powell?

25 A. To me, he is a man of integrity and a role model
for all

3481

Juror No. 182 - Voir Dire

1 Americans, bar none.

2 Q. Do you appreciate his comments about his life in
the

3 military since you served --

4 A. Yes.

5 Q. -- in the Air Force?

6 A. I certainly do.

7 Q. And I see that you -- you told us that you learned
a lot

8 from being in the military and took a great deal away
from your

9 service; is that right?

10 A. Yes, I did.

11 Q. What would you describe as the benefits that you
received

12 over your life from serving in the Air Force?

13 A. The Air Force, I guess, to be very point-blank --
it made a

14 man out of me. Discipline. Setting goals in life.
Working

15 with people. Cooperation. And just taught you all the
good

16 things about life and what the United States stands
for.

17 Q. And it sounds like you've been using those lessons
ever

18 since you got out of the Air Force?

19 A. Sure been trying to, yes, ma'am.

20 Q. And you said something interesting on your
questionnaire

21 about -- we asked you whether, you know -- if you could
listen

22 to people's opinions and change your mind. And you
said yes,

23 and you added a comment that you thought that was
important in

24 the work environment. Do you remember that?

25 A. Yes, ma'am.

Juror No. 182 – Voir Dire

1 Q. Can you explain that to me.

2 A. In the work environment which I came from, which
was a

3 highly technical field, you deal with all kinds of
people with

4 all different ideas. And one person can never always
be right.

5 One person, by the same token, can never be all wrong.
You

6 pull the ideas -- you put them together, you come to

7 conclusion -- or a conclusion. When you're all
finished,

8 whatever idea, that's the way we want to go, you join
the team

9 and that's the direction you head.

10 Q. Do you think that you could use those skills that
you

11 learned in your employment and in the military in terms
of

12 deliberating with your fellow jurors if you were
selected to be

13 a juror in this case?

14 A. Yes, ma'am, I could.

15 Q. And would you have any trouble being totally fair
in this

16 case and giving Mr. Nichols the presumption of
innocence and

17 making the Government -- making us prove to you beyond
a

18 reasonable doubt that he's guilty of the crimes?

19 A. Be as fair as I possibly could be, yes, ma'am.
20 Q. And you understand from his Honor that you, in a
case like
21 this, would have to do that twice?
22 A. Yes, ma'am.
23 Q. Once to determine whether a defendant was guilty or
not?
24 A. Yes, ma'am.
25 Q. And if you and your fellow jurors came to that
decision

3483

Juror No. 182 - Voir Dire

1 unanimously that he was, in fact, guilty, you'd have to
start
2 again and listen with an open mind about what the
penalty
3 should be?
4 A. Yes, ma'am.
5 Q. Would you have any problem doing that?
6 A. No, I would not.
7 Q. Now, do you understand from his Honor that
basically what
8 you said in your questionnaire when we were asking for
your
9 personal views is the law -- that you have to determine
the
10 proper sentence based on all the information?
11 A. That is correct.

12 Q. You can't have any views on or -- you know, we
don't have

13 an automatic death penalty. Even if the crime is
horrible, you

14 still have to listen and consider both sentences
openly.

15 A. That is correct, yes, ma'am.

16 Q. And do you -- do you have any reason to believe
that you

17 couldn't do that if you were selected here as a juror?

18 A. I certainly would do it to the best of my ability,
yes,

19 ma'am.

20 Q. Now, I think you told us the same kind of things
about the

21 pretrial publicity in this case; right? That you
really had no

22 opinions about --

23 A. Certainly didn't, no, ma'am.

24 Q. -- this case? And I think you said that opinions
must be

25 based on fact and not hearsay.

3484

Juror No. 182 - Voir Dire

1 A. You bet.

2 Q. And does that go back to your views on the media
and how

3 much you can believe what they're telling you?

4 A. It sure is, yes, ma'am.

5 Q. Tell me what you think about that.

6 A. First of all, everything that is written in the
papers or
7 on TV, it is from their perspective. It not always is
8 accurate, and you must take it with a grain of salt.

When
9 you're looking at a situation of this type, you weigh
all
10 evidence and get the facts, not hearsay.

11 Q. Now, have you heard anything about the McVeigh
case? Or
12 did you hear anything about the McVeigh case?

13 A. Anyone that is alive, I guess, in the last few
years has
14 heard something. I have separated myself from all
information
15 since Judge Matsch mentioned to us at Jeffco to not
read about
16 the case in the papers or watch it on TV, which I
certainly
17 followed.

18 Q. And your wife hasn't told you what's in the
newspaper or
19 what's on TV?

20 A. Nothing at all.

21 Q. Okay. And anything that you did here earlier about
the
22 case: Can you set that aside and come in here with a
clean

23 slate and listen to only the evidence?

no
24 A. I know very, very little about the case; and I have

25 preconceived ideas in any way, shape, or form.

3485

Juror No. 182 - Voir Dire

1 Q. Do you know anything about Terry Nichols?

2 A. No, I do not.

3 Q. Do you remember back in -- in 1995 when the bombing
4 occurred on April 19, seeing some of the pictures of
the
5 bombing?

6 A. Yes, ma'am.

7 Q. And what memories or what images do you have in
your mind
8 from that day?

9 A. I guess it was a loss of human life, which is
touching to
10 anyone, because everyone has loved ones and we all feel
a great
11 sense of loss, regardless of who it is, because maybe
12 somebody's husband, wife, father, mother, child,
brother,
13 sister, whatever the case may be. And I think we all
cherish
14 life as a true gift.

15 Q. Do you remember how many people died in the
bombing?

16 A. My best estimate, I think, is around 160; but I
don't know

17 the exact number.

18 Q. And do you know whether children were killed in the
19 bombing?

20 A. Yes. There was a child-care center, yes, to my
knowledge.

21 I don't know how many, but I think there were children
also

22 involved.

23 Q. Okay. And you have grandchildren, don't you?

24 A. Yes, ma'am. I do.

25 Q. Now, do you think if you were to hear testimony
about the

3486

Juror No. 182 - Voir Dire

1 children in this case -- and it would obviously be
emotional

2 testimony -- could you consider that fairly and
objectively in

3 determining whether the Government had proved to you
beyond a

4 reasonable doubt that Mr. Nichols was guilty?

5 A. If it was proven and without a reasonable doubt,
yes.

6 Q. You wouldn't let any emotional reaction --

7 A. Absolutely not.

8 Q. -- reaction to testimony sway you, would you?
9 A. Every person is innocent until proven guilty, and I
would
10 treat it as such.
11 Q. I just want to ask you one more question -- or one
more
12 area. You told us in the questionnaire that you're
active in
13 your church. And we asked you about whether you'd ever
changed
14 denominations, and you said you've searched for
churches and
15 gone to several until you found one you were
comfortable with;
16 is that right?
17 A. Primarily. It was due to moving from location.
18 Q. And does your church have any teachings on the
death
19 penalty?
20 A. No. We belong to a church where each individual's
feelings
21 are respected. There's no cut and dried this is the
way it is.
22 So we are quite free in that area.
23 Q. So you don't have any religious or moral opposition
to the
24 death penalty in theory?
25 A. Absolutely not, no.

Juror No. 182 – Voir Dire

1 Q. So would it be fair to summarize that your views
are it
2 just depends on all the facts and circumstances?

3 A. That is correct. The only way you can do it
fairly.

4 MS. WILKINSON: Thank you, sir, for answering
my
5 questions.

6 JUROR: Thank you, ma'am.

7 THE COURT: Mr. Woods.

8 MR. WOODS: Thank you, your Honor.

9 VOIR DIRE EXAMINATION

10 BY MR. WOODS:

11 Q. Good afternoon.

12 A. Good afternoon, sir.

13 Q. As the Judge introduced me, my name is Ron Woods;
and I,
14 along with Mike Tigar, were appointed by the district
judge

15 over in Oklahoma City right after Mr. Nichols was
charged by

16 the Government with this offense. We were charged to
assist
17 and help Mr. Nichols in this case.

18 Would you hold it against Mr. Nichols or would
he be
19 at a disadvantage if you were on the jury because he
couldn't

20 afford to have a lawyer and the court had to appoint a
lawyer
21 to represent him?
22 A. No, sir. Not at all.
23 Q. Okay. Most of the questions have already been
asked. We
24 have to go last, so there are only a few areas that --
25 A. That's fine.

3488

Juror No. 182 - Voir Dire

1 Q. -- I want to talk about because they have already
covered
2 everything. But I was a little unclear on the years at
the
3 farm. You mentioned that the farm was sold in '44 or
'45; but
4 on your questionnaire, you said that you were born and
raised
5 on the farm from '29 to '51.
6 A. Yes, sir.
7 Q. Did you continue working on the farm after it was
sold?
8 A. Yes. My mother passed away, and that's what
precipitated
9 selling the farm; so my dad moved to town, and I had
the
10 opportunity -- I wanted to finish high school where I
already
11 was enrolled. So anyway, there was some people in the

per se, 12 community that kind of adopted people -- not adopting
13 but took them in. So I went with them on the farm and
stayed 14 there until I entered the service.

15 Q. Okay. So you did 22 years of farm work then?

16 A. Yes, sir.

17 Q. Okay. Now, that was during the Depression, and you
18 mentioned that about the time when you left is when the
19 tractors were coming in?

20 A. Yes, sir.

21 Q. Okay.

22 A. I might make one clearance, sir, that you
mentioned. The

I 23 last -- I lived on the farm, but I did work in town --

24 believe it was three years prior to entering the
service.

25 Q. So '48, you started working in town?

3489

Juror No. 182 - Voir Dire

1 A. That is correct, yes, sir.

2 Q. Okay. What did you do in town there?

3 A. Worked for a telephone company in drafting.

4 Q. Okay. Which town?

5 A. In Galion, Ohio, at the North Electric Telephone

Company.

6 Q. Yes, sir. All right. When you were on the farm,
did you
7 all use commercial fertilizer at all when you were
raising your
8 crops of wheat and soybeans?

9 A. I was young on the farm. I did very little
farming. My
10 dad -- we had -- as I said, I had four brothers.

11 Q. Yes, sir.

12 A. So anyway, I was next to the youngest, and I --
when I left
13 from my folks' farm over to the other people where I
moved in
14 with them, I was, I believe, a 9th grader or in high
school. I
15 worked on the farm. As far as planting the crops and
so on, I
16 was too young to do that; and the people that I moved
into had
17 someone farm their area -- or farm for them, so that's
why I
18 worked in the telephone company in town for my last
three years
19 before I went in the service when I got out of high
school.

20 Q. Okay. And I take it, then, you weren't aware of
whether or
21 not they were using commercial fertilizer?

22 A. They used a commercial fertilizer, but that's about
all I
23 can remember on it.

24 Q. Do you know whether or not it was dry fertilizer?

25 A. It was a dry -- it was a dry fertilizer, yes, sir.

3490

Juror No. 182 - Voir Dire

1 Q. And was that applied by the commercial company that
sold
2 it? Would they come out and do the fertilizing or did
the
3 farmer do --

4 A. No. Did that right with the planting of the crops.

5 Q. Okay. And did you take part in that at all, the
planting?

6 A. No, I did not.

7 Q. Okay. Do you have any familiarity with commercial
8 fertilizer, its uses, how it's used?

9 A. No, sir, I don't.

10 Q. Okay. During those times from '29 on, did you ever
have an
11 occasion to see your brothers or your father or anybody
using
12 any blasting substance to remove tree stumps or rocks?

13 A. No, sir, I didn't.

14 Q. Okay. Were you aware that that had been done on
any farms
15 in that area at all?

16 A. Not to my knowledge in our area, no, sir.

17 Q. Okay. The land was pretty cleared, I take it?
18 A. Yes, sir.
19 Q. Okay. Had it been farmed for several decades?
20 A. Yes. Yes, sir.
21 Q. Did it come from your -- when you were born in '29,
was the
22 farm already in the family for a number of years?
23 A. I honestly can't tell you when my folks did buy the
farm.
24 Q. Okay. Okay.
25 A. So I can't give you a date on that or --

3491

Juror No. 182 - Voir Dire

1 Q. All right. How far was the farm from town?
2 A. We were about 4 miles from a small rural town, from
Galion,
3 Ohio.
4 Q. Okay. During that time, did you and your family
learn to
5 make do? Since you couldn't just drop the tractor to
be
6 prepared -- repaired at the mechanic or you couldn't
walk to
7 the hardware store, did you learn how to make do with
various
8 articles on the farm to make repairs or to substitute
uses?
9 A. Again, at my age, that was primarily my dad, so I

was a

10 go-fer.

11 Q. Okay.

12 A. Bring tools and things like that to assist my dad.

13 Q. Did you ever see him repair things where he would
use

14 something that was not its ordinary use, say like
baling wire,

15 bale hay with, but can make repairs?

16 A. I think every farmer did that, yes, sir.

17 Q. Okay. Okay. Now, in your Air Force service here
in

18 Denver, you were in electronics and radar. And you
still are

19 still in contact with some of your friends that were

20 instructors there; is that correct?

21 A. I have a couple that I'm still in contact with
within the

22 Denver area.

23 Q. Okay. And then you went to work for this
corporation. I'm

24 not going to name it so we can maintain your privacy.
Well,

25 you didn't do it at that particular time. In 1966, you
went to

3492

Juror No. 182 - Voir Dire

1 work for this particular corporation that you then

spent 28

2 years with, I believe?

3 A. Yes, sir.

in this

4 Q. Okay. Where are the offices for that corporation
5 area?

6 A. In Boulder.

7 Q. Okay. Is that the only office?

8 A. They have one in Broomfield, also.

9 Q. Okay. And which one did you work in?

10 A. I worked in the Boulder facility.

11 Q. Okay.

12 A. Corporate headquarters are in Indiana.

there?

13 Q. All right. And what type of work were you doing

covered

14 A. Started out, I was in quality control. Anyway, I

production

15 two launches at the Cape, came back and got into the

I

16 area, production supervisor of various areas; and then

And I

17 finished with that and got asked to come to a project.

aerospace

18 was a project manager and a production manager for

19 hardware.

active in

20 Q. Okay. And after your retirement, you've been

helping

21 charity work and then working around -- I assume

22 neighbors and helping other people; is that correct?

23 A. That is exactly it, sir.

24 Q. Where did you originally come to the belief that
you could

25 not believe everything that the press says?

3493

Juror No. 182 - Voir Dire

1 A. Probably at a very early age.

2 Q. All right. And I believe you stated you look at it
with a

3 grain of salt?

4 A. You have to get it in perspective. I'm not saying
that

5 everything written is wrong or everything on TV is
wrong, but

6 you have to evaluate it until you get the true facts,
learn

7 both sides. Like when you manage people, this person
may not

8 like this, someone doesn't like this. You have to get
all of

9 the facts and then evaluate those, make a decision
based upon

10 facts, not otherwise.

11 Q. All right. Okay. And, you know, there's been a
lot of

12 talk here about a punishment hearing. Since you're
talking

13 about the facts, I want to make clear to you that Mr.
Tigar and
14 Mr. Nichols and I are not conceding that we're going to
get to
15 a punishment hearing. The Government's got a theory
here about
16 Mr. Nichols being responsible for that bombing. We
disagree
17 with that theory. And when they call their witnesses
to the
18 witness stand, we're going to cross-examine all those
witnesses
19 very thoroughly to get to the facts. And the Court
told you
20 that we are not obligated, we don't have to put on
witnesses
21 ourselves; but I want to assure you that we are going
to put on
22 witnesses. We're going to put on a number of witnesses
that
23 contradict the Government's theory.
24 And at that time, after all the evidence is
in, if you
25 were on the jury, you would then be obligated to look
at all

3494

Juror No. 182 - Voir Dire

1 the facts. And if they didn't prove the case beyond a
2 reasonable doubt, what is the jury's obligation at that
time?

3 A. Based upon the evidence presented, they would have
to make 4 a determination of what guilt was involved, if any.

5 Q. All right. And if the Government had not removed
that case? 6 reasonable doubt, in your mind, what would you do in

7 A. Certainly wouldn't be something less than the death
the -- 8 penalty, that's for sure. You would have to see what

9 what the information presented was from both sides,
make an 10 evaluation and what punishment was dealt out, depending
upon 11 the evidence presented.

12 THE COURT: If I may intervene, I think
there's some 13 confusion.

14 MR. WOODS: Yes, sir, I was about to address
that.

15 THE COURT: Mr. Woods is asking you not about
a 16 penalty phase. He's talking about how the Government's
17 evidence will be challenged. So I think what Mr. Woods
is

18 asking you about is the trial phase, the question of
whether 19 the evidence shows the defendant to be guilty. That's
the part

20 he's talking about, and you seem to be talking about
something

21 else. You have to break this down into two types of
trial.

22 You understand?

23 JUROR: Yes, sir.

24 THE COURT: Okay.

25 BY MR. WOODS:

3495

Juror No. 182 - Voir Dire

1 Q. Perhaps I wasn't clear in giving the explanation
about the
2 procedure. We're talking about the first hearing when
the
3 Government's got to come forward with enough evidence
to prove
4 the defendant guilty beyond a reasonable doubt. My
example was
5 that if there was reasonable doubt at the conclusion of
all the
6 evidence -- after you heard their evidence and you
heard us
7 cross-examine their witnesses and you heard our
evidence and
8 they cross-examined the witnesses and if at that time
the jury
9 goes back to deliberate and you had reasonable doubt,
what
10 would be the jury's obligation at that time?
11 A. To evaluate the data presented and find out what
they felt
12 was the most honest and factual evidence presented.

13 Q. Okay. And you understand that the defendant at
this time

14 is presumed innocent?

15 A. That is true with anybody until proven guilty, yes,
sir.

16 Q. Okay. And if the Government, at the conclusion of
offering

17 their evidence at the guilt stage -- if the jury has a

18 reasonable doubt remaining after they have heard all
the

19 evidence and the jury says, I've got a reasonable
doubt, what's

20 the jury's obligation then at that time?

21 A. They can't make a decision or be in agreement as to
whether

22 a person is guilty or not guilty.

23 Q. And if the jury unanimously says, We all have a
reasonable

24 doubt, what would they then have to do under their
obligation?

25 A. They couldn't come to a decision.

3496

Juror No. 182 - Voir Dire

1 Q. Well, would the decision be not guilty if everyone
had a

2 reasonable doubt?

3 A. Under those circumstances, yes, sir.

4 Q. Okay. Thank you.

trick 5 THE COURT: Please understand there aren't any
6 questions here. We're just trying to explore your
7 understandings.

you. 8 JUROR: Yes, sir. I appreciate that. Thank

9 THE COURT: Okay.

10 BY MR. WOODS:

much 11 Q. And the reason I ask that is because there's so
I just 12 concentration here on talking about the penalty stage,
getting 13 wanted to let you know that we're not conceding we're
and 14 to the penalty stage. We're contesting their evidence
responsible 15 disagreeing with their theory that Mr. Nichols is
on what 16 for that bombing, and you've said yourself that based
and you 17 the press says, you look at that with a grain of salt
18 gather your own facts and make your own determination.

19 A. That's the only way you can do it, sir.

Waco 20 Q. All right. Now, there was a question about the

recollection of 21 incident, the Branch Davidians. What's your

and the 22 what happened down in Waco in '93 when the Government

23 Branch Davidians had a confrontation?

24 A. I know there was a confrontation; but as far as
details and
25 about any reading about it or any lengthy knowledge of
that

3497

Juror No. 182 - Voir Dire

1 particular incident, I'm not familiar with enough to
even
2 answer you.

3 Q. Okay.

4 A. Because I have no conclusions drawn one way or the
other
5 about it.

6 Q. Do you have any opinion one way or another about
how it was
7 handled by the Government and by the Branch Davidians
there in
8 their compound?

9 A. Again, what you see and what you hear is what you
have to
10 base your opinion on, and I don't think it's fair to
make a
11 judgment based on that evidence one way or the other.

12 Q. What did you hear or see that you can recall?

13 A. I think there was some criticism of the way it was
ended as
14 far as the Government was concerned, whether it was
right or
15 wrong. And again, these were only comments that you

would hear

16 on TV or read in the newspaper. And as far as the
manner in
17 which it was handled and the -- I guess the feelings
that
18 people felt, it was drawing -- drawn on too long before
19 something was done, I think created a lot of the old
feelings
20 of -- about a lot of it or with a lot of people, but I
really
21 have no specifics I heard about or any real feelings
about the
22 whole situation one way or the other.

23 Q. Okay.

24 A. And it was a very unfortunate situation, again,
with life
25 involved, which is very much a gift, as I said before.

3498

Juror No. 182 - Voir Dire

1 Q. Okay. Now, you mentioned about the O. J. system
(sic) when
2 the questionnaire asked about how the criminal justice
system
3 is working, and you checked adequately. And I think I
4 understand what you said about your opinion about the
way that
5 case was handled. You didn't watch all of it on TV, I
take it?
6 A. I watched very, very little of it, sir.

7 Q. Got excerpts at night?

8 A. On evening news, yes, sir.

9 Q. Yes, sir. And you marked on your questionnaire
that you

10 watched the evening news daily; is that correct? Or
the TV

11 news daily?

12 A. I have watched the daily news, but with the
directions of

13 Judge Matsch at Jeffco that we were not to watch news
or read

14 articles, I have not watched anything pertaining to
this under

15 any conditions. If it's on TV and I happen to be
watching, I

16 hit the mute button to follow that direction.

17 Q. I'm talking about up to September 17, last month.
That was

18 the day we all went out to Jeffco and met each other.
Prior to

19 that time, were -- was it your habit to watch the --
the news,

20 TV news daily?

21 A. Yes. We usually watched it every evening, usually
the

22 10:00 news. Depending upon if we're around, I may
watch the 5,

23 but not on a regular basis.

24 Q. Okay. You had mentioned to the Court that you had
some

25 disagreement about the way the O. J. Simpson trial was

handled

3499

Juror No. 182 - Voir Dire

control. Is 1 and mentioned that the lawyers sort of got out of

2 that the way I understand you?

think it 3 A. No disagreement with the trial, itself. I guess I

book. 4 was not handled in a totally professional manner in my

Was 5 Q. And that was because the judge did not control it?

6 that --

drawbacks on 7 A. Primarily, I think that was one of the main

8 the entire trial.

that 9 Q. Okay. Do you think that the televising the -- the
10 proceedings had any impact on the way people behaved in

11 case?

driving 12 A. To be very honest with you, I think that was the

13 force.

14 Q. Okay.

whatever 15 A. They knew they were on TV and for publicity and

16 reasons, I think it was used to the lawyers' advantage.

17 Q. Okay. And you understand this case is not being

televised?

18 A. Yes, I do. And I appreciate that very much.

19 Q. And you understand this judge is in control?

20 A. I am well aware of that, yes, sir.

21 Q. Okay. All right. Did you have any disagreement
with the
22 verdict in the O. J. case?

23 A. It's very hard to disagree with something when you
don't
24 know what the facts are.

25 Q. And you mentioned there that that jury was the only
one

3500

Juror No. 182 – Voir Dire

1 that heard the evidence presented?

2 A. That is correct.

3 Q. Okay.

4 A. You can't be a Monday morning quarterback if you're
not

5 there Sunday afternoon.

6 Q. And I take it then based on what you've said about
your

7 beliefs, the way this system works and the way it
worked in

8 that case, that if you were on the jury, you're going
to look

9 solely at the facts that are presented and if you heard

just 10 anything about the case in the media, you're -- you're
11 going to set that aside; is that correct?
12 A. That is correct, yes, sir.
13 Q. And base your decision just on the facts presented?
14 A. That's all you can base it on, sir.
I want 15 Q. All right. And the prosecutor mentioned this, but
highly, 16 to emphasize it. It's likely that there will be some
17 highly emotional testimony and photographs and evidence
efforts. 18 relating to the deaths and the sadness and the rescue
19 There may be photographs that's going to grip us all.
It's 20 going to be very sad, heart-wrenching. Can you
separate 21 that -- that's going to be very emotional. Can you
separate 22 that and then look at the evidence that the Government
says 23 proves Mr. Nichols was responsible for it? Can you
look at -- 24 at that evidence objectively and not let the emotion
interfere 25 with your deliberations?

3501

Juror No. 182 - Voir Dire

1 A. I think we all have emotions; but in a case like

that, you

2 have to look at evidence only.

3 Q. Okay. And you're assuring us that you can do that
--

4 A. Yes, sir, I can.

5 Q. -- if you were to sit on the jury.

6 Okay. As to the issue of punishment, you
mentioned

7 that your -- the churches that you've been a member of
because

8 of your moving around, that they have not had a
position one

9 way or the other on the death penalty; is that correct?

10 A. That is correct, sir.

11 Q. Okay. Over the years, through your life's
experience, I

12 take it that you have developed some opinions one way
or the

13 other about the death penalty?

14 A. Not really. I think it's something that until
you're in a

15 situation like that, you can think about it, but you
really

16 don't put it in perspective until you're actually
there, I

17 guess, and you hear everything and then you have to
make that

18 decision. But I have no preconceived notions one way
or the

19 other on that at this point in time.

20 Q. Okay. Did you ever in school have any discussions

one way

class, 21 or the other about the death penalty? Like in speech
this 22 sometimes they have, you know, we're going to debate
have 23 topic, the death penalty, or other areas. Did you ever
24 any discussions about the death penalty?
25 A. I certainly don't recall any, no, sir.

3502

Juror No. 182 - Voir Dire

any of 1 Q. Okay. And did you ever have any discussions with
death 2 your friends or family before last month about the
3 penalty as an issue in our society?
4 A. No, sir. I haven't.
5 Q. Ever thought about it as an issue in our society?
everyone 6 A. When you look at human life, I guess you consider
the 7 loves somebody along the line. And when you deal with
home as 8 death penalty, you are really hitting about as close to
guess 9 you can possibly hit. And as far as a death penalty, I
10 you have to look at all -- again, going to the evidence
warrants 11 presented and make up your mind whether that really

12 that type of a punishment or not in any way. I really
feel
13 that the death penalty, if such warrants -- or the
evidence
14 warrants that, I would have no problem of going that
direction,
15 but it -- that is the ultimate. But again, like I say,
unless
16 it's proven beyond a reasonable doubt, I would not --
you
17 couldn't even consider it.

18 Q. Okay. Have you been reading the newspaper about
the Gary
19 Davis execution that was scheduled earlier this week?

20 A. I knew it was completed; but no, I did not read
newspaper
21 articles on that.

22 Q. There were a lot of articles in -- do you take the
Rocky
23 Mountain News or The Denver Post?

24 A. We get the Rocky Mountain News -- or The Denver
Post -- I'm
25 sorry -- on weekends only.

3503

Juror No. 182 - Voir Dire

1 Q. Okay. There were a lot of articles in the weekend
for the
2 last several weekends. They would have guest
editorials from

any of 3 pro and con the death penalty. Did you happen to read

4 those?

5 A. No, sir, I deliberately did not read any of those.

6 Q. Not that it would be improper.

7 A. I did not read any of it --

reason that 8 Q. They didn't mention this case. Was there some

9 you chose not to read them?

crime was 10 A. No, I just -- first of all, I was here when that

sentenced; but 11 committed. And anyway, I remember when he was

Denver at the 12 after that, I have remembered like while I was in

And of 13 time and again, remember some of the circumstances.

But as far 14 course, they refreshed memories of people on those.

done 15 as reading any articles on it, discussing it, I haven't

16 any of that.

crime, you 17 Q. All right. Was it because of the nature of the

18 just didn't want to get back into it?

enough over 19 A. I think I felt that I had heard enough and seen

20 the years that this was a -- only a rehash of all the

21 information presented previously.

22 Q. Okay. Do you have any disagreement with that

jury's

23 verdict in that case?

24 A. Like I said before, the jury heard the evidence. I
didn't.

25 And I think they made the decision that they felt was
fitting

3504

Juror No. 182 - Voir Dire

1 for the evidence presented to them.

2 Q. Okay. Did you have any disagreement with the
jury's

3 verdict in the McVeigh case?

4 A. I guess I cannot answer that one for the fact that
I wasn't

5 there to hear the evidence.

6 Q. Okay. And do you have any disagreement with the
penalty --

7 that is, the death penalty -- in that case?

8 A. For what information was presented to them, I think
the

9 jury felt that everything there was certainly pointing
to and

10 warranted a death penalty, and they made that decision.
And

11 again, they had all the facts which we as laymen did
not have.

12 Based on all that, I have to agree that they probably
made the

13 right decision.

14 Q. Okay. Now, the Judge explained to you the
procedure in a
15 capital murder case in Federal Court. First, you never
get to
16 that penalty stage unless the jury has found the
defendant
17 guilty of premeditated, intentional murder of one or
more
18 individuals. Did you understand that?

19 A. Yes, sir.

20 Q. And then he instructed you that the jury would then
receive
21 evidence of aggravating factors and then would receive
evidence
22 of mitigating factors. What did you understand the
Judge to
23 mean when he talked about the mitigating factors?

24 A. My understanding of that is that it was additional
25 information that would lead you in a direction pointing
to a

3505

Juror No. 182 - Voir Dire

1 specific penalty or sentence to that individual,
something that
2 was above and beyond and also maybe some other
substantiating
3 evidence that kind of brought things together in
composite
4 information presented to the jury.

5 Q. Okay. Composite information as to what?

6 A. A summation of various things that kind of wrapped
it into
7 a close-knit ball rather than just a big area of
coverage.

8 Q. All right.

9 A. Kind of highlighting, I guess I would say on that.

10 Q. Are you speaking of highlighting as to the
defendant or
11 highlighting as to the crime?

12 A. It would be highlighting all information from the
defendant
13 and also the crime, itself.

14 Q. Okay. Now, on your questionnaire on page 28, you
talk
15 about life imprisonment and the death penalty.

16 A. Yes, sir.

17 Q. On C and D, you were asked what kind of cases is it
18 appropriate, if ever, to impose the punishment of life
in
19 prison without the possibility of ever being released.

And
20 what they were asking there is, you know, assume that
you were

21 in the legislature and you had the power to write the
laws.

22 For certain crimes, there's going to be a punishment of
life

23 imprisonment, and for certain other crimes, there would
be the

Questions 24 option of the death penalty. That was the meaning of
25 C and D.

3506

Juror No. 182 - Voir Dire

1 A. Yes, sir.

2 Q. Can you give me an example of what kind of crimes
you feel
3 that the appropriate punishment would be life
imprisonment
4 without release? And you understand in the federal
system,
5 when they say "life without release," that means you go
to
6 prison, you never get out again. You die in prison.
Can you
7 give me some examples of what kind of crimes, if you
were
8 writing the statute, that you feel that life
imprisonment would
9 be the appropriate punishment?

10 A. As I mentioned before, I did not read anything
about the
11 Davis case; and I guess an example of that would be
where the
12 wife, I guess, of Davis who was executed, got life
13 imprisonment -- I believe that it's correct, the
sentence that
14 she received where he got the death penalty. What the

15 separation on that was and again, not being in a jury
to hear
16 all of those facts, I guess I don't totally understand
why one
17 was given one sentence and one was given another
sentence.

18 Q. Okay.

19 A. You know, I haven't followed it that closely; and
again,
20 the jury is the only one that heard it and made the
decision.

21 Q. Okay. Was it your understanding, then, at the time
that it
22 happened and you read about it at the time of the first
23 trial -- did both of them go to trial and then the jury
24 sentenced one to death and then one to life
imprisonment?

25 A. I don't recall whether they went to trial as a team
or

3507

Juror No. 182 - Voir Dire

1 whether they went individually.

2 Q. Separate?

3 A. I don't remember that at all on which one went
which
4 direction on that.

5 Q. All right. And -- but it's your understanding that
a jury
6 assessed a life sentence for one and then a death

penalty for

7 the other?

8 A. To the best of my knowledge, that's what they
determined,

9 yes, sir.

10 Q. Okay. And do you have some disagreement with two
people

11 being involved in the same crime and getting different
12 punishments?

13 A. Again, based on facts, the jury heard it, I didn't.

14 Q. Okay.

15 A. So I can't make an answer on that one way or the
other,

16 because you're going on hearsays and rumors, and that
is not

17 the way to base your decisions.

18 Q. Okay. Well, legally, though, when we're talking
about

19 these cases that are appropriate for life imprisonment
and you

20 gave that Davis example, did you mean to say -- or what
do you

21 mean to say there with that?

22 A. That was just an example where there were two
people

23 supposedly involved in the same crime and one got one

24 punishment and the other one got another punishment.
And if

25 they were together, why is the difference between the
two

Juror No. 182 - Voir Dire

1 different ones? And again, the jury and defense --
defendants
2 and the prosecutors had to present that evidence to
prove that
3 one way or the other.

4 Q. All right. And -- but how does that relate to
Question C
5 there?

6 A. I guess my best answer to that would be based upon
all of
7 the evidence presented.

8 Q. Well, they're asking for what type of cases is it
9 appropriate to impose a punishment of life in prison
without
10 the possibility of ever being released. Can you think
of the
11 type of cases that you would write the law for that the
life
12 imprisonment is the appropriate penalty?

13 A. I would hate to write it, because it would probably
be
14 misinterpreted. And I think that's true of a lot of
the laws
15 by various people. Everyone has an opinion, and they
can
16 differ, even though they are all pretty much headed in
the

17 right direct -- same direction.

18 Q. And as the Judge said, there are no right or wrong
answers
19 here. The reason this questionnaire was given to you
was to
20 try to elicit your feelings about your thoughts, and
the only
21 answers we're seeking are the truthful answers, what
your
22 thoughts are. And you just have to assume that you
were
23 writing the laws for the legislature. What kind of
crimes
24 would it be appropriate to have life imprisonment?

25 MR. MACKEY: Judge, objection.

3509

Juror No. 182 - Voir Dire

1 THE COURT: Sustained. I think the man has
given us
2 his views.

3 MR. WOODS: All right. Thank you, your Honor.

4 THE COURT: Okay.

5 BY MR. WOODS:

6 Q. As to D, what kind of cases is it appropriate, if
ever, to
7 impose the punishment of death? Can you give me an
example of
8 what kind of cases you think the death penalty is an

9 appropriate verdict for?

10 A. Well, an example that happened recently, I guess,
was the
11 execution we had in Colorado this week. I think there
was
12 enough evidence obviously presented to the jury that
the
13 decision was made that that would be the punishment for
the
14 crime committed.

15 Q. All right. And that was where a life was taken and
the
16 defendant was convicted and the jury found that he
17 deliberately, intentionally killed another individual.
Is that
18 your understanding?

19 A. That is correct, yes, sir.

20 Q. And then the jury, upon weighing all the
circumstances,
21 looking at the evidence that was presented by both
sides, came
22 up with the death penalty. Is that your understanding?

23 A. Yes, sir.

24 Q. Okay. Now, do you feel that in a murder case --
take a
25 hypothetical case where --

3510

Juror No. 182 - Voir Dire

1 THE COURT: I think this area has been
explored
2 adequately.
3 MR. WOODS: All right.
4 BY MR. WOODS:
5 Q. If you were chosen on the jury, can you look Terry
Nichols
6 in the eye and say, Mr. Nichols, I will give you a fair
trial?
7 A. Yes, sir, I will.
8 Q. Okay. And you understand that we're not conceding
that we
9 will get to a punishment hearing in this case?
10 A. Yes, sir.
11 MR. WOODS: All right. Thank you, sir.
12 JUROR: Yes, sir.
13 THE COURT: We all appreciate your time and
your
14 efforts in responding to all of these questions. And
now,
15 you're going to be excused for today without knowing
whether
16 you're going to be serving on the jury. And you won't
know
17 that for a while, because we won't know that for a
while.
18 There's a process that we go through with respect to
jury
19 selection that includes, as you well know from having
been out
20 there at the Jefferson County auditorium, the need to

visit

21 with quite a few people.

22 JUROR: Yes, sir.

23 THE COURT: And it's not like a job interview.

It is

24 a matter of going through a set process to determine
the jury

25 in the case.

3511

1 JUROR: Yes, sir.

I

with

that if

2 THE COURT: So please continue to follow these
3 cautions that you already have from the last time that
4 excused you; and also don't discuss this part of it
5 anybody or what questions were asked, and so forth, so
6 you're called back in here to take on the
responsibility of

do it,

7 trying this case and deciding fairly, you'll be able to
8 as you told us you would.

9 JUROR: Yes, sir.

10 THE COURT: If anything happens here that
causes you

know

11 to be out of town or something like that, please let us

12 immediately.

13 JUROR: Yes, sir.

14 THE COURT: Because I can't give you an
expected date

15 that we'll get back to you. Stay in contact and avoid
things

16 that could affect your ability to serve.

17 JUROR: All right, sir.

18 THE COURT: You're excused for now.

19 JUROR: Thank you, your Honor.

20 (Juror out at 3:50 p.m.)

21 THE COURT: We're going to take a recess.

22 Yes?

23 MR. TIGAR: We'd like to be heard either now
or after

24 the recess, your Honor.

25 THE COURT: Now is fine.

3512

1 MR. TIGAR: We'd like to place on the record
an

2 objection to your Honor cutting off the questioning of
this

3 juror, and let me tell the Court what our reasoning
was.

4 THE COURT: Yes.

5 MR. TIGAR: The questions on page 28 asked the

juror

6 to be a legislator. And the problem, I think, was that
the

7 juror continued to answer questions which were directed
at what

8 would you do if you could write the statute in terms of
9 particular cases rather than generalities. And what
Mr. Woods

10 was attempting to do by getting down to D when your
Honor

11 terminated the questioning was to open up and find out
about

12 that, because there had been a great deal, in our
respectful

13 view, of confusion on the juror's part about the
different

14 phases of the trial, if your Honor can recall where he
had done

15 some of the questioning on that.

16 THE COURT: I had to intervene, yes, because
he was

17 mixed up on that; but I think the man was getting mixed
up by

18 the questions.

19 MR. TIGAR: Well, with all respect --

20 THE COURT: And I think the subject was
explored fully

21 and it became argumentative. And that's why I cut it
off.

22 MR. TIGAR: I'm not --

23 THE COURT: That's my ruling.

24 MR. TIGAR: I understand.

25 THE COURT: Your objection is recorded.

3513

1 MR. TIGAR: Our objection is on the record.

2 THE COURT: Court's in recess. 20 minutes.

3 (Recess at 3:51 p.m.)

4 (Reconvened at 4:09 p.m.)

5 THE COURT: Please be seated.

6 Okay. 176.

7 Good afternoon. Would you please raise your
right

8 hand and take the oath from our clerk.

9 (Juror No. 176 affirmed.)

10 THE COURTROOM DEPUTY: Thank you.

11 THE COURT: Please be seated in that chair by
the
12 microphone. And that moves around. You can swivel it
around.

13 You don't have to talk right into the microphone. It
will pick

14 you up if you're anywhere near, I think.

15 VOIR DIRE EXAMINATION

16 BY THE COURT:

17 Q. And you've been waiting all day.

18 A. Yes.

us to 19 Q. We're sorry to keep you waiting, but it's hard for
going to 20 sort of program this and know just how much time it's
21 take; so please forgive us that.

took 22 Well, you know that when that oath you just
that we're 23 refers to questioning about "the case now on trial"
Lynn 24 talking about the case of United States against Terry
25 Nichols; right?

3514

Juror No. 176 – Voir Dire

1 A. Yes.
serve on 2 Q. And you got a summons notifying you that you may
selection 3 the jury because your name came up through a chance
a short 4 process, actually a computer process; and you sent back
notice to 5 questionnaire with your answers, and then you got a
auditorium 6 come out to the Jefferson County Fairgrounds'
other 7 building on September 17. And you did that, met with
8 jurors there and with me. I introduced myself, and I
9 introduced some people who were with me. They're here

again,

10 so I want to introduce them so you know who is here
with us

11 this afternoon.

12 You recall meeting Mr. Lawrence Mackey, first
table

13 here, Ms. Beth Wilkinson, lawyers for the Government.
And now

14 they're joined by Mr. Geoffrey Mearns and Mr. James
Orenstein,

15 who were not there at that time. They're joining us
today.

16 You did meet Mr. Michael Tigar and Mr. Ronald
Woods,

17 lawyers for Mr. Terry Nichols; and of course, Mr.
Nichols was

18 there.

19 And then I explained to you some things about
the

20 background of the case. I'm sure most of what I said
you

21 already knew, in that the case arises as a result of an
22 explosion in Oklahoma City, Oklahoma, on April 19 of
1995,

23 where a federal office building was destroyed and
people were

24 killed and injured; that after that, charges were filed
in the

25 Federal Court in Oklahoma City in the form of an
indictment

Juror No. 176 - Voir Dire

1 brought by lawyers for the Government charging that a
man named
2 Timothy James McVeigh, along with Terry Nichols -- and
then the
3 indictment says that "other persons not named in the
4 indictment" formed a conspiracy or an agreement to bomb
that
5 building and to kill and injure the people in it and
that in
6 other charges in this indictment, the -- they're
accused of
7 going ahead and doing that bombing and with the murders
of
8 eight law enforcement agents who were in the building
and died
9 in the explosion and that to those charges, the
defendants
10 pleaded not guilty, thereby creating the issues -- the
dispute
11 that is to be tried by a jury.

12 And then the case was moved from Oklahoma City
to
13 Denver because of a concern about getting a jury there
and
14 asking the people in that community to serve on a jury;
and
15 then after the trial was moved here, separate trials
were
16 ordered. I ordered separate trials for Mr. McVeigh and
17 Mr. Nichols because, according to my view of it and the

nature

18 of the case, it would not be fair for the same jury to
hear the
19 evidence as it may relate to both of the defendants,
there
20 being probably significant differences in the evidence.

21 You follow me on all this so far?

22 A. Yes.

23 Q. And then there has been a trial of the evidence as
it
24 relates to Timothy McVeigh. A jury heard that case
here and
25 made a decision that they found the evidence to prove
his guilt

3516

Juror No. 176 - Voir Dire

1 beyond a reasonable doubt on the crimes charged; and
then there
2 was a second trial on the issue of punishment, and the
jury
3 returned a recommendation for the death penalty.

4 That's all done and over with and does not
affect this

5 trial. We start all over again to consider whatever
evidence

6 there may be as it relates to Mr. Nichols and whatever
7 involvement he may or may not have had in connection
with this

8 event in Oklahoma City and the charges made against

him.

9 Understand?

10 A. Yes.

11 Q. And as I explained very, I hope, clearly, nobody
can

12 consider the outcome of the Timothy McVeigh trial as
having

13 anything to do with the Terry Nichols trial. They are
two

14 separate trials, and it would violate the whole reason
for

15 separate trials if one result would spill over to
another or

16 whatever one may have -- a juror, for example, may have
heard

17 or read about the McVeigh trial affecting that juror's
judgment

18 in this trial. You follow me?

19 A. Yes.

20 Q. Now, we also went through some of the basic
principles or

21 fundamentals about the criminal justice system in the
United

22 States under the Constitution of the United States,
which says

23 that no matter who you are or what you're charged with
or where

24 the trial is in the United States, you're presumed to
be

25 innocent of the charges made against you, and that
presumption

Juror No. 176 - Voir Dire

1 carries throughout the trial and entitles you to an
acquittal,
2 a verdict of not guilty, unless 12 fair-minded people
as jurors
3 who come in with open minds and who consider only the
evidence
4 presented at the trial and follow the law determine
that your
5 guilt has been proved beyond a reasonable doubt. You
6 understand these points?
7 A. Yes.
8 Q. And no defendant in a criminal case, no matter who
that
9 person is, has any duty or burden of proving anything
at trial,
10 certainly not to prove that he's not guilty. No
defendant in a
11 criminal case has any burden of testifying. They don't
need to
12 take the stand and answer questions or give any
explanations to
13 the jury. And no juror can consider that, if it
happens at a
14 trial, the fact that a defendant doesn't testify, as
some kind
15 of admission of guilt or that he's hiding something or
16 whatever. In fact, what happens in those trials when a
17 defendant does not testify is that the jury is

instructed they

18 may not even talk about that in considering the
evidence.

19 Follow me on that?

20 A. Yes.

21 Q. So what the presumption means is that if at the end
of it

22 all and following instructions that the court gives at
the end

23 of the trial about what has to be proved -- these are
called

24 the "elements" of the offense; for each offense charged
what

25 has to be proved -- if the jury decides there is still
a

3518

Juror No. 176 - Voir Dire

1 reasonable doubt as to whether the evidence proved that
charge,

2 then the jury must give the defendant the benefit of
that doubt

3 and find him not guilty. Understood?

4 A. Yes.

5 Q. Now, are you prepared to follow these rules, if you
were to

6 serve on this jury?

7 A. Yes.

8 Q. Do you have any hesitation about doing so?

9 A. No.

10 Q. And you then, after hearing these things, filled
out a long

11 questionnaire, answered a lot of questions.

12 A. Yes.

13 Q. And we've taken your answers, made copies. I've
provided

14 it -- those copies to the people here; but they haven't
used it

15 in any way other than in how it will be used here this
16 afternoon. So none of this has been made public and
will not

17 be.

18 And that's why we don't refer to you by name
here,

19 either, or, you know, even involve the possibility of
somebody

20 could take your picture and put it in the paper, or
something,

21 coming in and out of the courthouse, because we want to
protect

22 your privacy so far as possible, knowing that some of
these

23 answers are rather personal in nature.

24 And we'll try to be careful as we go through
the

25 questioning, but recognize that the questions and
answers here

Juror No. 176 – Voir Dire

1 are now in the open. This is a public trial
proceeding. You

2 understand these points?

3 A. Yes.

4 Q. All right. Well, we're going to -- I want to ask
you a few

5 things about your answers. We're not going to go over
the

6 whole thing. Don't worry about that. And then when --
and

7 then I want to cover some more points with you; and
when I'm

8 completed, then a lawyer on each side will have the
opportunity

9 to question you some more.

10 A. Okay.

11 Q. Bear with us.

12 As I have it -- excuse me -- you were born in
Georgia?

13 A. Yes, I was.

14 Q. In Atlanta?

15 A. Uh-huh.

16 Q. And then you came to Colorado how long ago?

17 A. Oh, when I was 12 years old.

18 Q. And you've lived in Colorado since then?

19 A. Yes.

20 Q. And you told us something here on page 4 that I
simply want

got your 21 to check with you. If you'll turn to that -- you've

22 questionnaire there, haven't you?

23 A. Yes, I do.

told us 24 Q. Turn to page 4, if you will, and Question 18. You

understand 25 about some medication that you take. And the way I

3520

Juror No. 176 - Voir Dire

and 1 it from what you've told us is you take your medicine

2 everything is fine. Your --

3 A. Correct.

4 Q. -- situation is controlled, doesn't affect you --

5 A. Doesn't affect me.

6 Q. -- in your work or -- okay. Good.

divorced? 7 You -- let's see. You have been married and

8 A. Yes, I have.

9 Q. And remarried.

10 A. Correct.

11 Q. And you now have -- let's see -- two children.

12 A. Yes, I do.

family 13 Q. And is this right that you live with an extended

14 now, your mother and your brother and niece and nephew?

15 A. Yes, I do.
16 Q. So there is care for the children, is there?
17 A. Yes, there is.
18 Q. And that's one of the things we want to cover with
you, of
19 course. If you serve on the jury, you understand you'd
be here
20 9 to 5 and it may take several months to try the case.
21 A. Right. I have a father that's involved, so he can
take
22 care of them.
23 Q. All right. Okay. And you tell us in here where
you work.
24 Now, after you got your jury notice, did you talk to
your
25 supervisor, whoever you report to there, about that you
may be

3521

Juror No. 176 - Voir Dire

1 called as a juror?
2 A. Yes, I did.
3 Q. And did you talk to them about the length of the
trial and
4 what trial it is?
5 A. Yes. We didn't -- we didn't really discuss the
trial. I
6 just told him that I may be serving on a jury; and he
said,

7 Well, let me know what's going on, you know.

8 Q. Okay. And did you get any understanding from
anybody about

9 your job and your pay if you served on the jury for
several

10 months?

11 A. No, I didn't.

12 Q. And really, you were working for one company and
then it

13 got bought out and you're with another company now?

14 A. Correct.

15 Q. Doing the same kind of work?

16 A. Actually, assistant administrative.

17 Q. Better job now?

18 A. Yeah.

19 Q. Okay. And you just really started with this new
company a

20 couple of months ago?

21 A. Yes, I did.

22 Q. Well, I wanted to just check to make sure that you
didn't

23 look at this as your job being affected by your work
here on

24 the jury if you were to be serving on the jury.

25 A. It won't be, will it?

Juror No. 176 - Voir Dire

1 Q. What?

2 A. It won't be, will it?

3 Q. Well, they can't fire you for being on a jury.

4 A. Okay. That's the question.

5 Q. There is a federal statute that says they can't do
that.

6 A. Okay.

7 Q. But what the arrangements might be, may be, as far
as

8 paying you, I don't know. That's a matter between the
employer

9 and the juror.

10 A. Okay.

11 Q. Some companies go ahead and pay the difference
between the

12 jury pay and your regular salary.

13 A. Okay.

14 Q. Now, you haven't had any discussion about that one
way or

15 the other?

16 A. Not at all.

17 Q. All right. Are you -- is there some kind of a
written

18 contract with your job?

19 A. No, I don't think so. I'm not very sure, though.

20 Q. Okay. Well, you're not in the union, are you?

21 A. No.

ask you 22 Q. All right. Now, I want to be careful about how I
or make 23 these questions, because I don't want to embarrass you
things in 24 you uncomfortable in any way; but you told us some
talking about 25 here regarding a -- well, let me turn to what I'm

3523

Juror No. 176 - Voir Dire

questions, I 1 specifically. And it's on a number of different

2 think. Page 22 and 23.

3 You see on page 22 at No. 101 --

4 A. Yes.

go on 5 Q. -- what you wrote? And then at page 23 at 103, and

6 to the next page to 24 at page -- at Nos. 105 and 108.

7 A. Okay.

8 Q. Now, do these answers all refer to the same thing?

9 A. Yes, they do.

10 Q. And how long ago was this event?

11 A. About a year ago.

now? 12 Q. And is this relating to the man you're married to

13 A. Yes, it is.

14 Q. And does he live with you now?

15 A. No, he does not.

16 Q. You separated?

17 A. Yes.

18 Q. Were you separated then right after this event?

19 A. Yes, we did.

20 Q. Now, the way I understand this -- and I'm looking
21 particularly at what you said on page 24 at No. 105,
the police

22 came.

23 A. Uh-huh.

24 Q. And you're the one who had the consequences?

25 A. Right.

3524

Juror No. 176 - Voir Dire

1 Q. Even though you didn't start it.

2 A. Right.

3 Q. So you don't think that was fair.

4 A. No, I didn't.

5 Q. And still don't, I assume.

6 A. After looking at the whole situation, I still
didn't think

7 it was fair.

8 Q. Right.

9 A. But it helped me, so --

10 Q. "It helped me"?

11 A. Actually, it did.
12 Q. In what way?
13 A. The counseling part of it.
14 Q. Because that was a consequence.
15 A. Right.
16 Q. You were given some counseling?
17 A. Right.
18 Q. And were -- was that required by some court order?
19 A. Yes, it was.
20 Q. And this was in Denver?
21 A. In Aurora.
22 Q. Aurora.
23 A. Uh-huh.
24 Q. The court was in Aurora?
25 A. Yes, it was.

3525

Juror No. 176 - Voir Dire

the 1 Q. You have complied with all of the requirements that
2 court imposed on you?
3 A. Yes.
4 Q. So that's all over?
5 A. That's all over.
6 Q. Okay. And so you think you were strengthened by it

--

7 A. Yes.

8 Q. -- somewhat as a person?

9 A. I do.

10 Q. Now, you have a religious point of view, as I understand

11 it.

12 A. Yes.

13 Q. Listen to a religious talk show --

14 A. Yes.

15 Q. -- regularly?

16 A. Yes.

17 Q. And is one of those also a program that plays religious

18 music? You listen to that station?

19 A. Yes.

20 Q. And you have a bumper sticker expressing a point of view

21 that you're sincere about?

22 A. Yes, I do.

23 Q. On page 18 -- I'm sorry to jump around here.

24 A. That's okay.

25 Q. I don't want to go through it one page after the other.

3526

Juror No. 176 - Voir Dire

1 Page 18, we asked you whether you're -- you recognize
the names
2 of any organizations or movements. And you mark here
Coalition
3 to Stop Gun Violence. What do you know about that
group?

4 A. I don't know a lot about it. I've just heard about
it.

5 Q. And Child Welfare League. You marked that.

6 A. I only heard about -- actually, most of these
things I only
7 heard about. I've never encountered with any of them.

8 Q. All right. And then there was one marked Common
Law
9 Courts.

10 A. I heard about that, also.

11 Q. What did you hear --

12 A. Just through a friend of mine was talking about the
common
13 law courts.

14 Q. And what did he or she tell you about them, if you
15 remember?

16 A. He -- I think he was wondering if he was common law
married
17 to another girl and --

18 Q. Because they were living together?

19 A. Correct.

20 Q. As if they were married.

21 A. Correct.

22 Q. So you're thinking about it in terms of what you
heard as a

23 common law marriage?

24 A. Correct.

25 Q. Which in Colorado, you can be married without a
ceremony.

3527

Juror No. 176 – Voir Dire

1 You're aware of that?

2 A. Yes.

3 Q. Okay. Now, we also asked if you had any close
friends or

4 relatives who were lawyers. And on page 20, you told
us of an

5 aunt who is a lawyer in New Jersey.

6 A. Correct.

7 Q. And do you know what kind of lawyer she is; that
is, what

8 kind of practice she has?

9 A. No. I'm not close to her at all, so . . .

10 Q. But you know she's a lawyer?

11 A. I know that.

12 Q. Do you know whether she's ever been a prosecutor or
a

13 defending lawyer in criminal cases?

14 A. No, I don't.

15 Q. Or where in New Jersey?

16 A. Mt. Laurel.

17 Q. Okay. I want to -- I think on page 11, jumping
back again

18 the other direction, you marked -- again under a
heading about

19 has anybody in your family worked for any of these
kinds of

20 organizations, you've marked public defender's office.

21 A. I thought that's what she did.

22 Q. But you don't know?

23 A. I don't know for sure, but I think that's what it
is,

24 though. I'm not very sure, but I think that's what it
was.

25 Q. When is the last time you were ever in
communication with

3528

Juror No. 176 - Voir Dire

1 her of any -- in any way?

2 A. A year ago.

3 Q. Was that at a family gathering or something?

4 A. Yeah, it was a family gathering.

5 Q. Here?

6 A. No, in New Jersey.

7 Q. Do you have other family in New Jersey?

8 A. No, just an aunt and -- that's it.

9 Q. Okay. And is she your mother's sister?

10 A. Yes. My mother's sister.

11 Q. All right. I wanted to review with you something
about

12 your answers in connection with this matter of
punishment. And

13 you remember on page 27 there starting at -- toward the
end of

14 the page at 124, there is a long explanation about the
question

15 of a guilty verdict on one or more charges may result
in the

16 jury being involved in a decision about capital
punishment.

17 And then over on the next page, there are some
questions. Just

18 please take whatever time you need to review that.

19 A. Okay.

20 Okay.

21 Q. Now, did you read over your answers?

22 A. Uh-huh. Yes, I did.

23 Q. And then you understand we were asking you here
about your

24 view in general.

25 A. Correct.

law
respect
way you

1 Q. And not in terms of any law but what you think the
2 might be or the way you think the law ought to be with
3 to punishment for certain kinds of crime. Is that the
4 understood this?

5 A. Yes.

time

6 Q. Is this, as you answered these questions, the first
7 that you sort of confronted this question?

8 A. Yes.

readings
should be

9 Q. Have you ever thought about -- in your religious
10 or teachings anything about whether the death penalty
11 a part of the law?

about

12 A. I've thought about it, and I don't know how I feel
13 it, but I've thought --

14 Q. You're uncertain now; is that right?

15 A. Yes.

asked

16 Q. And were you surprised at these questions; that we
17 you such questions?

18 A. Yes.

there is
this type

19 Q. And the reason that we asked you such questions is
20 the possibility in cases of this type with charges of

21 that a jury may ask -- be asked to decide a question of
22 punishment; so that's what we -- why we had to ask; and
what we
23 wanted to know is what you thought about it, sort of
coming in
24 fresh without any -- any discussion about how it may
come up or
25 what the procedure is or what the law is.

3530

Juror No. 176 - Voir Dire

1 So there is no right or wrong here. We just
want to
2 know what you think.
3 And we're not asking you about this particular
case.
4 And the questions that follow, we're not asking about
this
5 particular case. And the reason is this: That as I've
already
6 told you, what happened in the Timothy McVeigh trial
cannot be
7 considered now; so whatever evidence you may have read
about or
8 heard about or was introduced in that case can't be
considered
9 here on the question of whether the Government will be
able to
10 prove the charges its made as to Terry Nichols.
11 And then the fact that a jury found Mr.
McVeigh guilty

12 and also recommended that he be put to death after
another

13 trial on that question of punishment can't be
considered here;

14 so we don't know what's going to happen.

15 And of course, we start with the assumption
that

16 Mr. Nichols is not guilty, but we have to talk about
17 possibilities here, because in selecting the jury, we
have to

18 cover everything before the selection is made and the
trial

19 even starts. You understand?

20 A. Yes, I do.

21 Q. So I wanted to turn to your answer. I think I
understand

22 your answers on page 28, but I want to turn to your
answer on

23 page 29 and just have you explain what you mean or
meant --

24 well, let me ask you this question first. I'm sorry to
start

25 and stop. But have you thought about this matter of
the death

3531

Juror No. 176 - Voir Dire

1 penalty any more since you answered these questions?

2 A. No, I haven't.

would be the 3 Q. Would it be fair to say that the answers today
you the 4 same as they were when you wrote them out if I asked
5 same questions now?

6 A. Yes.

and what 7 Q. So I just want you to explain, then, looking at 29
and took 8 you wrote, where you say, "If this man did something
cost, 9 all those lives, he and anyone else should pay the
10 whatever is decided."

I'd like 11 Now, I don't know what you mean by that, and
12 you to simply expand on that and tell us what you mean.

you 13 A. I guess I mean when you do something wrong, I guess
14 should pay for it, you know.

Terry 15 Q. When you say "this man," are you talking about
16 Nichols?

17 A. If that was the case.

wrote 18 Q. Well, I'm just trying to take you back to when you
you on 19 this now, and I'm not arguing with you or trying to put
you wrote 20 the spot. As you think -- can you think back to when
remember 21 this -- about a month ago and then tell us what you

22 thinking then.

23 thinking Maybe it's not clear as to what you were

24 of then, and we understand that because we gave you a lot

25 ask you questions in a short time. So again, I'm not trying to

3532

Juror No. 176 - Voir Dire

1 thinking to justify what you wrote; it's just what were you

2 about?

3 A. I don't know.

4 Q. You don't know?

5 A. To be honest, I don't know.

6 Q. Okay. That's what we want you to be, is honest.

7 about what And I guess this reflects something that --

8 whole you've just said. You're very uncertain about this

9 question of punishment.

10 A. Right.

11 terms of Q. Well, let me talk with you about it a little in

12 the law and the procedure.

13 A. Okay.

14 gets Q. Punishment is ordinarily not something that a jury

15 involved with in criminal cases because in cases that
don't
16 involve capital punishment, the possibility of putting
somebody
17 to death -- the whole matter of punishment is up to a
judge; so
18 a jury hears the trial and the jury hears the evidence
and then
19 decides at the end of it has the crime charged been
proved, or
20 no? And if not proved, not guilty is the verdict.
That's the
21 end. If proved beyond a reasonable doubt, the verdict
is
22 guilty; but that's still the end as far as the jury is
23 concerned because the matter then goes back to the
court, the
24 judge, as to what to do about it, what should be the
sentence.

25 And before judges make sentencing decisions,

3533

Juror No. 176 - Voir Dire

1 recognizing that it's a very individual thing -- it
isn't just
2 a question of here's the crime, here's the punishment.
It's a
3 question of here's the crime, here's the defendant,
what should
4 be done with respect to this individual person.

5 So before arriving at such a decision, more
6 information has to be given to the judge, information
that
7 includes more about the circumstances of the crime and
its
8 consequences, more than what was at the trial, and then
also a
9 lot more about the defendant: Who he is, what's gone
on in
10 this man's life, what has been his background, his
upbringing,
11 family relationships, marriage relationships, job
history,
12 military record if there is any, things that he's done
good in
13 his life, things that he's done bad.

14 You know, each one of us has our own story and
each
15 one of us is unique and different from everybody else,
16 depending upon our own life's circumstances and
individual
17 characteristics.

18 You accept that as being true?

19 A. Yes.

20 Q. So all that gets put together, and there is a
hearing in
21 front of a judge, with both sides making statements,
the
22 prosecution and the defense, and the judge hears it all
and
23 says, All right, this is the sentence for this person,
not just

24 for the crime but for the person as well. And it is an
25 individual decision.

3534

Juror No. 176 - Voir Dire

1 Now, it's not like that in Federal Court when
the
2 choice is life or death, because we don't have judges
make that
3 decision. That, we say, is a jury's job; so in cases
that
4 involve charges that could include capital punishment,
the jury
5 is not done by simply returning a verdict of guilty, if
that be
6 the fair verdict. They've got to do more. And before
they can
7 do more and decide on a punishment, they have to hear
more; so
8 there is a second trial, penalty phase hearing.

9 And it is at that time that the lawyers come
in with a
10 lot more information, the government with more
information
11 concerning the crime and the circumstances and its
consequences
12 to people and so forth, the defense with all these
things that
13 relate to the individual defendant -- you know, the
kind of

his own 14 thing I've just been talking about, the things that are
others, 15 life and what make him a human being separate from all
16 because we're talking about a human life.

17 And then at the end of such a trial, a second
trial --

18 this can be, you know, very lengthy because witnesses
come
19 in -- it isn't just giving you some kind of a report
about him.

20 Witnesses come in and testify on these things.
Exhibits are
21 offered, just like at the trial.

22 And then at the end of all of that, the court
gives
23 instructions to the jury; and there is no way to know
what
24 those instructions are ahead of time because it all
depends on
25 what is heard, what has been presented; but the court
sort of

3535

Juror No. 176 - Voir Dire

1 sums it up and says, now, this is what you've heard, on
the one
2 hand, that you can consider as aggravating factors or
3 circumstances that tend to support the idea that death
is the
4 sentence, and then these are the things that you heard

on the

5 other side here that tend to support the idea that
death --

6 even though the crime would justify a death sentence,
death is

7 not deserved for this person as a human being. And we
call

8 them aggravating, mitigating circumstances; sort of on
the one

9 hand seeking the ultimate punishment; on the other, no,
despite

10 the crime, that's not a just and deserved punishment
for this

11 person.

12 Follow me on this?

13 A. Yes, I do.

14 Q. And then the court gives the jury some questions
that the

15 jurors might ask themselves to help them sort through
it; but

16 there isn't any formula that can be given, and it
isn't, you

17 know, like arithmetic, add and subtract. It is at the
end a

18 moral decision being made by the jury. And that
decision, you

19 know, involves three choices, really: Should the
defendant be

20 put in prison for the rest of his life, dies in prison
at

21 whatever time there is a natural death; or the second
one is

third 22 the defendant is put to death, a death sentence; or the
something 23 one is neither one of those is deserved, it should be
24 less than that and goes back to the judge to decide.
25 You follow me on this?

3536

Juror No. 176 - Voir Dire

1 A. Yes, I do.
2 Q. So jurors then -- you know, this has nothing to do
with a 3 finding of guilty, because if there isn't any guilty
verdict, 4 we never get to this point, anyway. So it isn't a
question of 5 whether the evidence shows the person guilty. The
question is 6 what to be done about it, and that has to be based on
the 7 things that are heard at the second trial. And then
the jury 8 weighs these factors and decides what is the just
punishment 9 for this person.
10 And it's unique to him. Even in cases where
there are 11 people -- more than one person committing the same
crimes, the 12 sentences can be different.

of the 13 So just as there is individual consideration
sentencing 14 evidence by separate trial, so there are separate
15 hearings. Understand?
16 A. Yes.
17 Q. Now, what I want you to tell us is with all that
18 explanation in mind, will you be able to make a
decision on 19 punishment, life or death, of a defendant based on all
the 20 circumstances that are shown by the evidence, both
aggravating 21 and mitigating, and including not only the
circumstances of the 22 crime and all these things about the defendant that are
his own 23 unique characteristics and personality?
24 A. Yes.
25 Q. And you understand each juror -- I mean the jurors
talk

3537

Juror No. 176 - Voir Dire

1 about it, but each juror has to make that decision
2 individually.
3 A. Right.
4 Q. Can you do that?
5 A. Yes, I can.

6 THE COURT: All right. The lawyers have some
7 questions for you.

8 Mr. Mearns -- excuse me -- Mr. Orenstein?

9 MR. ORENSTEIN: Thank you, your Honor.

10 VOIR DIRE EXAMINATION

11 BY MR. ORENSTEIN:

12 Q. Good afternoon, ma'am. How are you?

13 A. Fine. How are you?

14 Q. Very good, thank you.

15 As the Judge introduced me a few moments ago,
my name

16 is Jamie Orenstein; and together with my fellow
prosecutors

17 it's our responsibility to present the evidence in this
case

18 against Mr. Nichols.

19 Your responsibility, if you were to be
selected as a

20 juror in this case, would be to sit and listen to all
of that

21 evidence and consider it with an open mind and then at
the end

22 of the evidence come to a decision after deliberations
with

23 your fellow jurors. Would you be able to do that job?

24 A. Yes, I would.

25 Q. Ma'am, I'd like to start by asking you the
questions on the

Juror No. 176 – Voir Dire

about 1 same subject as his Honor was just discussing with you
2 this issue of punishment, and let me start by saying I
3 apologize for asking what I'm sure are very difficult
start is 4 questions. And the other thing I should say as we
5 this is something that a jury doesn't have to face
unless and 6 until it decides that the Government has proved the
charges 7 against a defendant beyond a reasonable doubt. You
understand 8 that part of it?

9 A. Yes.

10 Q. That it's a separate process.

11 A. Yes.

12 Q. And you also understand that in that separate
process, if

13 the jury gets there, the Government presents evidence
that

14 supports its argument or believes supports its argument
that

15 the death penalty should be imposed, and the defense
has an

16 opportunity to present evidence on its behalf, to show
--

17 support their argument that the death penalty should
not be

18 imposed.
19 And jurors who sit in that process would have
to enter
20 it with an open mind, equally open to the idea of death
or life
21 or some lesser sentence.

22 Would you be able to participate in that
process with
23 an open mind as to all of those options?

24 A. Yes.

25 Q. I noticed when his Honor was asking about your
question --

3539

Juror No. 176 - Voir Dire

1 your answer, rather, to Question 124E on page 29, it
was
2 difficult for you to think back a month and try and
place
3 yourself back there and think what you had in mind. I
was
4 wondering if your answer to one of the later questions
about
5 media might help you. I noticed that on page 36,
Question
6 158 -- you see right there at the bottom under that,
you've
7 never even heard of Terry Nichols?
8 A. Never.

never 9 Q. Before receiving your summons in this case, you had

10 heard of him at all?

11 A. Not at all.

Nichols 12 Q. Is it fair to say that you probably didn't have Mr.

question about 13 specifically in mind when you were answering the

14 this man on page 29?

15 A. Right.

fair to 16 Q. And given that you haven't heard of him, is it also

17 say, you know -- lawyers can come up with all sorts of

18 questions. Would it be silly for me to ask if you know

like 19 anything about him, how he got into custody, anything

20 that?

21 A. No, I don't.

22 Q. Okay. So I won't ask those questions.

23 Let me return for a moment to that issue of

"I 24 punishment. And you said on page 28 a couple of times,

someone who 25 don't know." And it's obviously a fair answer for

3540

Juror No. 176 - Voir Dire

a chance 1 has never had to confront that issue. Let me give you

2 to get to the page.

3 A. Okay.

4 Q. My first question is when you say "I don't know" to
parts B
5 and D of that question -- and please don't let me put
words in
6 your mouth. I'm trying to find out what your thinking
is. Is
7 it that you don't know what kinds of cases you might
think
8 about imposing the death penalty, or you're just not
sure if
9 it's something you could ever do?

10 A. I don't know what kind of cases.

11 Q. So is it the case that if you were to participate
in this
12 jury process and there was a verdict of guilty, so you
would
13 then be faced with this second trial about punishment,
that
14 after listening to all of the evidence on both sides,
of
15 course, and deliberating with your fellow jurors that
you could
16 come -- first of all, you could listen to all the
evidence.

17 That's true?

18 A. Right. Right.

19 Q. And you could consider all of it from both sides?

20 A. Yes.

21 Q. If after listening to it and considering it and
debating it
22 with the other members of the jury, you all unanimously
decided
23 that the correct moral choice was that the defendant in
the
24 case you were on should be put to death, do you feel
that you
25 could make that decision and come into a court and
announce it?

3541

Juror No. 176 - Voir Dire

1 MR. TIGAR: Objection, your Honor.

2 THE COURT: Overruled.

3 That means you can answer. There may have
been some
4 confusion.

5 JUROR: All right. Can you repeat it now?

6 BY MR. ORENSTEIN:

7 Q. And it's a difficult question. I understand.

8 THE COURT: The question simply was whether
you can
9 make a decision.

10 JUROR: Yes, I can.

11 BY MR. ORENSTEIN:

12 Q. Okay. So just to return for a moment to this Part
E on
13 page 29, when you talk about someone paying the cost,

whatever

could 14 is decided, is that again referring to the fact that it

listen 15 be death, it could be a life prison sentence, and you'd

16 to the evidence and decide?

17 A. Yes.

you; and 18 Q. There is one other area I'd like to discuss with

questions that 19 again, forgive me if it's difficult or awkward

with your 20 I'm asking. The incident that his Honor asked about

the one 21 husband last year: From what I understand, you were

22 that actually called the police. Is that right?

23 A. No, he was the one.

24 Q. Oh, I'm sorry, he did.

25 A. He was the one, yes.

3542

Juror No. 176 - Voir Dire

they 1 Q. The police arrived and you thought unfairly they --

2 took you into custody.

3 A. Right.

4 Q. And not your husband; is that right?

5 A. Right.

6 Q. Do you have any feelings about police or law
enforcement in

7 general as a result of that incident?

8 A. No, not really.

9 Q. Now, you mentioned in your questionnaire -- well,
there was

10 a question on page 2 about what opinions you have of
someone --

11 of people being involved in interracial marriage, and
you said,

12 "If you love someone, color doesn't matter." Is that
your

13 view?

14 A. Correct.

15 Q. And unfortunately, not everybody would share that
view. Do

16 you have any feelings that in the incident that you
discussed

17 with his Honor that that played any role?

18 A. No.

19 Q. So you don't have any concerns about law
enforcement the

20 way you were treated carrying over from that case?

21 A. No.

22 MR. ORENSTEIN: Okay. Ma'am, thank you very
much for

23 answering my questions.

24 JUROR: You're welcome.

25 THE COURT: We're not going to be able to
complete,

3543

Juror No. 176 - Voir Dire

then 1 probably, Mr. Tigar, but would you mind starting, and

2 we'll interrupt when we get to 5:00 or so.

3 MR. TIGAR: Of course, your Honor.

4 THE COURT: All right.

5 MR. TIGAR: Thank you.

6 VOIR DIRE EXAMINATION

7 BY MR. TIGAR:

8 Q. Hi.

9 A. Hi.

started. 10 Q. I guess what we're hearing is that we'll get
And

11 will you forgive me if it's my questions that make you
have to

12 come back tomorrow?

13 A. I'll forgive you.

14 THE COURT: I may ask some more, too, so we
won't put

15 it all on any one person.

16 JUROR: Okay.

17 BY MR. TIGAR:

18 Q. Let me start out by asking about that court case
that

19 everybody else has asked about, because I wasn't clear.
Was

20 there actually a trial in that case?

21 A. No. There wasn't. There was a pretrial.
Pretrial.

22 Q. What, you went to court and your husband went to
court and

23 there were lawyers?

24 A. Right.

25 Q. Okay. And you had a lawyer?

3544

Juror No. 176 - Voir Dire

1 A. I did.

2 Q. Now, was that a public defender lawyer, a court-
appointed,

3 or retained lawyer?

4 A. No, that was retained lawyer.

5 Q. Okay. Somebody that you had hired?

6 A. Right.

7 Q. Okay. Well, understand, Ron Woods is sitting there
and

8 I -- I'm Michael Tigar. You've met me?

9 A. Right.

10 Q. We were appointed by the United States District
Court in

11 Oklahoma to help out Terry Nichols and shortly after
this whole

12 thing started.

13 Now, would you -- would we start out with a
14 disadvantage in your mind, or would Terry Nichols start
out
15 with a disadvantage because he didn't have the money to
hire a
16 lawyer and we were appointed by the court to help him?
Do
17 we --

18 A. Repeat that again.

19 Q. I'm sorry. Do we start out with a disadvantage, or
does
20 Terry Nichols start out with a disadvantage because he
didn't
21 have the money to hire a lawyer and he has a court-
appointed
22 lawyer?

23 A. Oh, you probably.

24 Q. Yeah, that's me.

25 A. You.

3545

Juror No. 176 - Voir Dire

1 Q. But is that okay with you?

2 A. That's okay with me.

3 Q. All right. You know, some folks think it's a waste
of
4 taxpayers' money or something like that. You don't
have any
5 idea like that, do you?

6 A. No.

7 Q. Okay. Well, then, let me turn to some of these
issues.

8 This court case that you had: Now -- and your husband
at that
9 time -- is he of a different race than yourself?

10 A. Yes, he is.

11 Q. Now -- and the reason -- one reason we're focusing
-- if

12 there should be evidence that Mr. Nichols has an
interracial

13 marriage and there is children of that marriage, would
anything

14 about your experiences cause you to have a problem
judging the

15 case fairly?

16 A. No.

17 Q. Okay. Now, you mentioned that you are a member of
a church

18 and you go regularly. Is that right?

19 A. Correct.

20 Q. Okay. And that among the things that you have been
reading

21 recently is the Bible.

22 A. Correct.

23 Q. Yes. Now, I guess you do that pretty much all the
time;

24 right?

25 A. I do.

3546

Juror No. 176 - Voir Dire

1 Q. Now, is there any part of the Bible that you have
been
2 studying on recently? Any particular book of the Bible
or part
3 or whatever or theme?
4 A. Not really.
5 Q. Okay. And in your studying of the Bible, do you --
you
6 look -- do you have a preferred part, Old Testament,
New
7 Testament, any particular --
8 A. I like the New Testament better.
9 Q. Okay. I notice -- if you would take a look,
please, at
10 page 32 of your questionnaire -- you answered a number
of
11 questions about guns. And you start out actually at
page 31
12 and you say that you have views about individuals'
possession
13 of firearms. You don't own any yourself. That's those
14 Questions 136 and '37. And then over on page 32, you
tell us
15 that "Everybody doesn't need to have firearms,
especially kids
16 now & days" (sic) "that don't even really know what
it's for."

17 Now, in this case, if there was evidence that
someone
18 made their living by going to gun shows, selling
firearms, and
19 so on, would you have some idea that it's not right;
that they
20 shouldn't be in that business?
21 A. No.
22 Q. Wouldn't affect you one way or another?
23 A. No.
24 Q. You could still be fair to that person and judge
them the
25 same as everybody else?

3547

Juror No. 176 - Voir Dire

1 A. Yes.
2 Q. Okay.
3 THE COURT: I think this might be an
interrupting
4 point.
5 MR. TIGAR: Yes, your Honor. I was finished
with that
6 topic. Thank you.
7 THE COURT: Well, we'll interrupt now and we
will ask
8 you back tomorrow. And it isn't anybody's fault. I
mean, we
9 can't, you know, say this amount of time for this

person; so

10 please bear with us.

11 JUROR: Okay.

12 THE COURT: And we'll be visiting with you
some more

13 tomorrow morning at 8:45; and of course, between now
and

14 then -- and you're going to hear this when you're done,
too --

15 you'll have to assume that you're going to be on the
jury; so

16 we don't make the decisions yes or no with persons one
at a

17 time. We wait until we've talked with a lot of people.
And as

18 you know from being out at the fairgrounds, there are a
lot of

19 people who have been called in; so that doesn't mean
we'll talk

20 to everybody who was out there, but we don't know how
many

21 people or how much time. So we'll finish with you --
talking

22 with you tomorrow morning, and then you'll be excused
for the

23 day.

24 JUROR: Okay.

25 THE COURT: But please continue to not discuss
the

anything 1 case and be careful so that you're not influenced by
2 outside of our evidence, whatever it may be.

3 JUROR: Okay.

4 THE COURT: All right?

5 Well, we'll excuse you for now and hope you
have a
6 pleasant evening. We'll finish up talking with you
tomorrow
7 morning.

8 JUROR: Thank you.

9 (Juror out at 5:00 p.m.)

10 THE COURT: Okay. Well, we'll resume at 8:45
tomorrow
11 morning. We hope you have a pleasant evening, too.

12 MR. TIGAR: Thank you, your Honor.

13 (Recess at 5:00 p.m.)

14 * * * * *

15

16

17

18

19

20

21

22

23
24
25

3549

	1	INDEX
Page	2	Item
	3	Jurors
	4	Juror No. 721
3406	5	Voir Dire Examination by The Court
3432	6	Voir Dire Examination by Mr. Mearns
3439	7	Voir Dire Examination by Mr. Tigar
	8	Juror No. 182
3461	9	Voir Dire Examination by The Court
3480	10	Voir Dire Examination by Ms. Wilkinson
3487	11	Voir Dire Examination by Mr. Woods
	12	Juror No. 176
3513	13	Voir Dire Examination by The Court
3537	14	Voir Dire Examination by Mr. Orenstein

3543 15 Voir Dire Examination by Mr. Tigar

16 * * * * *

17 REPORTERS' CERTIFICATE

18 We certify that the foregoing is a correct
transcript from

Dated 19 the record of proceedings in the above-entitled matter.

20 at Denver, Colorado, this 15th day of October, 1997.

21

22

23

Paul Zuckerman

24

Carpenter

25

Bonnie