

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF COLORADO
 3 Criminal Action No. 96-CR-68
 4 UNITED STATES OF AMERICA,
 5 Plaintiff,
 6 vs.
 7 TERRY LYNN NICHOLS,
 8 Defendant.

ff

9
 10 REPORTER'S TRANSCRIPT
 (Trial to Jury: Volume 30)

11
 ff

12 Proceedings before the HONORABLE RICHARD P.
 MATSCH,
 13 Judge, United States District Court for the District of
 14 Colorado, commencing at 8:45 a.m., on the 16th day of
 October,
 15 1997, in Courtroom C-204, United States Courthouse,
 Denver,
 16 Colorado.

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 18
 19
 20

13

PROCEEDINGS

14

(In open court at 8:45.)

15

THE COURT: Be seated, please.

16

Good morning. Ready to resume?

17

MR. TIGAR: Yes, your Honor.

18

THE COURT: Okay.

19

(Juror No. 176 was recalled to the stand.)

20

THE COURT: Good morning.

21

JUROR: Good morning.

22

THE COURT: Thank you for your cooperation in

23

returning for some additional questions.

24

And, Mr. Tigar, you may continue.

25

MR. TIGAR: Thank you, your Honor.

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Juror No. 176 - Voir Dire

1

VOIR DIRE EXAMINATION CONTINUED

2

BY MR. TIGAR:

3

Q. Good morning.

4

A. Good morning.

5

subject and

6

please,

7

you were

to page 27 of your questionnaire. At the top there,

8 asked, "Do you have any feelings or opinions about a
case in
9 which a witness has pleaded guilty and agreed to
testify as a
10 witness for the prosecution," and so on.

11 Can you tell me what -- what you were thinking
about
12 with that answer.

13 A. Which question was that?

14 Q. 121. I'm sorry.

15 A. I may have been thinking myself at the time I wrote
this.

16 The situation.

17 Q. Okay. Okay. And in what way were you thinking
about
18 yourself?

19 A. I -- I think that -- in my situation, my husband, I
think
20 he should have just told the truth. You know, I think
he told
21 a lot of lies and stuff.

22 Q. Okay. So for you, the real question is, you know,
who's
23 telling the truth; right?

24 A. Right.

25 Q. And that's, of course -- that's a process that in
our

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1 justice system is not left to judges or lawyers.
Jurors decide

2 that. They look and they decide.

3 A. Okay.

4 Q. And in that connection, I wanted to -- to talk a
bit about

5 the charges in this case. Do you remember seeing the
pictures

6 of the federal building in Oklahoma City that had --
had been

7 bombed?

8 A. Yes. Kind of.

9 Q. Okay. And do you remember seeing pictures of
people who

10 had been injured in the bombing?

11 A. Yes.

12 Q. Do you remember the -- the firemen and the
policemen that

13 came there and were helping the people?

14 A. Some of them.

15 Q. Well, if this -- if you're seated as a juror in
this case,

16 if you become a juror, you may very well see very
dramatic,

17 very heart-rending, very emotional pictures about the

18 destruction, the death, the damage in Oklahoma City.

19 A. Okay.

20 Q. And when you see that, it -- it -- it's going to
have an

on 21 effect on you, I would assume. It would have an effect
the 22 anybody. Would you be able as a juror to listen to all
the very 23 evidence and make your decision and not just focus on
24 emotional part?
25 A. Yes.

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Juror No. 176 - Voir Dire

the 1 Q. How do you think you would be able to separate out
from the 2 question of damage -- which nobody denies happened --
that's on 3 question of, well, what did this particular defendant
involved 4 trial -- what did that person do and what were they
5 in? How would you approach that?
6 A. I don't know. Can you just say it one more time.
you had 7 Q. Okay. How would you approach this process where
people 8 some very emotional things that -- that -- pictures and
well, in 9 testifying and you also had to consider the question,
there 10 addition to this damage and destruction I heard about,
11 are these questions about what did this particular

person do,

12 this person on trial, what were their actions, who did
they

13 know, what were they involved in?

14 A. I think.

15 Q. Would you like me to put it another way?

16 A. Yes.

17 Q. Okay. Would you -- do you think that you'd be able
to look

18 at the evidence one piece at a time and not let your
decision

19 about where was this person, what was this person doing
who was

20 on trial be influenced by looking at the question of
what

21 happened to people and what the damage was?

22 A. Yes.

23 Q. You could do that; that is, you could look at --
could you

24 look at each witness and say, now, is that -- is that
witness

25 telling it right, do they have the best chance to
observe, and

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1 take it one at a time?

2 A. Yes.

3 Q. Okay. All right. I noticed in your questionnaire,

you

J. case 4 said that you had followed some cases in the media, O.

5 and the JonBenet case. All right?

6 A. Yes.

Simpson case, 7 Q. Now, what -- what did you think of the O. J.

8 Mr. Simpson's trial?

handled 9 A. How that was handled? I thought it was -- it was

10 very well, I thought.

11 Q. Okay.

because it 12 A. I just finally stopped watching it after a while

13 just kept on and on.

jurors 14 Q. It did, indeed. And did you agree with what the

15 decided in the criminal case?

16 A. Yes.

write that 17 Q. Okay. And how about the JonBenet case? You did

what do 18 down as a -- as another one that you followed. What --

19 you think about that?

20 A. I kind of stopped watching that one, too.

21 Q. Okay.

22 A. It went on.

about how 23 Q. I understand. Well, what opinions had you formed

24 that was being handled by the authorities?

25 A. I didn't form any --

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Juror No. 176 - Voir Dire

1 Q. Okay.

2 A. -- opinions.

3 Q. It just seemed like it was going on a long time?

4 A. Yes. Still going on.

5 Q. Well, you know, there were a lot of questions
yesterday

6 about this question of punishment and how you know what
-- what

7 kinds of factors you would think are important. I want
to

8 start out by reviewing, you know, that the first part
of this

9 case, the very first thing that's going to happen is
that there

10 will be a decision by a jury, and that decision is did
the

11 Government prove beyond a reasonable doubt the charges
that its

12 made against Mr. Nichols. You know -- does that sound

13 familiar?

14 A. Yes.

15 Q. Okay. Well, first, the fact that we're talking
about what

16 possible punishments there could be doesn't mean that

we

Mr. Woods 17 concede that there should be any punishment; that is,

18 and I do not concede the Government's allegation that

And 19 Mr. Nichols had, you know -- did anything wrong here.

20 before anybody could ever think about punishment, the

bring 21 Government -- that is, these prosecutors -- have to

every 22 evidence and they go first. They put on a witness; and

23 time they put on a witness, Mr. Woods and I, we get to

turn, we 24 cross-examine that witness. And then when it's our

now, you 25 put on witnesses and they cross-examine. And right

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1 haven't heard any evidence; right?

2 A. Right.

right? 3 Q. Right. And so Mr. Nichols is presumed innocent;

4 A. Right.

5 Q. So far as you're concerned, he is innocent; right?

6 A. Right.

if at the 7 Q. Because you haven't heard the evidence. And then

8 end of that process, that evidence, the jurors still

say no,

9 I've still got a reasonable doubt here, then their
sworn duty,

10 as Judge Matsch said yesterday, is to come in and say
not

11 guilty. Okay?

12 A. Right.

13 Q. And then -- and if -- if that happens, then
everybody goes

14 home, we don't think about this question of punishment.

15 A. Okay.

16 Q. All right. If the jury finds Mr. Nichols guilty of
these

17 charges, then there will be a separate trial, a whole
new trial

18 on the question of, well, what's the right punishment?

19 A. Okay.

20 Q. Now, when you were out at Jefferson County
Fairgrounds, do

21 you remember the Judge describing what the charges
were?

22 A. Yes.

23 Q. I'm not going to test you on, you know, all of the
words he

24 spoke, but you remember generally?

25 A. Yes.

1 Q. Okay. And do you remember him saying also, there
and here,
2 that there's a charge that's just an allegation,
something they
3 say happened, it's not evidence, but there's a charge
that
4 Mr. Nichols participated in a conspiracy to bomb the
building
5 and is responsible for bombing the building and for the
murder,
6 premeditated murder of eight federal agents that were
working
7 in the building? Those are the charges here. Okay.
And
8 you -- you heard the Judge talk about that at Jeffco;
right?

9 A. Yes. Yes, I did.

10 Q. And you also saw Mr. Nichols out there?

11 A. Yes, I did.

12 Q. Right. Okay. Well, could you turn, please, to
page 29 of
13 your questionnaire. And I just want to make sure under
that --
14 the top question there, "I would need to hear all the
evidence
15 to better answer this question. If this man did
something and
16 took all those lives, he and anyone else should pay the
cost.
17 Whatever is decided"; right?
18 A. Yes.

were you 19 Q. When you said "took all those lives," what lives

20 talking about?

21 A. The bombing.

22 Q. The Oklahoma City case?

23 A. Right.

and 24 Q. Okay. And when you say, "If this man did something

or the 25 took all those lives," were you talking about the man

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1 people that had been charged with that?

2 A. The people. Just the people that had been charged.

one of the 3 Q. Okay. All right. And of course, Mr. Nichols is

4 people that's been charged?

5 A. Okay.

could 6 Q. Okay. Now, I want to back up for a minute. If you

7 turn back over to page 28. And do you see that second

following 8 paragraph there, which says, "In answering the

9 questions"? Do you see that part?

10 A. Right.

questions, 11 Q. Could I read it out, "In answering the following

law 12 assume that you alone have the power to decide what the
and, if 13 should be as to whether there should be a death penalty
used." 14 there is such a penalty, how and when it should be

15 Okay.

16 A. Okay.

for -- 17 Q. All right. So here's what I'd like to assume that
18 so that we can talk about this. Do you have a favorite
19 political leader?

20 A. No. Not really.

for a 21 Q. Not really. Okay. Well, could you assume with me
Colorado. 22 moment that you've been elected to the legislature of

23 Right?

24 A. Okay.

other 25 Q. And through some magic, you're -- there are no

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your job 1 legislators. It's just you. You walk in there and

people of 2 for the day is you're going to write the law for the

be 3 Colorado as to when, if ever, the death penalty should

4 imposed. Okay?

5 A. Okay.

6 Q. Because that's what this is. Okay. And also
you're going

7 to write the law and say, Wait a minute. When should
life in

8 prison without ever getting out -- when should that be
imposed?

9 And then there would be a third part of this law, the
project

10 that would say, well, when -- when should we just let a
judge

11 decide. You know, some lesser punishment than those
two.

12 Now, could we start out and say what kinds of
crimes

13 would you put down in the -- in the law where the
punishment

14 should be life without the possibility of parole if you
were

15 making the law?

16 A. If a person was continually taking people's lives
and just

17 in trouble all the time.

18 Q. Uh-huh.

19 A. I think that I might do that then.

20 Q. Okay. And that would be for the protection of
society --

21 A. Right.

22 Q. -- that idea. Okay. And now, we turn to this
question of

23 when should there be a -- a death penalty, the
punishment of
24 death. As you were thinking about that, you were going
to make
25 this law, do you think you would be influenced by your

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1 religious faith?
2 A. Not really.
3 Q. Okay. Because -- have you read what the Bible says
about
4 the punishment of death?
5 A. Yes.
6 Q. Right. And has that had some influence on your
thinking
7 about this before today?
8 A. No.
9 Q. Okay. And when you say you've read about what the
Bible
10 says about the punishment of death, is there some
particular
11 part that you're thinking of?
12 A. No. Not really.
13 Q. Okay. Were you thinking more of Old Testament or
the New
14 Testament?
15 A. Yes. The Old Testament.

is talk 16 Q. The Old Testament. And in the Old Testament, there

17 about the punishment of death; right?

18 A. Yes, there is.

there a 19 Q. And do you know -- have you thought about -- is

know? 20 different view in the New Testament about that, do you

21 A. I don't know.

22 Q. Okay. Well, then let's start. What -- under what
23 circumstances would you say there should be the
punishment of

24 death?

time and 25 A. Like when people are taking people's lives all the

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1 continually doing it.

who took 2 Q. Okay. And so that -- if -- if there were somebody

would 3 a lot of lives, then there's the possibility that you

right? 4 write into the law they should have to pay the cost;

5 A. Right.

this 6 Q. Okay. Well, then we get to the -- the next part of

7 law that -- this project. You know, what you were

thinking.

8 Should -- would you write the law so that if somebody
committed

9 several murders that killed several people
intentionally,

10 premeditated, that those -- that somebody that got
convicted of

11 that would get the death penalty no matter what else
was there?

12 A. Yes.

13 Q. Okay. And in -- what I'm really asking you if your
law --

14 if you were making the law, would you have a -- a
procedure, a

15 way for somebody who, you know -- that intentionally
killed a

16 lot of people, to say, gee, I shouldn't have the death
penalty

17 because I had problems growing up or my background is
that, you

18 know, I've never been in trouble with the law before or
-- or

19 re -- reasons like that? Or would you say no, if you
committed

20 these murders, that's really all -- all that in the law
that

21 you wrote you would need to hear?

22 A. And they are continually doing it.

23 Q. Well, under our law that -- you're the one that's
writing

24 it so you have to tell me, but I thought where we were
is that

people 25 somebody had, in a single criminal act, killed a lot of

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they 1 intentionally; for instance, they bombed an airplane or
killed a 2 had gone into a -- a restaurant and just, you know,
3 lot of people, or into a school. Something like that.

4 A. I don't know.

5 Q. Don't know. Well, how -- how do you feel about it?
6 What -- what kinds of -- what kinds of things would you
think 7 about --

8 MR. MACKEY: Objection.

9 BY MR. TIGAR:

you 10 Q. -- in deciding whether to put that in this law that
11 would be writing?

12 MR. MACKEY: Objection, Judge.

13 THE COURT: Sustained.

14 BY MR. TIGAR:

the law 15 Q. Okay. Well, let's then turn to the question of not
the 16 that's being written, but the law that is applied in
17 federal courts. Okay?

18 A. Okay.

19 Q. Because under the federal law, the law that we
exist under,

20 there is no such thing as an automatic death penalty.
Okay?

21 A. Okay.

22 Q. That is, the federal law that Judge Matsch was
talking

23 about has answered the question that you and I were
just

24 talking about. Okay?

25 A. All right.

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1 Q. And yesterday, Judge Matsch was talking about these
2 aggravating factors and mitigating factors. Do you
remember

3 that?

4 A. Yes, I do.

5 Q. Okay. And what did you understand him to be saying
about

6 mitigating factors?

7 A. I don't quite remember everything he said.

8 Q. Okay. Then it's not a test, so let me -- let me
describe

9 the process and see; because really, what we're trying
to do

10 is -- is -- is find folks that -- that, you know, with

an open

11 mind, can participate in a certain kind of a process.

12 A. Okay.

13 Q. Now, we don't concede that a jury ever gets to
this. Okay?

14 A. Right.

15 Q. And we're not going to talk about this particular
case.

16 The reason is that none of us here in this courtroom
can know

17 what the evidence -- what the jury's actually going to
hear.

18 The lawyers on one side might say, Well, I know I'm
going to

19 present such-and-such evidence, but they don't know
what the

20 lawyers on the other side will cross-examine it with so
they

21 can't know the whole picture. And those lawyers on
this side,

22 they might say, We're going to present that, but they
can't

23 know what these other lawyers are going to do. So we
don't

24 know. So we'll talk a little hypothetically.

25 If you're a juror in a case where somebody was

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1 convicted of a crime, where there was the possibility

of

had 2 capital punishment, the death penalty, after the jury
people 3 decided that person has committed a crime, killed
Okay. 4 intentionally, that wouldn't be the end of the story.

should 5 The jury would then have to say, Well, what punishment
for the 6 they get for that. And there would be three options
the 7 jurors. Option 1 would be death penalty -- or one of
find that. 8 options would be, because nobody is ever required to

possibility 9 Another option would be life in prison without the
prison. A 10 of release. Just lock them up. Right. They die in

Those 11 third would be turn it to the judge who would decide.
12 are the things.

choice, the 13 Now, to make that decision, to make the

evidence. 14 jurors would have to hear -- first they would hear

see, 15 They'd hear witnesses. They'd see photographs. They'd

Government 16 you know, things the lawyers would present; and the

these are 17 lawyers, the prosecutors will present evidence saying

18 aggravating things, these are reasons why you should

choose

19 death. And the defense would present mitigating
factors. And
20 the mitigating factors, that means maybe they would
say,
21 listen, you know, if this defendant was involved in the
crime,
22 they were involved much less than somebody else. So
that would
23 be a factor. Or they would say, listen, this defendant
has
24 never been in the trouble with the law before, or
something
25 about this person's background, their family life, they
have

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1 children, whatever. They could present all those
things about
2 the defendant as an individual human being. All right?
Over
3 and above what that person did.
4 And then the lawyers would present arguments,
and
5 Judge Matsch would say, look, these are some things you
can
6 consider aggravating and mitigate -- "mitigating" just
means
7 extenuating, things that tend to show why the -- this
person

8 should live. And then the jurors would look at all of
that and
9 they would make a reasoned moral response as the
conscience of
10 the whole community. So words like "moral" and
"conscience"
11 get used in that, and they would decide.

12 Now, is that a process you feel that you could
13 participate in --

14 A. Oh, yes.

15 Q. -- if you were selected? Okay. And if you
participated in

16 it, let me take it a step at a time. Could you -- even
if you

17 were someone who decided that a defendant had taken a
lot of

18 lives -- all right -- could you participate in the
process of

19 deciding what punishment and be open to thinking about
some

20 punishment other than death?

21 A. Yes.

22 Q. All right. Your mind would not be closed by what
you'd

23 heard about this person before then?

24 A. No.

25 Q. Okay. And then next, could you consider that even
though a

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1 person was convicted of having killed several people
2 intentionally, that something about that person as an
3 individual human being meant that they still shouldn't
get the
4 death penalty?

5 A. Right.

6 Q. You could do that?

7 A. Yes.

8 Q. Now, in doing it, would you -- do you have the
sense as you

9 think about participating in that process that even
though a

10 person has committed a horrible thing, that they are
still, you

11 know -- the children of their creator? Everybody is an
12 individual human being?

13 MR. MACKEY: Objection, Judge.

14 THE COURT: Sustained as to "the children of
their
15 creator."

16 MR. TIGAR: Yes, your Honor.

17 BY MR. TIGAR:

18 Q. Do your religious views -- do you think about ways
in which
19 your own religious views would influence your decision?

20 A. No.

21 Q. Okay. All right. So that you don't -- there's

nothing in

22 your reading that you would think would -- would get in
the way

23 of listening to what the Judge said?

24 A. No.

25 Q. Okay. All right. And as you thought about this,
would you

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Juror No. 176 - Voir Dire

1 be willing to give effect to the evidence about this

2 defendant's individual characteristics and personality?

3 A. Yes.

4 Q. Okay. And then if you came to a decision yourself
as to

5 what was right, would you be able then -- would you be
able to

6 talk to other jurors about it, know that nobody can
force you

7 to change your mind if you're thinking a certain way,
but would

8 you talk to other jurors about it?

9 A. Oh, yes.

10 Q. Okay. And if you were to decide, you know -- this
case got

11 a lot of publicity; right?

12 A. Okay, yes.

13 Q. You're aware of that.

14 A. Yes.
15 Q. If you weren't before today, I guess you are by
now.
16 A. Yes, I am.
17 Q. And no matter what you decided, even if it wasn't
the
18 popular thing, but you felt in your heart that it was
the right
19 thing to do, would you be able to then go back out to
your
20 friends, your family and say, well, listen, I heard it,
I
21 decided it, I did what I thought was right?
22 A. Yes.
23 Q. Okay. As you sit there today, can you look Mr.
Terry
24 Nichols -- can you look him in the eye and say that you
could
25 give him a fair trial and be fair to him?

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Juror No. 176 - Voir Dire

1 A. Yes.
2 MR. TIGAR: Thank you very much.
3 JUROR: You're welcome.
4 THE COURT: We all appreciate your time with
us and
5 including the time waiting, so thank you. And we can't
tell

I 6 you now whether you will be serving on the jury because
7 think, as it is obvious to you from the waiting and so
forth, 8 we -- we don't have a clock going where we can say,
well, this 9 day, we'll make the decision. So there will be a time
of 10 uncertainty when you will not know whether you're going
to 11 serve or not. And the way in which I want you to
approach that 12 is to assume that you will, assume that you will be
called at 13 some later date to come back in here and we'll start
the trial 14 and you sit on that jury.

15 JUROR: Okay.

16 THE COURT: And to be able to do that, of
course, 17 you're going to have to continue to do as you've been
doing, 18 staying away from the publicity, not talking about the
case 19 with anyone else, and, you know, if we were to bring
you back 20 in here at a later day, be able to answer the questions
in the 21 same way as you've answered them today, without
anything 22 changing.

23 JUROR: Okay.

24 THE COURT: You'll do that, I hope?

25 JUROR: Yes, I will.

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1 THE COURT: All right. And if something
happens where

2 you have a change of your telephone or you get called
out of

3 town unexpectedly, anything like that, let us know
right away,

4 will you?

5 JUROR: I will.

6 THE COURT: Thank you. You're excused now.

7 JUROR: Thank you.

8 THE COURT: And we have 979.

9 Can I have counsel at the bench a moment?

10 (Bench Conference 30B1 is not herein transcribed by
court

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

12

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1 (In open court:)

2 THE COURT: Good morning. If you'll raise
your right

3 hand and take the oath from the clerk, please.

4 (Juror No. 979 affirmed.)

5 THE COURTROOM DEPUTY: Thank you.

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

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

8 the microphone. We can hear you if you're anywhere in
the

9 neighborhood.

10 JUROR: Okay.

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. You waited all day yesterday to come in here, and
we
14 apologize for taking two days of your time and also
away from
15 your job responsibility, but we can't program this with
any
16 certainty about how long it takes with each person. So
I hope
17 you forgive us for keeping you waiting.

18 A. Thank you, sir.

19 Q. You, of course, took an oath like this before when
you and
20 others were out at the Jefferson County Fairgrounds'
auditorium
21 building about a month ago and were given some
explanation
22 about this case, and that all came as a result of your
first
23 getting a summons, advising that your name had come up
in a
24 chance selection process as a person who may serve on a
jury
25 for the trial of the case of the United States against
Terry

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Juror No. 979 - Voir Dire

1 Lynn Nichols. Do you recall all that?

2 A. Yes, sir.

3 Q. And when we were out there, I introduced to you

other

want to 4 people who were with me after introducing myself, and I
and 5 do that again because we have those same people here
us in 6 others, and you should know who's in the courtroom with
7 front of you.

Mackey, 8 You'll recall my introducing Mr. Lawrence
9 Ms. Beth Wilkinson, as attorneys for the Government.

They are 10 now joined by Mr. Patrick Ryan and Mr. Geoffrey Mearns,
11 additional counsel for the Government.

Woods, 12 You also met Mr. Michael Tigar and Mr. Ronald
13 attorneys for Terry Lynn Nichols; and Mr. Nichols, all
of them 14 having been present before. There are a few other
people here 15 who are assisting in this process.

asked of 16 And we are well aware that the questions we
17 you in this lengthy questionnaire and which you
cooperated in

18 answering include things of a personal and private
nature. We

19 did invade your privacy somewhat. We try to protect it
as much

20 as we can, knowing that also, this is a public process,
so

21 there is a kind of balancing that we attempt to

accomplish.

22 But we do not use your name here, and you come and go
to the
23 courthouse shielded from the view of photographers who
could
24 publicize the fact that you're a possible juror. And
in the
25 course of the questioning, we'll try to avoid things
that could

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1 specifically identify you.
2 So a couple of things first that I simply want
to
3 review. And it's not because I don't think you can
remember
4 from a month ago, but it is important on our record
that we
5 establish something of a foundation for the questioning
that
6 will follow. And we're going to ask you a few
questions about
7 some of the things that you've answered here and some
8 additional things. So we're not certainly going to
repeat all
9 the questions that you've already answered.
10 But you recall that in explaining the case, I
reviewed
11 that it arises as a result of an -- of an explosion in
Oklahoma

12 City on April the 19th of 1995.
13 A. Yes.
14 Q. A time when a federal office building in Oklahoma
City was
15 destroyed by an explosion and people who were in the
building
16 were -- some injured, some killed, and that after the
event,
17 the Government lawyers filed charges in the United
States
18 District Court in Oklahoma City in the form of an
indictment,
19 which is nothing more than a statement of charges; and
that in
20 the indictment, the Government lawyers allege that a
man named
21 Timothy James McVeigh, along with Terry Nichols -- and
then the
22 indictment says "and persons not named" -- engaged in a
23 conspiracy, a criminal plan, to bomb that building and
kill and
24 injure people in it. The counts of the -- the counts
being --
25 referring to the charges, multiple charges include the
carrying

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1 out of such a plan with the actual bombing of the
building,

2 resulting in death and injury and also, with
premeditated
3 murder of eight law enforcement agents who were in the
building
4 and died in the explosion; that to those charges, the
5 defendants pleaded not guilty, thereby creating the
dispute
6 that must be resolved by trial and that the case was
moved from
7 Oklahoma City here to Denver because of a concern about
asking
8 people from that community where this happened to serve
on a
9 jury, and so the case was transferred. And after it
was
10 transferred, I entered an order separating the two
defendants
11 named for trial so that Mr. McVeigh would come to trial
before
12 a jury, that jury would hear and consider the evidence
with
13 respect to him, make a decision as to him, and a
different jury
14 for Mr. Nichols because of differences expected with --
with
15 respect to what the evidence may be as to each person.
16 As a result of that order of separation, there
was a
17 trial of Timothy James McVeigh, and a jury heard that
case here
18 and read -- returned a verdict of guilty on all of the
charges
19 against him. And then as required by federal law,

there was a
being 20 second trial or hearing to determine punishment, that
jury to 21 under federal law, as we will discuss, an issue for the
heard 22 decide. And the jury in that case, the same jury that
sentence as to 23 the trial, returned a recommendation for a death
24 Mr. McVeigh.
the 25 Now we're getting ready to start the trial of

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1 evidence as it may relate to Mr. Nichols. And of
course, none 2 of us can be influenced in any way by the outcome of
the 3 McVeigh case or anything that happened during the trial
of 4 Mr. McVeigh. We start with a clean page. And a -- and
of 5 course, the jurors selected in this case must consider
only the 6 evidence that's received at this trial, without regard
for 7 anything that they might have heard, read, or seen
about what 8 happened in the other case. You understand those
basics?

9 A. Yes, your Honor, I do.

10 Q. And I also reviewed with you and the others some of
the
11 fundamental principles of the criminal justice system
under the
12 United States Constitution.

13 Now, you've never served on a jury before,
have you?

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

15 Q. Or in the course of your academic pursuits, have
you ever
16 studied these things about the Constitution and the
criminal
17 law aspects of it?

18 A. No, sir.

19 Q. So -- but you probably were aware of some of these
things
20 before I explained them, but we've got to go through
them.

21 A. Yes.

22 Q. And that includes, of course, the fundamental
principle of
23 the presumption of innocence. Any person, no matter
who that
24 person is, or what the charges may be, or indeed, what
the
25 court is in the United States, is presumed to be
innocent of

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1 those charges. And that presumption of innocence
carries
2 throughout the trial and entitles that person to an
acquittal,
3 a verdict of not guilty unless everybody serving on the
jury
4 decides by unanimous decision that what they heard and
saw as
5 evidence proved guilt beyond a reasonable doubt. No
defendant
6 in a criminal case has any burden or duty of proving
anything
7 or explaining anything, so a defendant does not have to
call
8 witnesses or introduce exhibits, and no defendant has
to take
9 the witness stand and answer questions or offer any
charges, it
10 explanation. The Government -- having brought the
prove
11 is the burden of Government's counsel to come in and
course, there
12 them. And to prove it by legal evidence. And of
consider, and
13 are rules that restrict what a jury can hear and
applied
14 those are the rules of evidence. And those rules are
15 by the court, the judge in the case. Agreed?
16 A. Yes.
17 Q. Do you agree with that?
18 A. Yes, sir, I do.

judges 19 Q. And as a part of that, of course, we instruct --
testify, the 20 instruct that if a jur -- if a defendant does not
you can't 21 jury may not consider that in any way, may not draw any
22 inference of guilt from it. In fact, what we say is
23 even talk about it. Do you understand?
24 A. Yes.
simply 25 Q. And so at the end of the case, the defendant can

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evidence, 1 remain silent and challenge all of the Government's
of 2 cross-examining the witnesses, objecting to admission
is asked, 3 evidence and so forth. But at the end then, the jury
reasonable 4 well, has -- have these charges been proved beyond a
are -- I 5 doubt. And the Court instructs about what the charges
evidence 6 mean, what has to be proved and then says does the
doubt 7 prove it. If the jury at that time has a reasonable
plain 8 about whether the evidence does prove the charge, the

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

10 Understood?

11 A. Yes, sir.

12 Q. Do you accept these principles and agree to be
bound by
13 them if you serve on this jury?

14 A. Yes, your Honor.

15 Q. Excuse me. Now, I want to review a few things
about your

16 background. And what'll happen here is I'm going to
ask you

17 some questions, and then one of the lawyers on each
side will

18 have an opportunity to question you.

19 You were born in Hobbs, New Mexico?

20 A. Yes.

21 Q. And then you left there at an early age. Your
family did,

22 I take it?

23 A. Yes.

24 Q. And you -- you lived for a time abroad outside the
United

25 States. I think you went to high school in
Switzerland?

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1 A. Yes, sir.

2 Q. Why was that?

3 A. When I was living in Libya, there was no high
school there

4 for us to go to, so we had to go -- elected to go to
boarding

5 school.

6 Q. Okay. And your family at that time was in Tripoli?

7 A. Yes.

8 Q. And why was that?

9 A. My dad worked for Occidental Petroleum Company.

10 Q. And of course, that's an oil-producing area of the
world?

11 A. Yes.

12 Q. And you lived in -- with your family in Tripoli
some 11

13 years?

14 A. Yes, sir.

15 Q. Went over to Switzerland then for boarding school,
high

16 school, and then, were you -- was the family still in
Tripoli

17 after you graduated high school?

18 A. Yes, sir. My high school years include the 11
years of --

19 Tripoli as my permanent residence. My parents stayed
there. I

20 returned there on vacations and then came back to the
United

21 States in '76 after I had graduated from high school.

22 Q. To go to college?

23 A. Yes, sir.

24 Q. Was your family still living in Tripoli when you
came back

25 to college in the United States?

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1 A. My parents were, yes.

2 Q. And you went to school in Lawrence at the
University of

3 Kansas?

4 A. Yes, sir.

5 Q. Is that where you went first?

6 A. Yes.

7 Q. Then to a community college in Greeley and then to
Northern

8 Colorado?

9 A. Yes, sir.

10 Q. And as I understand it, your course of study was in
11 business, business administration with also elementary
12 education?

13 A. Yes.

14 Q. A combination?

15 A. Well, no, sir. My first time through, I had gotten
a

16 business degree; and then when I returned to school, it
was to

17 get my teaching certificate.

18 Q. That was to Northern Colorado?

19 A. Yes, sir.

20 Q. Excuse my voice here. I've got a little remnant of
a

21 grandchild's cold, I think. You then -- well, you are
now in

22 teaching?

23 A. Yes, sir.

24 Q. And have been for a number of years, teaching very
young

25 people in elementary school?

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1 A. Yes.

2 Q. Has all your teaching been in this same school?

3 A. Yes. My first year was substituting, so it was
around

4 various schools.

5 Q. Okay. And you are concerned about being on this
jury

6 and -- and the effect of your being away from the
classroom and

7 schoolhouse on these youngsters?

8 A. Yes, sir.

9 Q. And of course, you've had to -- I guess the school
has had

10 to put some substitute in there yesterday and today?

11 A. Yes.

12 Q. But I don't know at that teaching level -- and I
just want

13 you to explain a little bit about it -- is there a
course of

14 program or whatever you describe as to what the
youngsters do

15 that you outline for a whole semester?

16 A. Yes, sir.

17 Q. And then whoever is in the classroom as a
substitute is

18 following that kind of outline or should be?

19 A. Yes, sir. It's called a curriculum map. And what
the

20 curriculum map does is give very basic guidelines as to
what

21 subjects will be learned by the students, but it
doesn't -- it

22 doesn't include lessons in more specific sort of
logistics.

23 Q. But of course, I don't -- I don't mean in any way
to

24 diminish the value of the skills of the particular
teacher and

25 the relationships that develop there between student
and

1 teacher, but, you know, the responsibility of jury
service is

2 also of importance to us.

3 A. Yes, sir.

4 Q. And it indeed may take several months to try this
case if

5 you were on the jury. So I take it that you could, in
working

6 with whatever substitutes get called in, at least be of
some

7 assistance in making sure that this curriculum map is
followed?

8 A. Yes. I'm not sure I understood your question, sir.

9 Q. Well, what I was trying to get to is that, you
know, I

10 guess if we look at it in terms of college education,
you'd

11 have a course outline and then make sure that the
students who

12 have enrolled in that course get the whole -- all of
the

13 subject matter. Now, we're not talking about subject
matter so

14 much in this level as we are a lot of social
development of

15 certain interpersonal skills and all those things.

16 A. Yes, sir.

17 Q. And so the disadvantage to the students is going to
be they

18 don't have the benefit of your particular techniques
and your

19 skills and your presence.

20 A. Yes, sir.

21 Q. Otherwise, they'll -- they'll get what the
taxpayers are

22 paying for?

23 A. Yes.

24 Q. All right. So let's talk a little about your --
well, you

25 were married very recently -- very recently?

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1 A. Yes, sir.

2 Q. And your wife is now working with placement of
children in

3 foster homes?

4 A. Yes, sir. That's correct.

5 Q. And she began that work about how long ago?

6 A. I'm not sure.

7 Q. Has she done that kind of work since you've known
her?

8 A. Yes, sir.

9 Q. But there was a time when she was in therapy, doing
massage

10 therapy?

11 A. Yes, sir, that's correct.

12 Q. Did she do that with her own practice or was she
working

13 with some clinic or --
14 A. I believe she just did it independently.
15 Q. All right. And in the work that your wife now
does, she
16 works with, I assume, welfare offices?
17 A. I would assume so, yes.
18 Q. Well, do you know much about her work?
19 A. Pardon me?
20 Q. Do you know much about your wife's work?
21 A. I know a little bit. Because of the nature of her
-- of
22 her job, there are -- there's quite a bit that she does
not
23 disclose to me.
24 Q. Sure. There are confidences that have to be
maintained?
25 A. Yes, sir.

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1 Q. But is it in -- in the nature of going in and
making an
2 investigation of a situation and then returning to
court, for
3 example, to determine the need for intervention?
That's one
4 area of this kind of work, as I understand it. And
another is

and now 5 to -- somebody else has already made that determination
what is a 6 it's a matter of finding the appropriate placement,
on the 7 good environment for this particular child. So is she
8 second part of that?

understand 9 A. It's more related to the second part. The way I
who -- 10 it is that there -- someone who has a position who --
the 11 who finds the homes. Her job specifically is to help
she 12 children make a transition to the foster home, and then
that foster 13 works with them in dealing with issues and problems
14 families deal with.

some things 15 Q. Good. Okay. We asked you on the questionnaire
page 11 16 about other kinds of employment, and I'm referring to
17 and page 12. You have your questionnaire there; right?

18 A. Yes, sir.
covered 19 Q. And the agency using social workers, we've just
20 that. That's the wife -- your wife's work; right?

21 A. Yes, sir.
22 Q. And then on the next page, newspaper and magazine
23 or journals. Tell us what that reference is to.
24 A. Well, I have a sister who years ago worked as a --

well,

25 for lack of a better term, the cut-and-paste person for
a

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1 cattle magazine.

2 Q. Oh. Okay. Called The American Cattleman or --

3 A. It was called Limousin Journal.

4 Q. For limousin cattle?

5 A. Yes, sir.

6 Q. And that's been sometime back?

7 A. Yes, sir.

8 Q. Okay. There was something about your brother on
page 24.

9 And I don't want to get into any undue details here;
but, as I

10 understand it, your concern about what happened to your
brother

11 on this occasion and whether he was treated fairly.

12 A. Yes, sir.

13 Q. Where did that take place?

14 A. In our town of residence.

15 Q. And how long ago?

16 A. Probably three or four years, I think.

17 Q. Were you present at the time?

18 A. No, sir, I was not.

19 Q. Something he told you?

20 A. Yes.

21 Q. Is there, from that, any carryover effect in your
mind that

22 would affect your ability to deal in a case in which
law

23 enforcement people are witnesses?

24 A. No, sir. None at all.

25 Q. The questionnaire asked of you about your view of
guns and

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1 gun control and gun laws?

2 A. Yes, sir.

3 Q. And on page 32, you, among other responses, gave us
a

4 response at 141 -- well, first of all, you expressed a
view

5 that handguns kill innocent people and only law
enforcement

6 should carry handguns. That's the view you had -- you
now

7 have.

8 A. Yes, sir. That's correct.

9 Q. And it looks like at page 141, there were two
things that

10 have influenced that view.

11 A. Yes, sir.

12 Q. One being a friend who was killed.

13 A. Yes, sir.

14 Q. And can you tell us a little about those
circumstances.

15 A. Well, when I -- it was when I was a child, and I
had a

16 friend that was a -- two friends, a brother and sister,
and

17 they had returned home to the United States for
Christmas; and

18 there was a -- a new shotgun that had been -- I'm not
sure it

19 was a shotgun. A rifle, the way I understood it. And
the

20 children were allowed to handle it, and there was an
accident

21 and the sister was killed.

22 Q. By the brother?

23 A. Yes.

24 Q. And at what -- what were their ages at that time as
far as

25 you know? Maybe an approximate age.

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I 1 A. She was a year younger. Probably 9 to -- 9 and 10,

2 think. He was 10, she was 9, I believe.

got in 3 Q. Okay. And you look at that as a -- you know, a gun
4 the hands of children who innocently, without adequate
5 supervision, played around with it and one was killed?
6 A. Yes, sir.

done 7 Q. Then the other was some research work that had been
8 about handgun control. Was that your work? Did you do
this 9 study?
10 A. Yes, sir.

11 Q. And was that for a course requirement?
12 A. Yes, sir.

13 Q. What was the course?
course. It 14 A. I don't remember specifically. It was a civics
15 was called U.S. government and something else, and I
don't 16 remember.

17 Q. Where were you then? What school?
18 A. At Aims Community College at the time.

19 Q. And what kind of references did you use in -- in
your 20 research paper?
21 A. I don't remember specifically, but most of it was
journals.

22 Q. And you came to a conclusion of what?
23 A. That too many accidents happen with handguns and
that there

every 24 are a lot of homicides committed in the United States

disputes. And 25 year that -- that involve families and domestic

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1 when we look at the number of homicides in this country
2 compared to the number of homicides, for instance, in
Japan or 3 England, I discovered it to be alarmingly high.

4 Q. So you came to the conclusion and you still are of
the 5 opinion that there should be controls?

6 A. Yes, sir. And I understand that it's -- with --
with --

7 that judgment is made based upon my somewhat limited
knowledge 8 of the whole thing.

9 Q. What about your knowledge of the Second Amendment?
In your

10 research, did you include such journals as the
publications of

11 the National Rifle Association?

12 A. I don't believe so.

13 Q. Did you look at the Second Amendment? That's --
that's the

14 one that deals with the protection of a right to bear
arms.

15 A. Yes, sir.

means in 16 Q. And it's variously interpreted about whether that
arms. I 17 an organized militia or individually a right to bear
18 mean, there's differences of opinion here.

19 A. Yes.

it is a 20 Q. And the only time the Supreme Court has spoken to
21 long time ago.

22 A. Yes, sir.

about 23 Q. Do you have a view that -- well, what is your view
you for 24 the Second Amendment, if you have one? I'm not asking
25 a legal opinion, but just what your view is.

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obviously, 1 A. Well, I think that when it was first written,

enforcement 2 our culture and times were a lot different, and law

the 3 was different back in that time. People who lived on

to 4 frontier, people who didn't have 911, those folks had

amendment was 5 protect themselves. And I think that when that

time as 6 written, it was real clear as to -- I believe at that

and 7 to how it was to be interpreted. Today, as our culture
8 society have changed, I think that there's a lot more
9 interpretation of that amendment to make it fit to the
use of 10 guns in our society. And I think, quite frankly,
people stand 11 behind the Second Amendment to make a case for owning a
gun,
12 and I think it's stretched.

13 Q. Okay. Did your -- I'm just going to ask you one
more
14 question about this. This isn't a test of your views
of gun
15 control, but we do appreciate your responding to them.

Did
16 you, in the journals that you read as reference
material for
17 this paper that you did, see anything about response
times to
18 911 calls and whether 911 has any relationship to
effectively
19 stopping a crime?

20 A. Not that I recall, sir.
21 Q. Okay. Now, you also were asked for a very broad
opinion
22 about your view of the effectiveness of the criminal
justice
23 system. And you gave us that on page 22 at Question
100, which
24 is, I guess, a failing grade. You said it's not
working well

25 at all?

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1 A. Yes, sir, that's correct.

2 Q. And you gave us your reasons for that. And I'd
like you to

3 just expand on those a bit and tell us something about
where --

4 what you relied on in forming these opinions. One is
of

5 backlogs in coming to trial? Is that what you're
thinking

6 about?

7 A. Well, yes, sir. In terms of where I get -- I get
these

8 ideas, I suppose most of it would be hearsay, things
that I've

9 read or have talked about with other people.
Basically, what I

10 feel -- how I feel is that our -- our -- I hope I don't

11 contradict myself here. The system of justice, the way
that we

12 uphold justice and the way that we -- that our court
system is

13 designed, I think, is fine. However, the system,
because of --

14 because I believe that the infrastructure is not large
enough

15 to handle the number of cases that come through, that

there are

16 people who sit waiting for trial for years, people who
are

17 dismissed for wrong reasons, and -- and consequently a
whole

18 lot of taxpayer money spent. I suppose I would feel
that there

19 needs to be a system reform, but I couldn't begin to
say what

20 that will be.

21 Q. I guess one thing you think, there ought to be more
courts

22 and more capacity to handle more people.

23 A. Yes, sir.

24 Q. Which of course, involves public expenditures, and
therein

25 you recognize your own problem with consistency.

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1 A. Yes, sir.

2 Q. Overcrowded jails, again, can be looked at as,
well, we

3 need more of them, or another way to look at it is
we've got

4 too many people in jail, which is your view?

5 A. Yes, sir. So really, maybe what I'm feeling is
that it

6 would be best if we had a social reform. Then we
wouldn't have

7 so much of that need.

8 Q. Meaning better people?

9 A. No. Not better people. Good people making better
10 decisions.

11 Q. Then you also have people getting acquitted on
12 technicalities.

13 A. Yes.

14 Q. Do you have anything specifically in mind there?

15 A. No, sir. Nothing that's --

16 Q. Well, let me suggest a thing or two and then see if
that's

17 what you're talking about. Some people believe that
the rules

18 are too strict regarding search and seizure and that
where, you

19 know -- you've heard of cases where judges have ruled
out

20 evidence and said that can't come into trial because
the police

21 or whatever, law enforcement agency violated the
person's

22 rights in breaking into an apartment or whatever.
Illegal

23 search and seizure. Is that one of the things that you
think

24 of as a technicality?

25 A. I suppose so, yes.

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1 Q. And then of course, we have rules of evidence that
limit
2 what can come in, and you mention hearsay; so you
recognize
3 that that's probably one of the rules?
4 A. Yes, sir.
5 Q. Do you think the rules are too strict as to what
can be
6 admitted into evidence?
7 A. Well, no. And I guess I'm going to contradict
myself again
8 because I understand that in a courtroom setting that a
9 person's guilt or innocence is based purely upon the
evidence
10 that's admitted into the court. And I'm aware that
that
11 evidence has to be presented in a legal way. I -- I
suppose
12 I -- I look more at the outcomes of someone who we
perhaps as a
13 public believe or believe that we know was guilty, but
because
14 someone failed to fill out a paper or someone went to
it at an
15 incorrect time or something that was -- may have been
just an
16 oversight allows that person to walk away. And while I
17 understand the -- how the system is supposed to work,
in my

18 heart and in the idea of justice, that doesn't feel
right.
19 Q. It's been said, as I'm sure you know, in various
ways by
20 various people over the years in our constitutional
system that
21 if there be any errors in -- in the process, it is
better that
22 we err on the side of the guilty going free than that
the
23 innocent be punished.
24 A. True.
25 Q. Do you agree with that?

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1 A. Yes, sir, I do. Uh-huh.
2 Q. And that fairness is the first principle of the
system.
3 A. Yes, sir.
4 Q. Now, the final thing in -- I'm not putting you
through a
5 test here. I'm only trying to get your opinions
expressed so
6 that we have a clear understanding of, as they
sometimes say,
7 where you're coming from on these things.
8 A. I understand.
9 Q. You say, "Way too much money spent," and you
underscored

10 the "way."
11 A. Yes.
12 Q. Would you expand on that for us.
13 A. Well, I guess at the time, I was kind of thinking
about
14 this case in particular. Can I say specifics?
15 Q. You can say whatever was in your mind when you
wrote this.
16 A. Well, I thought, okay, there are a thousand people
who are
17 coming down to fill out this survey, and they are going
to pay
18 us at \$40 apiece. That's \$40,000 right there just for
those
19 folks to come for one day. And then when I consider
the
20 magnitude of the case, the amount of money that is
spent -- and
21 I guess I feel like if I were to be in trouble and in
front of
22 a -- had to go to trial, that if it were me, in a
different
23 case, they would say, "Luck of the draw, buddy. Here
you've
24 got 12 people, let's get it done," and in a week, it's
over.
25 And when we talk about swift justice, when we spend
millions of

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1 dollars on one court case for one person, while that
person
2 deserves a fair trial and maintains the presumption of
3 innocence, again, it feels to me like that's a lot of
money
4 that, you know, I -- I -- I see families, children
every day
5 who could sure benefit from some of that money, and so
I guess
6 that's what I'm feeling.

7 Q. Okay. Well, don't feel, you know, that criticizing
this
8 case or something that I am responsible for is in any
way out
9 of bounds.

10 A. Uh-huh.

11 Q. Everything that affects your thought processes, we
want to
12 have you express candidly. That's why we're here. And
I've
13 been criticized before, so that's not -- and I didn't
take that
14 as personal criticism. Obviously, what is necessary to
deliver
15 a fair trial and a fair result that is also perceived
that way
16 depends a great deal on the circumstances of the case.

17 A. Yes, sir.

18 Q. And we are dealing with a very unusual situation
here, both

event, 19 with respect to what happened in Oklahoma City, the
20 itself, you would -- I'm sure that you saw some of the
21 publicity about that at the time?

22 A. Yes.

23 Q. In April of 1995.

24 A. Yes, sir.

in the 25 Q. And could recognize that as rather an unusual event

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1 United States.

2 A. A tragic event.

3 Q. Pardon me?

4 A. A tragic event.

5 Q. And unusual?

6 A. Yes.

exactly what 7 Q. And that necessarily in attempting to find out

8 happened and who may be responsible, a great effort is
9 required.

10 A. Yes, sir.

of the 11 Q. And in addition to whatever has been done outside

is a 12 court system through investigation and the like, there

13 great deal of material gathered that now has to be
tested under
14 the rules and under due process procedure. And you
know, it's
15 not like a case of somebody running a red light and --
and
16 there's a need to have a fair trial about whether that
17 happened.

18 A. Yes, sir, I understand.

19 Q. So necessarily, the more there has been public
comment --
20 public exposure about it and then public comment about
it, the
21 more difficult it becomes to make sure that the process
is
22 fair. And in the end, somebody has to exercise some
judgment
23 about that and decide on the basis of a lot of things
what is
24 required.

25 So we don't use a cost-benefit analysis in
deciding

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1 what's necessary for a fair trial. Do you accept that?

2 A. Yes.

3 Q. And I guess, you know, you can -- I'm not trying to
change
4 your opinion.

5 A. I understand.

6 Q. What I want to know, though, is whether your
opinion about

7 it would affect your ability to participate in it as a
juror.

8 A. No, sir. I understand a pretty good deal of what I
would

9 be accountable for and responsible for so -- and I
understand

10 that some of my personal opinions -- that my personal
opinions

11 do have to stay out of and aside from what's going on
in court.

12 Q. Okay. Now, you told us, you know, some perceptions
about

13 this process that you've been directly involved in.
Are there

14 any other cases that come to your mind as examples or
15 illustrations of the concerns about the system that
you've

16 summarized here?

17 A. Well, not offhand, no, sir.

18 Q. All right. The -- the trial of the case, as was
already

19 talked about, may take considerably longer than the
trial of

20 the average case, if there is such an average case,
and, you

21 know, what is an average case. It's sort of like if
you break

22 your arm, somebody looks at it and says, well, that's
just a

very 23 broken arm, but it's your broken arm and therefore is
the 24 important. And of course, every case is important to
the 25 people who are in it and directly affected by it. And

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public sees 1 public is affected by it as well, because how the
the case 2 what we do in our courts is an important thing. But
takes, I 3 will take as long -- the trial will take as long as it
4 mean, to get the job done fairly.

process 5 And in the -- I must talk a little about the
punishment, 6 here before asking you some of your opinions about
turning to 7 as we did on pages 27 and 28 and 29. But before
answers, I 8 what you said there, and without influencing your
already 9 just want to explain why we asked it, and maybe you
involve 10 know this. But in the criminal cases that do not
under the 11 crimes for which capital punishment is a possibility
12 law, what the jury does is hear the case, hear the

evidence,

13 and decide on the basis of the law and evidence has the
14 defendant been proved guilty beyond a reasonable doubt,
what we
15 just talked about. And then if the verdict is not
guilty,
16 obviously, that ends it. If the verdict is guilty in
such
17 other types of cases, then that's still the end of it
from the
18 jury's standpoint because the matter then goes to the
judge for
19 the determination of sentence. And that's something
that is
20 done carefully, also, through a process by which
additional
21 information is obtained and transmitted to the judge,
all kinds
22 of things that may affect the individualized sentence
decision.
23 So these would be things about the circumstances of the
crime,
24 its effects upon people and the community involved, and
it also
25 includes a good many things about the defendant, things
that

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1 are unique and personal to him or her as a human being,
2 including all of the life history of that person, the

3 background, where he was born and raised, family
relationships,
4 then, really, all of the things that's happened to him
or her
5 in life and what that person has done with his life up
to that
6 time, including the education, the employment history,
7 relationships with others, whether there's any prior
8 involvement with the criminal law, including also some
9 additional things about the criminal conduct, itself,
if other
10 persons were involved, was the defendant more or less
involved
11 than the other persons, all of these things. And of
course,
12 each one of us has a unique background. That's what
makes us
13 individual human beings. And then all of that the
judge has,
14 judge hears from defense counsel and -- and the
prosecution and
15 makes a decision that is individual to the person
involved.

16 Understand?

17 A. Yes, sir.

18 Q. So it isn't just the crime equals the punishment.
It's the
19 crime and the person and then what is just and
deserved. In
20 cases where the charges are such as they are in this
case,

is the 21 because of the statutes alleged to be violated, there
without 22 possibility of sentences such as imprisonment for life
put to 23 ever being released, you die in prison; death, being
sentence and it 24 death; and the possibility of some other lesser
under 25 goes back to a judge. But the life-or-death decision

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decided the 1 federal law is made by a jury, the same jury that
2 question of guilt. Now, that's why we asked you these
this 3 questions, because a jury selected in the event -- in
required to 4 case, in the event of a guilty verdict, would be
options. You 5 consider these three option -- among these three
6 understand?
7 A. Yes, sir, I do.
considering 8 Q. So what we wanted to hear from you is without
9 what the law is as to how a jury goes about making that
the nature 10 decision -- we wanted to get your views about the --
11 of punishment and what kinds of crimes you would relate
it to.

gave us 12 And that's why we asked you the questions. And you
13 your answers, and let's turn to them.
14 A. What page again, sir?
with sort 15 Q. Well, your answers are on 28. This starts on 27
emphasizes on 16 of the explanation that I've just given and then
17 28 that there's no right or wrong answer; that we're
asking for 18 your opinions. And it's on the premise that you have
the power 19 to decide what the law should be --
20 A. Yes, sir.
if 21 Q. -- without regard for what it actually is. So just
and 22 you'll take a moment to read your responses on 27 -- 28
23 again carrying over to 29.
24 A. I'm ready, sir.
25 Q. Now, you wrote a paper on gun control. You've been

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this. 1 interested in some things affecting the system before
something 2 What about the punishment of death? Has that been
3 that you've also researched and wrote about or --

it in the 4 A. Well, no, sir. But I've sure thought a lot about

5 last month.

6 Q. Okay. Well, how about before you answered these
questions?

7 How much had that been a matter of your thinking and --
and

8 deliberation?

9 A. Before, I -- I suppose not -- if this makes any
sense,

10 probably not any more than any other lay person.

11 Q. Okay. We understand. Well, you've thought about
it a lot

12 more since, as you just said.

13 A. Yes, sir.

14 Q. And in doing so, do you have any change that you
would make

-- some 15 in these answers? You're free to do so if you have to

16 different view, because this is a matter of opinion.

17 A. No, sir. No changes.

18 Q. So if we asked you the same questions in exactly
the same

19 words today, you'd give us the same answers, I presume.

20 A. Yes, sir. I believe so.

21 Q. You -- and, you know, we're not trying to argue
with you.

22 A. Yes, sir.

23 Q. It's nothing like that at all. It's just the
purpose of

24 follow-up questions here is to just ask you for some
expansion
25 of your thinking. You say at B you don't think anyone
should

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1 take a life. However, some horrible crimes can warrant
its

2 use. And that's referring to the penalty of death.

3 A. Yes, sir.

4 Q. And then at D, there, you say "killing someone," I
guess.

5 A. Yes.

6 Q. Now, there seems to be a bit of inconsistency
there,

7 because D suggests the punishment of death you guess
should be

8 used when someone kills someone else.

9 A. Yes.

10 Q. And B seems to suggest to me that you're
distinguishing

11 among types of crimes. Now, I may be reading this
wrong. And

12 on the next page -- I don't want to be unfair to your
answers.

13 A. That's all right.

14 Q. The next page, you say that you have -- you're
unsure.

15 A. Yes, sir. That's correct.

16 Q. So it's hard for you to make a call on this, what
crimes

17 deserve this punishment. Is that where you are now?

18 A. Yes, sir. In response to Item D, I guess the way
that I

19 read that question was, I guess, how I felt, like is
that

20 obviously -- the death penalty is used in the United
States and

21 under what circumstances should it be used. And that's
how I

22 read that question, but that does not necessarily mean
that I

23 believe that it should be. At least that's kind of how
I was

24 feeling at the time.

25 Q. Okay. And of course, you well know there are --
there's a

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1 broad spectrum of opinion about this?

2 A. Absolutely.

3 Q. In fact, in some states of the United States, there
is no

4 death penalty in the state courts.

5 A. Yes, sir.

6 Q. And it has varied from -- over time back and forth
in other

7 jurisdictions.

8 A. Yes, sir.

9 Q. But we, of course, have the law as it is. And we
are in

10 Federal Court under federal statutes; and the federal
statutes

11 do provide for the punishment of death, and it is
restricted to

12 the intentional killing of other people. I mean, it
involves

13 killing and intent, or there isn't any possibility of a
death

14 sentence.

15 A. Yes, sir.

16 Q. So the law has made the choice here that we asked
you to

17 make.

18 A. Yes, sir.

19 Q. But I -- but the law is certainly not self-
enforcing and

20 not automatic. Otherwise, we wouldn't have a
punishment

21 hearing. And we wouldn't ask the jury for judgment on
this.

22 If all you do -- did is have to decide a guilty verdict
and

23 then if you found somebody guilty of an intentional
killing,

24 that's it, death, you know, the process that I'm about
to

25 describe would have no value or meaning.

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1 But here is the way in which the law is
actually
2 applied in Federal Court: If there is a finding of
guilty
3 beyond a reasonable doubt and such a verdict is
returned in a
4 case that involves the possibilities of punishment and
the
5 options I've described, then the jury comes back into
the
6 courtroom and hears another -- really another trial.
This
7 time, the subject matter of the trial is punishment,
what
8 should be done with respect to this particular person
who has
9 been found guilty of that -- of the crimes charged.
10 Now, that is approached in the same way as the
trial
11 is, in that counsel for the government bring in
witnesses,
12 exhibits, things that are given to the jury to support
the idea
13 that -- and the conclusion that death is the deserved
14 punishment for this crime and this person. The
defense, to the
15 contrary, comes in with exhibits and witnesses and
information,

16 really the kinds of things that I've already talked
about that

17 a judge considers in other types of individual
sentencing done

18 by a judge, because now, the jury becomes the
sentencing

19 judges. Understood?

20 A. Yes, sir.

21 Q. So the jury would hear -- and I can't tell you what
might

22 be heard in this case any more than I can tell you what
the

23 evidence at trial will be in this case. We have a
blank. And

24 we can't speculate on that because we don't want to
speculate

25 about something that may never happen. But the kinds
of things

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1 that come in are, again, the things that are unique to
the

2 defendant himself, which can include, just as I've said
in --

3 in judge sentencing, if more than one person was
involved in a

4 crime, what was the involvement of the person now being
judged

5 relative to others. That can be a part of it. Minor
role,

found 6 major role, whatever, even though they both have been
defendant's 7 guilty. Another is all of these things about the
it up 8 background, his individual characteristics, sort of sum
beings, not 9 as to who this person is, because we judge human
10 crimes, in punishment.

11 And so at the end of such a trial, there is a
summing
well, now, 12 up, sort of, in instructions from the judge, saying,
what 13 this is what you've heard and these are the things from
factors -- 14 you've heard that you can consider as aggravating
death as 15 and by "aggravating," we're talking about suggesting
heard 16 the just punishment; these are the things that you've
despite 17 suggesting that death is not deserved for this person
18 the crime. These are, we refer to, mitigating factors,
there are 19 mitigating punishment. And then in such instruction,
answer 20 some questions asked of the jury so that the jury can
has 21 them to sort of guide them through the information that
a 22 been provided at this punishment hearing, but it's not

these 23 formula. There's not an equation. It is: Think about
And 24 things, discuss them, and then make a moral judgment.
objectively 25 that's what it is. It's not something that can be

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really, 1 judged. It has to be done with a moral conscience and
the 2 the conscience of the community. That's why the jury
3 sentences. Because that's what they represent. And in
an 4 end, after discussion of it all, each juror has to make
5 individual decision about this.

6 You understand this explanation?

7 A. Yes, sir.

8 Q. Have you any question about it?

9 A. No, sir.

you to 10 Q. All right. Then what I must ask you is given this
about 11 explanation, understanding this process, if it came to
you be 12 serve on a jury and to be required to make a decision
at this 13 whether a particular person should live or die, would
14 open and -- open-minded and consider all that you heard

15 penalty hearing, not only about the circumstances of
the crime
16 and also all of the things that you've heard about the
17 defendant, his background and his individual
characteristics in
18 making that decision?

19 A. And the question is would I be open-minded?

20 Q. Would you be able to make a decision based on
everything

21 that you've heard, aggravating, mitigating, and
consider life,

22 death, or a lesser punishment?

23 A. I guess I'd like to answer in two parts, if I
could.

24 Q. Yes.

25 A. First of all, certainly, I would be open-minded. I
mean,

3519

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1 just as -- just as you and I have spoken and you've
asked me

2 questions about some of my responses and made some
points about

3 those and how they might be related or how they might
be

4 contradictory, even during this time, I've been able to
kind of

5 reposture and reformulate some of those, although not
really

could be 6 changing the feelings in my heart. So certainly, I
7 open to considering it.

8 But when it -- when it comes to the idea of
the death 9 penalty, I guess, to be as honest as I can be, I'm not
sure. I 10 haven't decided, you know, personally how I feel about
it. And 11 as you said, sir, it's not -- it's not a matter of
necessarily 12 just weighing the factors on this side and the factors
on this 13 side and this side outweighs, so it would be one
penalty or the 14 other. It's about morals and about people's feelings.
And -- 15 and I guess that's what I would be presented with when
it comes 16 to that time; and so honestly, at this point, I don't
know for 17 sure. I haven't decided that.

18 Q. Yeah. Well, you know, it is very difficult to
predict a 19 human reaction, for any one of us to predict our own
reaction 20 and our own ability to make a decision about life or
death. Of 21 course, you have to hear it all. But there are some
people who 22 take the position -- and I'm not saying anything you
don't know

23 from the public discussion about this -- there are some
people
24 who take the position, be it religious or otherwise,
that well,
25 that may be all right as far as the law is concerned,
but I

3520

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1 cannot do it.
2 A. Uh-huh.
3 Q. I could not participate and make a decision that
the person
4 should die. And there are others who say, Well, it's
easy. If
5 I'm sure that the person killed somebody else, they
deserve to
6 die and I don't want to hear anymore about it.
7 A. Yes, sir.
8 Q. Those are the extreme views. And I guess what I
want to
9 hear from you is whether you have either of those
views.
10 A. No, sir. Again, I -- you know, I'm undecided and I
have
11 really done a lot of soul-searching, because I know
that this
12 particular case may or may not involve a penalty; and
if it --
13 and if it does, it may or may not involve the death
penalty.

14 And through my soul-searching, I've done all the
personal
15 things that I can do to come to some sort of decision
or -- or
16 idea and I'm still right there in the middle. I -- I
guess it
17 would -- I don't know what it would take, but I can't
tell you
18 one way or the other at this point.

19 Q. Sure. And we're not asking anybody to prejudge.

20 A. Yes, sir. I understand.

21 Q. All that we can ask is, you know, can you make a
decision
22 ultimately. And there's always the possibility that
the way
23 the information comes in, you can't make a decision
because the
24 information doesn't satisfy one way or the other.
25 A. Well --

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1 Q. There are cases that end up that way.

2 A. Yes, sir. And I guess I could -- it's possible
that -- in

3 a case if I were to get to that point, that -- that I
-- it's

4 possible that I might say to myself, I -- I can't
impose it

5 regardless of --

6 Q. All I think that we can ask you to say is whether
you would

7 automatically rule out the death sentence or
automatically

8 impose it.

9 A. No, sir. Neither of those.

10 Q. Okay. Well, these are hard questions. And we
understand

11 that. And we understand we're putting you on the spot,
as it

12 were, and causing you, you know, to really search in
your own

13 soul, essentially. So you have to forgive us for
pursuing it.

14 But you understand the importance of it?

15 A. Absolutely, sir.

16 THE COURT: What I'm going to do is take a
recess

17 before we -- I've asked you the questions I'm going to
ask you,

18 but lawyers on each side have an opportunity to
question you

19 some further questions. Bear with us, please.

20 JUROR: Yes, sir.

21 THE COURT: And we're going to take a -- about
a

22 20-minute recess and then resume. Court's in recess.

23 (Recess at 10:13 a.m.)

24 * * * * *

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7 Voir Dire Examination by The Court

8 * * * * *

9 REPORTER'S CERTIFICATE

10 I certify that the foregoing is a correct transcript from

Dated

11 the record of proceedings in the above-entitled matter.

12 at Denver, Colorado, this 16th day of October, 1997.

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Carpenter

Bonnie

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