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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY LYNN NICHOLS,

Defendant.

ff

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REPORTER'S TRANSCRIPT  
(Trial to Jury: Volume 32)

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ff

12 Proceedings before the HONORABLE RICHARD P.  
MATSCH,  
13 Judge, United States District Court for the District of  
14 Colorado, commencing at 10:44 a.m., on the 16th day of  
October,  
15 1997, in Courtroom C-204, United States Courthouse,  
Denver,  
16 Colorado.

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24  
Transcription  
Street,  
629-9285

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

13 \* \* \* \* \*

14 PROCEEDINGS

15 (Reconvened at 10:44 a.m.)

16 THE COURT: Be seated, please. We're sorry  
for the

17 delay in resuming, but we are now ready to resume.

18 Please resume your seat there; and as I told  
you

19 before we broke, counsel for each side has an  
opportunity to

20 ask you some additional questions.

21 So, Ms. Wilkinson, you have some questions for  
the

22 Government?

23 MS. WILKINSON: I do, your Honor. Thank you.

24 (Juror No. 979 was recalled to the stand.)

25 VOIR DIRE EXAMINATION

3535

Juror No. 979 - Voir Dire

1 BY MS. WILKINSON:

2 Q. Good morning, sir.

3 A. Good morning.

4 Q. As the Judge told you, my name is Beth Wilkinson,  
and I'm

5 one of the prosecutors who will be presenting the  
evidence

6 against Mr. Nichols in this case.

7 A. Yes.

8 Q. I know you've answered a lot of questions.

9 A. Yes.

10 Q. But I have a few more.

11 A. Okay.

12 Q. And as the Judge told you and as I think you can  
tell from

13 his questions and the questionnaire, obviously we just  
want you

14 to give us your truthful answers.

15 A. Yes.

16 Q. This is our one opportunity to question jurors and  
find out

17 their feelings and their beliefs; and as I think you

18 appreciate, both sides here want a fair trial. And the  
best

19 way we can get that is by knowing what you honestly  
think.

20 We're not trying to test your views in any ways. We  
just want

21 to know what you think.

22 A. I understand.

23 Q. Thank you. First I'd like to talk to you a little  
bit

24 about your changing careers.

25 A. Okay.

## Juror No. 979 - Voir Dire

1 Q. You were in sales for a while. Is that right?

2 A. Yes.

3 Q. And then I looked -- a lot of family members are  
teachers;

4 is that right -- or a couple?

5 A. Yes, uh-huh; correct.

6 Q. What made you decide to get out of sales and go  
into

7 teaching?

8 A. Well, I was getting to a point in my life --  
actually, I

9 was a person who worked six days a week and I worked 51  
weeks

10 out of the year and made great money; and I got  
hollered at a

11 lot on the phone. And because of just some events in  
my life,

12 I kind of questioned where I was heading, and I got to

13 wondering if that would be something that I would after  
25

14 years look back on and feel really good about. And it  
was at

15 that time that I did some thinking about where I was  
headed and

16 talked to some family members and some friends and  
ultimately

17 made the decision to quit the job, go back to school,  
become a

18 teacher and have not regretted that a single day since.

19 Q. I take it it's very fulfilling work?

20 A. Very much so.

21 Q. And it sounds like you're someone -- and please  
correct me

22 if I'm wrong -- who thinks things out pretty carefully  
and you

23 did a serious, it sounds like -- evaluation of your  
life; what

24 you wanted to do with your life?

25 A. I tried to, yes.

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Juror No. 979 - Voir Dire

1 Q. And throughout your questionnaire, I think several  
times

2 you used the word "moral" and "morality," and it sounds  
like

3 you have over the years developed quite a sense of your  
own

4 personal morality. Would that be fair to say?

5 A. Very much so, yes.

6 Q. You told us that you're a Christian and that you're  
7 somewhat active. Is that something that is more  
spiritual for

8 you that you practice at home, or do you attend a  
church?

9 A. I don't attend church right now. I have in the  
past. I

10 was raised in a church; but I would consider myself

more of a

11 spiritual person and not -- more than a religious  
person.

12 Q. And what church were you raised in, if I could ask?

13 A. I was raised in a Union Protestant church,

14 non-denominational.

15 Q. Has your spirituality affected your moral views, or  
is that

16 something that's hard to separate, or are they from two

--

17 based on two different perceptions?

18 A. I think they're completely intertwined.

19 Q. I ask you that -- go ahead.

20 A. I'm sorry. No, I shouldn't say that because there  
are --

21 there are issues involving the law and other sorts of  
things

22 that helped to form my morality, so I misspoke.

23 Q. So it depends on the issue. Is that fair?

24 A. Yes.

25 Q. Well, you told us in response to a question on  
whether we

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Juror No. 979 - Voir Dire

1 should -- you thought it was proper to use accomplice  
2 testimony, you know, someone who has pled guilty and  
was trying

3 to receive a reduced sentence.

4 A. Yes.

5 Q. That you thought that was immoral.

6 A. Yes.

7 Q. Can you explain that to me?

8 A. I think that when someone goes to trial that we're  
dealing

9 specifically about that person and the issues  
surrounding the

10 circumstances involving that person. And when another  
person

11 who may or may not be involved in the same crime gets a  
free

12 ride on the coattails of that, then I think, to me,  
that feels

13 wrong.

14 Q. And that, again, is from your own personal morality  
that

15 you've developed?

16 A. Yes.

17 Q. Do you think it's possible to come into a courtroom  
when

18 you have a highly developed sense of your own morality  
and

19 ignore that when you have -- if you'd have to listen to  
a

20 witness who told you, I pled guilty and yes, one of my

21 interests is receiving a reduced sentence?

22 A. No, that wouldn't be difficult for me, because I  
understand



23 that my emotions and my personal beliefs have to stay  
out of

24 the presentation of evidence and that the  
interpretation of the

25 evidence --

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Juror No. 979 - Voir Dire

1 Q. So could you see one that -- that you could  
separate

2 that -- if the court told you you could consider that  
testimony

3 that you'd have to scrutinize it, of course, but that  
you could

4 consider it? Could you do that?

5 A. Yes, I could, much as there may be some things that  
exist

6 in the world that I don't -- that I'm not real happy  
about but

7 I go along with anyway because that's the law or the  
status

8 quo.

9 Q. Could you also see the benefit of that type of  
testimony,

10 if you were trying to determine the full nature of a  
crime and

11 someone were to come in and tell you they had some  
knowledge

12 and you had to make a determination about someone's  
guilt? I

13 mean, perhaps one of the most important decisions --

correct --

14 is whether someone is guilty of a criminal charge.

15 A. Could you restate that again to me?

listen 16 Q. Sure. Could you see that it might be beneficial to

you're going 17 to that type of testimony; and again I'm assuming

benefit 18 to scrutinize it very carefully, but could you see the

accomplice who 19 to listening to testimony from someone who is an

for a 20 says I have some knowledge of the crime, I'm looking

juror 21 reduced sentence? Could you see a benefit if you're a

determination of 22 and you want to know and you have to make that

other 23 whether a defendant is guilty of the crime and this

24 person is telling you I have some information?

would be -- 25 A. Of course. Yes. And then it would to me -- it

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Juror No. 979 - Voir Dire

whatever 1 I think you'd have to put the plea bargaining or

2 aside.

questions 3 Q. Okay. You told us when we asked you some of the

criminal 4 about pretrial publicity that you had followed some

5 cases, including the McVeigh case; is that right?

6 A. Yes.

publicity 7 Q. Can you tell me whether you recall watching the

8 surrounding the actual bombing back in April of 1995?

9 A. Yes, I did.

10 Q. What do you recall from those days?

pictures 11 A. Mostly what I recall was pictures of the building,

12 of the people who had been killed or injured, a lot of

about the 13 sensationalism and then I also remember discussion

14 truck that was or was not involved and some about the  
15 explosives.

16 Q. Well, let's go over each one of those, if we could.

17 A. Okay.

18 Q. First of all, tell me what sensationalism you think  
19 surrounded the bombing --

shows a 20 A. Sensationalism, to me, is like local news that

automobile 21 blood spot on the highway when there has been an

sell, the 22 accident because they think that's what's going to

think that 23 gore and -- so they throw in a photograph and they

another 24 that media does that -- they outdo -- try to outdo one

25 by having the most spectacular shots. So  
sensationalism.

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Juror No. 979 - Voir Dire

1 Q. Did you have any emotional reaction to seeing those  
2 photographs? I assume you're talking about people who  
either  
3 died or were injured or were being rescued?

4 A. Yes, of course.

5 Q. Tell me what you know about the truck or what you  
recall  
6 about the discussion about the truck.

7 A. Not a lot. I know that there was -- there was a  
piece of a  
8 vehicle that was found somewhere; that there was -- I  
remember  
9 that there was discussion about whether the truck was  
rented,  
10 who was involved in that, and basically that there were  
11 explosives on it, and so not that much.

12 Q. Do you remember where the truck was rented?

13 A. No.

14 Q. Do you remember who rented or was alleged to have  
rented  
15 the truck?

16 A. The only -- the only thing that I could remember is  
that --

17 that is Mr. McVeigh and Mr. Nichols' names both were --  
came up  
18 and so I don't know necessarily what the connection  
was,  
19 though.  
20 Q. You mean in connection with the case but you don't  
know  
21 whether they rented the truck or what happened.  
22 A. I don't remember specifically, no.  
23 Q. Okay. You mentioned something about knowing or  
hearing a  
24 discussion about the type of explosives used.  
25 A. Yes.

3542

Juror No. 979 - Voir Dire

1 Q. Can you explain that to me?  
2 A. That -- sure. I know that there -- it's believed  
that it  
3 was made from fertilizer and something else, and I  
don't  
4 remember what the ingredients were, but it was  
something  
5 that -- that they said -- was something you could make  
at home.  
6 Q. And how did you feel when you heard that?  
7 A. I -- indifferent, I suppose. I mean, you can make  
all  
8 kinds of things at home. It's just one more thing.

it can 9 Q. Do you have any knowledge about fertilizer, whether  
10 be used as an explosive?  
11 A. I just use fertilizer in my garden. That's it.  
12 Q. What kind of fertilizer do you use?  
13 A. I've tried mostly organic.  
the 14 Q. Now, you also said that you didn't know just about  
that 15 bombing itself but you followed the McVeigh case. Is  
16 right?  
17 A. Up --  
18 Q. Or to some extent?  
not buy 19 A. I'd have to say I didn't actively do that. I would  
case. I 20 a magazine because it had an article involving the  
that I read 21 never at any point became so interested in the case  
22 because I needed to know who or what -- Most of the  
things were 23 things that I just glanced at or overheard.  
order not to 24 Q. Well, you know, again, you weren't under court  
25 follow --

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Juror No. 979 - Voir Dire

1 A. Right.

2 Q. -- the publicity, so we're not, you know,  
challenging you.

3 I assume -- let me stop there. I assume that since his  
Honor

4 told you that you should not be following any publicity  
about

5 the case, you've conducted yourself accordingly.

6 A. Yes.

7 Q. Okay. So let's talk about only what happened  
before you

8 were summoned as a juror --

9 A. Okay.

10 Q. -- when you were free to read --

11 A. Right.

12 Q. -- or watch whatever you wanted. Tell me what you  
remember

13 about the McVeigh case, if you could. What sticks in  
your

14 mind?

15 A. What sticks in my mind? I suppose the parts that  
stick in

16 my mind were the film of him walking out of, I would  
assume the

17 jailhouse or courthouse the first time. That tape was  
played

18 over and over and over again in the news. I remember  
-- what

19 really sticks out? I remember there being a lot of  
discussion

20 and comparing to O. J. Simpson trial about how this  
would be

the 21 conducted; and of course, there was a good deal about

22 sentencing.

about 23 Q. What do you recall, if anything, about the comments

24 the comparison between the McVeigh trial and the  
Simpson trial?

25 A. Well, that there would be speculation that it would  
be

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Juror No. 979 - Voir Dire

sell 1 something that was strung out and used once again to

2 media. Whether there was an actual connection between,  
you

3 know, the length of the case and the involvement of  
media, I

4 don't know.

5 Q. Do you -- I'm sorry. Go ahead.

6 A. But I remember that there being some speculation as  
to

7 whether it would be as lengthy.

8 Q. And do you recall what actually happened, how long  
the

9 McVeigh case was?

10 A. It was a relatively short trial considering the  
magnitude.

J. 11 Q. And did you -- do you have any views about the O.



12 Simpson case?  
13 A. Sure.  
14 Q. Kind of a broad question.  
15 A. Sure.  
16 Q. Let's start with the process. What did you think  
about the  
17 trial process in the O. J. Simpson case? You looked at  
Judge  
18 Matsch. He wasn't the judge, so you can say honestly  
what you  
19 think about it.  
20 A. I know that. No, I'm sorry. I was thinking -- the  
reason  
21 I looked at him is because I was thinking about what he  
22 explained to me a little while ago. My initial  
reaction was to  
23 say, you know, I thought it went on way too long. The  
reason I  
24 looked at his Honor because as he was saying to me,  
when you  
25 have a case that's of that magnitude, the court does  
what it

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Juror No. 979 - Voir Dire

1 can to treat each person fairly. And so -- and so I  
guess my  
2 reaction has changed a little bit in terms of, you know  
-- I

3 guess it had to be that long, although I didn't feel  
like it  
4 was really long, so . . .

5 Q. So that time, you were not thrilled with how long  
it was  
6 taking.

7 A. Mostly indifferent, I think.

8 Q. Did you have an opinion as to the verdict, whether  
9 Mr. Simpson was guilty or not?

10 A. You know, I remember discussing it with friends and  
I  
11 remember specifically telling people that, you know, he  
was  
12 found innocent and that's what we have to presume and  
that's  
13 what the -- that's what the evidence showed. And I  
know that  
14 there are a lot of folks who say, Hey, he was guilty,  
of  
15 course, he was. But I know in my own heart I can't say  
of  
16 course he was, because that's the way it came out.

17 Q. So you respect the jury process; that it's the 12  
jurors  
18 that sit in that box and hear the evidence?

19 A. I try to, yes.

20 Q. Going back to the McVeigh case, you had told his  
Honor that  
21 you thought sometimes there is a lot of money spent in  
the  
22 system.

23 A. Yes.

24 Q. Did you see any news reports on the costs of the  
defense of

25 Mr. McVeigh?

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Juror No. 979 - Voir Dire

1 A. Not that I recall.

2 Q. And did you have any opinions about that due to the  
length

3 of the trial or the speculation about the comparisons  
between

4 the O. J. Simpson case and the McVeigh case?

5 A. Just that it was a speedier process.

6 Q. Now, you told us that you heard a lot of commentary  
about

7 the penalty phase or the sentencing of Mr. McVeigh. Is  
that

8 right? What do you recall hearing?

9 A. I recall hearing that there was a possibility that  
he could

10 be sentenced to die, and he was.

11 Q. And how did you feel about that? Did you agree  
with that?

12 A. I don't know if I do or not. That's -- that was  
the

13 outcome. I don't know if I agree with that or not.

14 Q. What is your personal opinion? I'm not asking you  
about --

15 I realize you're saying the jury makes that ultimate  
decision,  
16 but I'm asking you for just your personal opinion.  
17 A. My personal opinion? I'm not sure how I feel about  
it.  
18 Q. When you heard about the trial and the sentencing,  
did it  
19 make you think about your views on the death penalty?  
20 A. Yes, it did.  
21 Q. And what did you think about at that time?  
22 A. Well, I mean, that there are two parts to it, where  
there  
23 have to be penalties so that people can see those  
possibly as  
24 deterrents from committing crimes. And people get  
punished for  
25 committing crimes.

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Juror No. 979 - Voir Dire

1 The other part of it is that we're talking  
about a  
2 person, and this is a person who will -- he is a person  
who  
3 will die; and there -- I have a degree of empathy for  
that  
4 person personally.  
5 Q. Do you believe that the death penalty can be a  
deterrent?

you're 6 You said people should be held accountable. I assume  
7 talking about accountability, responsibility for the  
8 consequences of your actions.

9 A. You know, I'm unsure about that. I've talked to  
people who 10 say they don't believe it has been. I've heard things  
on the 11 radio, speakers who say that we don't believe it that  
it's a 12 deterrent, that it will keep people from committing  
crimes. I 13 personally do. I mean, if I were -- I personally think  
that it 14 would be, I guess.

15 Q. Well, let's turn to your views on the death penalty  
--

16 A. Okay.  
17 Q. -- if we could for a minute. You understand that  
or it

18 sounds like from listening to you that you have thought  
about 19 this issue for a while but especially over the last  
month once 20 you answered this questionnaire; is that true?

21 A. Yes, that's correct.  
22 Q. And would you say your views about the death  
penalty are

23 based on your own personal morality, your religion, or  
what 24 would you say they're based on?

not 25 A. I guess they're based upon my own morality. It's

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Juror No. 979 – Voir Dire

morality, the 1 really a religious thing for me. It's just my

personal 2 morality, I suppose I tend to see people on a real

3 level.

ever 4 Q. And you understand here that we're -- no one would

if you 5 force you to do anything or sit in judgment of someone

6 are not comfortable or if you can't do that? That's --

7 A. Of course.

you 8 Q. If you don't feel like you're able to do that. But

being? 9 said that you always have empathy for another human

10 A. To a certain degree, sure, I do.

selected 11 Q. Did you understand from his Honor that if you were

be a 12 to participate in a trial where the death penalty could

found 13 possible punishment and you and your fellow jurors

do that 14 someone was guilty -- because obviously, you'd have to

would have 15 before you can get to the penalty phase -- that you

16 to make a decision, a personal decision on whether it  
was moral

17 to take someone's life?

18 A. At the sentencing phase?

19 Q. That it comes down to a moral judgment.

20 A. I understood that, yes.

21 Q. And do you believe that you could ever make a moral  
22 judgment to take someone's life?

23 A. I suppose when you put it that way -- I don't know.  
I'm

24 uncomfortable with the way that you phrased that  
because I'm

25 not so sure that it would be me taking someone's life.

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Juror No. 979 - Voir Dire

1 Obviously, were I to be a juror, were there to be a  
guilty

2 verdict, then obviously, I would have had a hand in it,  
but I

3 mean, it's not something that I would have done  
personally.

4 And again, the way that I understand the  
process is

5 that I have to leave my emotions out of the evidence  
part until

6 we get to the sentencing and at that point; as his  
Honor said,

7 that I needed to be willing to be open-minded and to

discuss.

8 And that part, I can do. However, at this moment, I  
don't

9 know -- can't speculate how I would feel at that point,  
so I'm

10 not so sure I could answer the question.

11 Q. Okay. Well, you understand at this point, we're  
not

12 talking about emotion; we're talking about morality.  
And his

13 Honor has said it is a moral judgment. I mean, he'll  
give you

14 the outlines of the law and you'll hear lots of  
evidence, but

15 it comes down to making a moral judgment.

16 A. Right.

17 Q. There is no formula. You know, there is nothing  
that's

18 going to tell you this is the right decision, this is  
the wrong

19 decision; and you will hear that it -- that word. It's  
not

20 emotion, it's not sympathy, it's not empathy; it's a  
moral

21 judgment. And what I'm asking you is can you make that  
moral

22 judgment, not can you consider it. I understand you  
can

23 consider it. You're a spiritual guy. You can consider  
lots of

24 options. That's really not the ultimate question.  
It's can



25 you make a moral decision about someone else's life.

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Juror No. 979 - Voir Dire

1 VOIR DIRE EXAMINATION

2 BY THE COURT:

3 Q. I think there is some confusion, perhaps. You're  
not being  
4 asked to make a moral judgment about the law.

5 A. Right.

6 Q. And here, we're talking about something different  
between  
7 your responses about what you think the law should be  
--

8 A. Right.

9 Q. -- and what the law is.

10 I believe what you're being asked is as the  
law

11 considers it, recognizing the process that I've  
explained to

12 you, the options that the jury has and the factors,  
aggravating

13 and mitigating, can you make a judgment that has a  
strong moral

14 component within that context?

15 A. Thank you for phrasing it that way. Yes, I can.

16 And I'm sorry: The way that you asked that  
was fine,

17 but I struggled a little bit when you asked me can you

make a

18 moral judgment about someone else's life.

19 VOIR DIRE EXAMINATION

20 BY MS. WILKINSON:

21 Q. And tell me why that's a struggle for you vs. the  
way his

22 Honor asked. What's different about that for you?

23 A. Because there is an element of me not being a  
judge; that I

24 have to look at it as his Honor said, once again not  
just the

25 crime but the person and the circumstances and the  
situation

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Juror No. 979 - Voir Dire

1 and all other sorts of things that are involved. So  
when --

2 can I be open-minded in terms of making a moral  
judgment?

3 Based upon these things, I can be. But can I say I can  
make

4 moral judgments about other people? I might be able  
to,

5 although it may not necessarily be my place.  
Obviously, here

6 it would be, so . . . I don't know if I answered your  
7 question.

8 Q. I think you did. It sounds like you're  
uncomfortable with

9 the judging of a person is what you're saying and  
you're more

10 comfortable -- is that what you're trying to say?

11 THE COURT: I think he's answered the question  
in the

12 way it could best be phrased, not that I phrased it the  
best

13 way it could be phrased; but I think in terms of being  
able to

14 communicate, we've communicated.

15 MS. WILKINSON: Your Honor, if I could pursue  
one

16 additional question from something that you said.

17 THE COURT: All right.

18 BY MS. WILKINSON:

19 Q. When his Honor was talking to you, he said -- and I  
wrote

20 it down because of the way he said it -- you are  
judging a

21 human being; and I think that's why I'm pressing this  
area,

22 because I sense something uncomfortable. And maybe  
it's just

23 that middle ground, and I just want you to explain it  
to me

24 about this job about judging another human being.

25 A. In the capacity of a juror, I believe I could.  
When you

Juror No. 979 – Voir Dire

know, in 1 ask me about the death penalty and say, could you, you  
part -- 2 your set of morals put another person to death, that  
different, 3 that feels uncomfortable to me because that sounds  
So if 4 feels different than having it worded a different way.  
possibly. 5 it's a matter of semantics that I'm getting hung up,

should 6 Q. I don't think it's semantics, and I think maybe I  
We 7 ask you not are you comfortable, but could you do it?  
do that. 8 realize it could be uncomfortable, but it's could you

make a 9 THE COURT: Well, can you do what? Can you  
described at 10 decision as a juror within the construct that I've  
11 some length?

12 JUROR: Yes.

13 BY MS. WILKINSON:

I think 14 Q. On the death penalty is what we're talking about.  
15 you're going back to judging the guilt.

guilt. 16 THE COURT: He isn't going back to judging the

pursued it 17 The man has answered the questions. I believe we've

18 far enough.

19 BY MS. WILKINSON:

20 Q. Let me go back to one other question on the  
publicity, if I

21 could.

22 You told us that you said Timothy McVeigh did  
it and

23 that Terry Nichols may be involved. Do you recall  
answering a

24 question --

25 A. Yes, I do.

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1 Q. When you say Timothy McVeigh did it, what did you  
mean by  
2 that?

3 A. He was tried by a jury of his peers and they found  
him

4 guilty; and so as far as that goes, he did it. That's  
the way

5 the court -- trial came out.

6 Q. And when you're saying Terry Nichols may be  
involved,

7 you're just saying those are the allegations, I take  
it?

8 A. Those are the allegations, and nothing has been  
proven; and

9 he's presumed innocent until otherwise.

if you 10 Q. We also asked you about your opinions on Waco; and  
11 could turn to page 31, Question 133.  
12 A. I'm sorry. Which number?  
13 Q. Page 31, Question 133.  
14 A. Okay, yes.  
it down 15 Q. Do you see that? And you said, let's see -- I have  
innocent 16 that you said these people endangered and killed  
17 children who are too young to make judgments and  
decisions for 18 themselves. See that?  
19 A. On 132, yes.  
20 Q. And can you tell me who you mean by "these people  
21 endangered and killed innocent children"?  
22 A. Yes. Actually -- actually, both parties. I am  
someone who 23 is really an advocate for young people, and there were  
children 24 involved in that incident by the Branch Davidians who  
chose to 25 put children at risk; and I believe those folks knew  
that they

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1 were putting those children at risk, especially after  
they had

2 come into contact with the United States Government.

3 Q. The Branch Davidians put the children at risk? Is  
that

4 what you're saying?

5 A. Well, again, both parties. The Branch Davidians  
did

6 because they made a choice to hold on to those  
children, and

7 they put those children at risk. Those children were  
people

8 who were not able to make decisions for themselves and  
needed

9 to be protected; and I don't believe that they were.

10 The United States Government also had to know  
that

11 they were putting those children at risk; so, yeah, do  
I have

12 strong feelings about that? Absolutely, I do.

13 Q. And who would you assess is at fault in that  
situation?

14 A. Well, I think there are two parts to that question.  
The

15 first part, obviously, the Branch Davidians were  
because

16 they're the ones who put those children at risk in the  
first

17 place.

18 I don't know whether or not the United States  
19 Government made a good choice. I'm not even sure that  
I want

20 to speculate; but nevertheless, those children once  
again were

21 put at risk.

22 Q. Then you're not saying, then, that you hold the  
federal  
23 agents responsible for the deaths of the children, or  
do you,  
24 or you don't know?

25 A. I'm not sure.

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1 MS. WILKINSON: Thank you for answering my  
questions.

2 THE COURT: Mr. Tigar.

3 VOIR DIRE EXAMINATION

4 BY MR. TIGAR:

5 Q. Good morning, sir.

6 A. Good morning.

7 Q. My name is Michael Tigar. I was introduced to you  
out at

8 Jeffco and earlier today. Together with Ron Woods  
here, we

9 were appointed by the United States District Court for  
the

10 Western District of Oklahoma shortly after the charges  
were

11 filed to help out Terry Nichols.

12 A. Yes, sir.

13 Q. And I want to start by asking you about some of the



things

14 that you're interested in reading and watching on  
television,

15 and so on.

16 A. Okay.

17 Q. You said that you watch nature documentaries. Is  
that

18 right?

19 A. Yes, that's correct.

20 Q. Do you watch the PBS "Nature" series?

21 A. Occasionally.

22 Q. Okay. Did you remember seeing one about parrots  
and

23 talking birds?

24 A. Not offhand that I recall.

25 Q. Okay. You read Newsweek. Is that right?

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1 A. Yes, sir.

2 Q. You have followed the Newsweek coverage of the  
Oklahoma

3 City case and the McVeigh trial?

4 A. Sir, I read that magazine selectively; and quite  
frankly

5 there are times -- there were times when I elected not  
to read

6 that material. And there are other parts that

interested me

7 more, sometimes I did, sometimes I didn't.

8 Q. So as you sit there today, do you have any opinions  
based

9 on what you read in Newsweek about how this case should  
come

10 out?

11 A. About how it should come out? No, sir.

12 Q. Okay. And you do read a lot; right?

13 A. I do.

14 Q. And keep up with the news?

15 A. Try to.

16 Q. When is the first time you can remember hearing  
about Terry

17 Nichols in the news or seeing his picture on television  
or in

18 the media?

19 A. I think it was fairly shortly after the -- after

20 Mr. McVeigh had been implicated.

21 Q. Okay. This is not a test, by the way.

22 A. It feels like it.

23 Q. No, well -- then I should stand down a little bit,  
because

24 what we're looking at here and what I'm looking at is  
what

25 impressions do you come in here with and whatever they  
are.

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1 They could be, you know, right, wrong, made up, off a  
2 billboard, whatever; and then we get to this question  
of  
3 whatever those impressions are, would they have effect  
on your  
4 service as a juror.

5 A. Well, I'd like to answer that, sir, the same way  
that --

6 I'll answer it this way: I spent a lot of time  
thinking about  
7 the death penalty because I knew that that would be an  
issue  
8 here. I also spent a lot of time thinking about my  
attitude  
9 toward the case and toward Mr. Nichols. And I know  
that as a  
10 juror, I would need to be an impartial juror --

11 Q. Right.

12 A. -- someone who is able to look at the evidence. I  
know  
13 that there are allegations toward Mr. Nichols; but, you  
know,  
14 other than that, I don't really have strong emotions  
one way or  
15 another. I certainly have emotions about what happened  
in  
16 Oklahoma City. I think that was a tragic, horrible  
event; but  
17 I understand that Mr. Nichols is innocent until proven  
guilty,

18 or vice versa, or whatever.

19 Q. All right. Well -- go ahead.

20 A. I believe I'm finished.

21 Q. Okay. So -- and when you say "innocent until," if  
at the

22 end of the case -- a case works like this: The  
Government goes

23 first. They present evidence. We cross-examine every  
one of

24 their witnesses, although we are not obliged to do so.  
We

25 then -- when it's our turn, we put on witnesses. The

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1 Government cross-examines.

2 If at the end of that process the jurors still  
have a

3 reasonable doubt, then they vote not guilty. So it's  
"unless

4 and until."

5 A. Unless and until.

6 Q. Okay. Well, then, given that answer, I won't try  
to pursue

7 this publicity in detail. I'll go on to the next  
thing,

8 because what happened in Oklahoma City was horrible.  
Would you

9 agree with that?

10 A. Yes, sir, I certainly would.

11 Q. And you know there were children killed?

12 A. Yes, sir, I do.

13 Q. And they were in a day-care center.

14 A. Yes, sir.

15 Q. And if you're selected as a juror, in the evidence  
in this  
16 case you will see pictures -- you may see pictures, you  
will  
17 hear witnesses, some whom have sadness, some of whom  
have  
18 anger; and you'll hear their testimony.

19 There may not be any doubt at all about what  
happened:

20 The building was bombed, the children died.

21 Have you thought about how you would look at  
those  
22 children at risk and then in the same case in which  
you're also

23 asked to consider the question: Well, did the  
Government prove

24 beyond a reasonable doubt the charges that it made that  
Terry

25 Nichols is intentionally, knowing responsible for that?

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1 A. I believe I can. I've thought about that, also. I

I know 2 consider myself a fairly intelligent person; and while  
that in 3 that I can have strong emotions about this I realize  
understand 4 the courtroom that those have to be left aside. I  
expected 5 what the responsibility is, and I understand what is  
objective in 6 of jurors, and I understand that you have to be  
could, 7 terms of the evidence presented, so I believe that I  
8 yes.

mentioned 9 Q. And I -- to take this, then, a step further, you  
10 this concept of technicalities.

11 A. Yes.

the 12 Q. About the criminal justice system. Do you think of  
13 presumption of innocence as a technicality?

think 14 A. I'm not sure about what you just said, but I don't  
15 so.

at page 16 Q. Okay. Well -- when you were looking -- if you look  
the 17 22 of your questionnaire, because that's what raised

acquitted on 18 concern, Question 100. You see: "People getting  
19 technicalities"?

20 A. Yes. I remember.

21 Q. Okay. And I know the Judge talked about this; and  
my  
22 question is do you think of the presumption of  
innocence as a  
23 technicality?  
24 A. Of course not, no.  
25 Q. Okay.

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1 A. No.  
2 Q. And then we go on to "way too much money spent,"  
and you  
3 talked about that some; but I want to pursue it a  
little  
4 further. It's no secret that Mr. Nichols has two  
lawyers  
5 sitting here, and at trial you may see other people  
that are  
6 involved in helping him; right? And at trial, you will  
also  
7 see that the Government is represented by more than one  
lawyer  
8 and they have people helping them.  
9 Let me take these things one at a time. When  
a  
10 terrible thing has happened -- and let's don't talk  
about this  
11 case; let's talk about some other situation like the  
Lockerbie

12 situation -- would you think it's spending too much  
money for  
13 government agencies to put a lot of investigators on  
the scene  
14 and try to find out what happened?

15 A. No, but --

16 Q. Did I choose the wrong one?

17 A. Well, no.

18 Q. Go ahead.

19 A. No, there is a connection there, though.

20 No, sir, I think that -- the "way too much  
money"

21 comes up in what seems to be bureaucracy and red tape.  
You

22 know, I look at those things and I think there is too  
much

23 money spent there. I think basketball players make too  
much

24 money; so it's not specifically about a case or about  
lawyers.

25 It's about that it's too bad that that part of American

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1 taxpayers' money has to be spent on that, when I see  
such great

2 need in other parts of our society. That's what --  
really what

3 that's about.



4 Q. So you're not bothered by the fact that under our  
5 constitution, somebody like Mr. Nichols, who can't  
afford a  
6 lawyer, gets appointed lawyers.

7 A. Well, no. I support that.

8 Q. Okay. And in fact, ever since 1790 if there is a  
9 possibility even of a death penalty, he gets more than  
one.

10 That's okay with you?

11 A. Sure.

12 Q. Okay. And similarly, if he wants to challenge the  
13 Government's investigation, it wouldn't bother you to  
see that  
14 he would have court-appointed investigators and other  
helpers  
15 to help him do that?

16 A. No, it wouldn't; but in the back of my mind, I'd be  
17 thinking that it's too bad we have to spend all of our  
money  
18 here and can't be out spending it on our kids.

19 Q. Would you hold that against us?

20 A. Of course not.

21 Q. All right. And then the second part is when you  
talk about  
22 time, the Government -- they go first; and when we  
start  
23 putting on our evidence, we may be several weeks into  
this  
24 process. Is there any risk that you'll be sitting  
there

25 thinking, you know, gosh, this is taking a long time  
and those

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1 people over there are the ones that are making it take  
that

2 long time?

3 A. Well, no. We did say that back there; but I don't  
think I

4 would, no.

5 Q. So you wouldn't hold that against us, either --

6 A. No.

7 Q. -- that we're going to put on a full defense?

8 A. No.

9 Q. You understand why I would be concerned, given your  
answers

10 to the questions.

11 A. Yes, I do.

12 Q. Now, you mentioned that you've had -- thought a  
great deal

13 about guns and the regulations concerning guns --

14 A. Yes.

15 Q. -- is that right? If in this case you were to hear  
16 testimony that involved people who make their living  
going to

17 gun shows, these kinds that are advertised on  
billboards and

18 selling guns and military surplus; that is to say,  
people who  
19 are in that culture that you may have read about --  
20 A. Yes.  
21 Q. -- given your attitudes, would you be able to judge  
the  
22 believability of those people and their actions without  
regard  
23 to your own views about whether that's a very good  
business to  
24 be in at all?  
25 A. Well, I think I would really be indifferent to  
those folks.

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1 I mean, people who are involved in that sort of thing,  
that's  
2 their -- that's perhaps their hobby or their interest.  
I may  
3 not agree with it, but that doesn't make them good,  
bad, or  
4 otherwise.  
5 Q. Now, just one more question about publicity. You  
answered  
6 a question about what about Mr. McVeigh or his trial  
sticks in  
7 your mind. Is there anything about Mr. Nichols that  
sticks in  
8 your mind?

9 A. The thing that sticks most is over at Jeffco, was  
it, that  
10 when I walked into the room and when you introduced  
him, seeing  
11 him sitting there, standing there -- that sticks out in  
my mind  
12 probably more than any other part so far.

13 Q. And did you have any recollection or memory as you  
saw him  
14 there or as you see him today as to how he first made  
contact  
15 with federal law enforcement?

16 A. I think -- I think -- I think I recall that they  
had gone  
17 to his home.

18 Q. Okay. All right. Again, this is not a test. I  
can't  
19 respond one way or another; but whatever the facts are,  
you'd  
20 wait to hear the evidence?

21 A. Right.

22 Q. Could you turn, please, to page 27. Let's see  
here. Yes.

23 And look at Question 122. You say, "Some beliefs and  
opinions  
24 go far beyond what is accepted as normal by mainstream  
society  
25 and may be harmful to communities."

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1 Now, what were you thinking about there?

2 A. Well, two parts to it. I think that people,  
sometimes  
3 groups of people, adopt a cause and stand behind the  
4 Constitution as a justification for their behavior,  
people who  
5 want to own semiautomatic weapons in their homes; and  
for what  
6 reason, I'm not sure, but they stand behind the  
Constitution  
7 and say, I have a right to bear arms.

8 People who are involved in hate groups, people  
who  
9 make racist comments, actions toward others and say  
that it's  
10 acceptable because it's guaranteed me by our  
constitution --  
11 those sorts of things I see as being on the edge of  
what is  
12 accepted in mainstream America. And while those  
activities are  
13 guaranteed by our constitution, in my own mind, it  
doesn't make  
14 those morally right, ethically right, or safe.

15 Q. And -- and that's the same view basically that's  
expressed  
16 in Question 123, this idea of a guaranteed right which  
can be  
17 maliciously used?

18 A. Yes.

19 Q. Okay. Well, let me take a hypothetical situation  
and ask  
20 how that view, which a lot of people share, might  
affect a case  
21 in which you were a juror. Suppose you were called as  
a juror  
22 in a case of a person who was a member of the Ku Klux  
Klan, who  
23 had a lot of racist books in their house, who had made  
racist  
24 speeches, and so on, and they were charged with the  
arson of a  
25 church attended by African-Americans. Would you in  
your mind

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1 be able to judge that person based on evidence of their  
2 behavior, whether or not they had conducted behavior  
directed  
3 towards the unlawful, clearly unlawful goal of arson --  
all  
4 right -- and yet respect the line that a judge might  
draw for  
5 you between what's protected speech -- even though you  
might  
6 think it's odious, awful -- and what's criminal  
conduct?  
7 A. Yes, I believe I could.  
8 Q. Okay. And when you say "I believe I could," that  
doesn't

that's 9 indicate any hesitancy on your part; you just mean  
doing? 10 what -- that's what you believe yourself capable of  
case in 11 A. Yes, sir. You know, I realize that in any given  
I could 12 the courtroom that were I to be a person on the street,  
probably even 13 have all the emotion that I wanted to have; and  
and 14 in the courtroom, I would feel emotion. But I realize  
be set 15 understand that regardless of the case that it has to  
the 16 aside and that a person has to be judged purely upon  
17 evidence that is admitted.  
consider 18 Q. And the other part of that is whether it's how to  
whether 19 the evidence; that is, what to consider and what not --  
20 it's how to look at the testimony, the believability of  
might give 21 somebody who was an accomplice as to which the judge  
at it, or 22 instructions, this is the way you're supposed to look  
there -- and 23 whether it's the question of punishment, if we get  
to 24 we sure don't concede that we will. Would you be able  
apply 25 listen to the instructions that Judge Matsch gives and

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1     them in the decision-making process?

2     A.   Yes, I could.  And in support of that, in the  
nature of my

3     job, I am always having to look at the line between  
4     subjectivity and objectivity.

5     Q.   Because you're responsible for the well-being of  
those

6     children; right?

7     A.   Because of that and also because when it comes to  
assessing

8     and evaluating, you have to look at the difference  
between

9     subjectivity and objectivity, so -- so I'm able to  
separate at

10    least those.

11    Q.   And it might even happen that a kid who may not be  
very

12    attractive, some other kids says, Well, he pulled my  
hair, and

13    you didn't see it so you've got to look at it  
objectively and

14    decide it?

15    A.   Absolutely.

16    Q.   Happens every day, doesn't it?

17    A.   Yes, it does.

18                   MR. TIGAR:  Thank you very much, sir.



19 THE COURT: We all appreciate the time that  
you have  
20 put into this with us, cooperation with us in answering  
all  
21 these many questions.

22 I will not be able to answer your question of  
when you  
23 will know whether you serve or not. Obviously, I can't  
answer  
24 whether you will serve. We are going through a process  
that  
25 takes a good deal of time, admittedly. And now that  
you've

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1 experienced it, I think you can understand why it takes  
some  
2 time and why we can't project exactly how much time.

3 But I can't even tell you when we'll decide  
who serves  
4 on the jury; so bear with us, if you will. Continue to  
do as  
5 you have been doing, avoiding publicity about the case.  
And in  
6 terms of also the school planning, you'll have to  
anticipate  
7 the possibility that you'll be out of the classroom and  
in the  
8 courtroom.

9 JUROR: Yes, sir.

10 THE COURT: So if you will be patient with us,  
we will  
11 get back to you as soon as we can; and if something  
comes up  
12 and that causes you a change, that causes you to have  
to leave  
13 town or a change in your phone number, anything, let us  
know  
14 immediately by calling in the number we've given you.

15 JUROR: Yes, sir.

16 THE COURT: All right. For now you're  
excused; and  
17 thank you again for your time and efforts.

18 JUROR: Thank you, sir.

19 (Juror out at 11:30 a.m.)

20 THE COURT: We have 948.

21 Good morning. If you'll raise your right  
hand, take  
22 the oath from the clerk, please.

23 (Juror No. 948 affirmed.)

24 THE COURTROOM DEPUTY: Thank you.

25 THE COURT: Please be seated there by the  
microphone;

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1 and be assured you don't have to lean over and talk  
into the

2 microphone. You can make yourself comfortable in that  
chair,  
3 and the microphone will, I think, amplify your voice  
enough for  
4 us to hear.

5 JUROR: Okay.

6 VOIR DIRE EXAMINATION

7 BY THE COURT:

8 Q. And I'm having a little trouble with my voice this  
morning,  
9 so bear with that, too, if you will, please.

10 A. Sure.

11 Q. You recall, of course, receiving a jury summons now  
some  
12 quite a few weeks ago; that your name has come up  
through the  
13 process we use to, by a chance method, call people in  
for jury  
14 service.

15 A. Yes, sir.

16 Q. And that you were notified that you were among  
those being  
17 called in as possibly being a juror in the trial of the  
United  
18 States against Terry Lynn Nichols.

19 A. Yes, sir.

20 Q. And then you answered a short questionnaire; and  
after  
21 that, you got a notice to come out to the Jefferson  
County

22 Fairgrounds, and you answered a much longer  
questionnaire.

23 A. Yes, sir.

24 Q. And when you were out there at the auditorium  
building, I

25 was there and gave some explanation about the matter  
and also

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1 introduced the people who were with me and who are  
participants

2 in the case. And I want to do that again because I  
want you to

3 know who is here with us this morning.

4 We have here at this table immediately in  
front of you

5 Mr. Lawrence Mackey and Ms. Beth Wilkinson. They were

6 introduced to you as lawyers for the Government. They  
are

7 joined now by Mr. Patrick Ryan and Mr. Geoffrey Mearns  
as

8 additional lawyers for the Government.

9 You also were introduced to Mr. Michael Tigar,

10 Mr. Ronald Woods, and Mr. Terry Nichols. Mr. Tigar and

11 Mr. Woods are attorneys for Mr. Nichols.

12 A. Okay.

13 Q. And then I explained to you that the case arises as  
a

Oklahoma 14 result of an explosion in a federal office building in  
of that 15 City on April 19 of 1995, resulting in the destruction  
in it 16 building and injury and loss of life to people who were  
District 17 and that there was then filed in the United States  
charges, 18 Court in Oklahoma City an indictment, statement of  
Terry 19 charging a man named Timothy James McVeigh and also  
not named" 20 Nichols -- and then the indictment says "and persons  
building 21 in the indictment -- with a conspiracy to bomb that  
22 and to kill and injure people in it; that the charges  
summary, they 23 include -- and there are 11--some charges; but in  
and did 24 include charges that the named defendants went ahead  
25 that bombing and that the charges include the murder,

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were in 1 first-degree murder of eight law enforcement agents who  
that the 2 the building and who died in the explosion and then  
guilty to 3 defendants, Mr. McVeigh, Mr. Nichols, pleaded not

4 those charges.

here to  
in  
moved over  
separately and  
heard by  
jury and  
to  
two men.

5 The case then was moved from Oklahoma City  
6 Denver because of a concern about having to ask people  
7 Oklahoma City to serve on a jury when the community was  
8 affected by this event and that after the case got  
9 here, I entered orders that the cases be tried  
10 that the evidence, as it may relate to Mr. McVeigh, be  
11 a jury and get a decision on that evidence from one  
12 then a separate trial for the evidence as it may relate  
13 Mr. Nichols because of differences with respect to the

it  
of the  
penalties that  
heard a  
for a

14 And there has been a trial of the evidence as  
15 relates to Mr. McVeigh. A jury found him guilty on all  
16 charges. And then because of the nature of the  
17 are possible under the statutes involved, the jury  
18 second trial on punishment and made a recommendation  
19 death sentence.

the

20 And then as I explained to you and the others,  
21 outcome of that case and indeed none of the information

that

22 anybody might have about what the evidence was in that  
case or  
23 indeed how the case progressed -- none of that can be  
24 considered now when we're going to go to trial and  
determine  
25 what is the evidence with respect to Mr. Nichols.

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1 I'm sure you remember all these things. I  
only review  
2 it with you so that you can -- you know, we can start  
with sort  
3 of a foundation for what we're going to do here, which  
is to  
4 ask you some more questions.  
5 And we have taken the answers that you gave  
us, made  
6 copies of your questionnaire, provided it to the people  
you see  
7 here in front of you for the limited purpose of what  
we're  
8 doing here of asking you some questions. And they have  
not  
9 shown their copies to anybody else and won't use it for  
any  
10 purpose other than this.  
11 And we are attempting to protect your privacy  
by not

your 12 using your name and even by, you know, arranging for  
having a 13 coming in and out of the courthouse without anybody  
pictures of 14 chance to -- from a TV camera or something to take  
15 you and publish them.

also 16 And as we go through the questioning, we'll  
you; but 17 attempt to avoid things that could readily identify  
public. 18 you do have to understand that what we're doing now is

19 We are in a courtroom, and this is a public proceeding.

20 A. Yes, sir.

have it 21 Q. Now, if I may just turn to your questionnaire. You

a few 22 in front of you, I believe. And I want to just ask you

beginning 23 things to make sure we understand your answers and

in 24 with that you're native to Colorado, having been born

25 Denver.

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1 A. Yes, sir.

including 2 Q. And having lived in the Denver metropolitan area,



3 the suburbs, for all your life to now.

4 A. Yes, sir.

5 Q. And you are married to a person who is retired from  
a

6 career with the Denver Fire Department.

7 A. Correct.

8 Q. And I take it looking at the times here, you were  
married

9 during that career. I mean, you've been married, the  
two of

10 you, for about 42 years.

11 A. Yes, sir.

12 Q. Okay.

13 A. Going on 43.

14 Q. Yes. And you have three grown children. The  
youngest of

15 them is following apparently in his father's footsteps.

16 A. Correct.

17 Q. Also with the Denver Fire Department.

18 A. Correct.

19 Q. And, you know, that leads me to ask you: I take it  
that

20 when on April 19 of 1995 there was a lot obviously of  
newscasts

21 and a lot of pictures about this explosion and the  
rescue work

22 that went on and, of course, fire departments from a  
lot of

23 communities were directly involved in helping trying to  
get

ending up 24 people out of there who were still alive and indeed  
25 removing the remains of people who were killed; and I'm

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some 1 guessing, and I just want to ask you whether you paid  
because 2 particular attention to that, as your husband may have,  
3 of the role of the firefighters.

4 A. Yes, sir.

I'm 5 Q. Did he have any direct contact with any of the --  
rescue teams 6 talking now about your husband -- with any of the  
7 down there?

8 A. No, sir.

watch it 9 Q. Or have anything to do with it at all excepting  
10 like you on television?

11 A. Just watching.

you 12 Q. And I suppose -- and I'm guessing again -- that as  
about what 13 watched together, he may have had some observations

because of 14 they were doing and maybe some explanations for you  
15 his own experience in rescue efforts?

has 16 A. Only that he is one of these who clams up when he  
17 something extremely touching.

with this 18 Q. Well, that's -- you anticipated where I was going  
19 question.

20 A. Yes.

21 Q. Because I'm sure over his many years working as a  
22 firefighter, he's had some very emotional --

23 A. Yes.

do 24 Q. -- tasks and some of the things that he has had to  
25 professionally, very hard to do emotionally.

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1 A. Correct.

didn't 2 Q. And I guess what I hear you saying is generally he  
3 talk to you about it?

4 A. He doesn't talk to me for six days at a time.

5 Q. And sort of working it out himself?

6 A. Correct.

7 Q. And within himself.

8 A. Yeah.

the 9 Q. How about your son? Now, how long has he been with

10 Denver Fire Department?

11 A. I want to say 15 years.

12 He was hurt quite seriously when an airplane  
turned  
13 over on its top and slid down the runway in the snow;  
and he  
14 rescued people for over six hours, laying on his back,  
cutting  
15 them out of the seats in the plane, and picked up a  
baby that  
16 was thrown from the plane.

17 Q. Yes.

18 A. Anyway, in the process of all of this, he injured  
his back  
19 seriously; and they since put him in the dispatch  
office.

20 Q. How long ago was this event involving the plane?

21 A. I'm terrible with --

22 Q. Well, I'm not asking you day and date; but, you  
know, are  
23 we talking about two years ago, five, what?

24 A. I'd say six or seven.

25 Q. Six or seven?

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1 A. Uh-huh.

2 Q. Was this a private plane?

3 A. No, it was a large --

4 Q. Commercial plane?

5 A. Yeah.

6 Q. And was that out at Stapleton?

7 A. Yes, sir.

8 Q. And it was when there was a snowstorm.

9 A. Yes, sir.

10 Q. And, of course, there were people killed.

11 A. Yes, sir.

12 Q. And injured.

13 A. Yes.

14 Q. And you mentioned picking up a baby. Was the baby  
dead?

15 A. No.

16 Q. So -- and do you know anything about what happened  
to that

17 child or any of these other people?

18 A. Have heard nothing since, no. Only that several  
survived.

19 Q. Yeah.

20 A. And several didn't.

21 Q. And some of them perhaps owe their lives to the  
work that

22 your son and others did there.

23 Did he -- you know, does your son have  
somewhat the

24 same practice as your husband when he has been involved  
in an

25 emotionally difficult rescue effort, or does he tell  
you about

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1 it all?

2 A. I think he more has my temperament than Dad's.

3 Q. Share it, sort of let it out.

4 A. Yeah. Except that he's -- he's emotional. He's  
emotional;

5 but he also is a man, which maybe would make it a  
different way

6 that they show their emotions than women do.

7 Q. Okay.

8 A. I don't think I ever saw him cry.

9 Q. But apparently he talked with you some about how he  
felt

10 and what he did while he was doing it and afterwards,  
did he?

11 A. We had a few comments. Yes. Yes.

12 Q. Now, I'm not trying to lead you anywhere, and I  
don't want

13 you to misunderstand this process. Just because I'm  
sitting

14 over here looking authoritatively with a robe and all  
that, I'm

15 not pushing you in any direction.

16 A. Uh-huh.

perhaps 17 Q. I'm simply suggesting some things here to help you  
because we 18 go through this and explain some of these things,  
make a 19 don't want you to feel that you have to sit here and  
I don't 20 speech, so I'm just trying to get some information; but  
you to 21 want you to think I'm asking something and then want  
22 agree with me.  
23 A. Okay.  
asking 24 Q. You just tell me what the facts are; and when we're  
honestly what 25 you your opinions or feelings, you just tell us

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1 they are. There is no right or wrong to any of these  
2 questions, as I explained to you when you got the  
3 questionnaire.  
4 All we want to know is some information and  
some  
5 opinions so that -- to serve in this process, we need  
to be  
6 able, the lawyers and I, to evaluate you as potentially  
a  
7 juror. That's why we're doing this.  
8 A. Okay.

I don't 9 Q. All right. Now, there will probably be evidence --  
It's no 10 know what the evidence is going to be in this case.  
McVeigh 11 secret to you probably that I was the judge in the  
12 trial.

13 A. Correct.

jurors. 14 Q. And, of course, I sat through that trial as did the  
to 15 I made no judgments about it. That was up to the jury  
to try 16 decide the issues; but as I sit here now getting ready  
heard and 17 the case as it relates to Mr. Nichols, none of what I  
But, 18 saw as evidence in that case is going to be in my mind.  
because we 19 of course, that's a lot easier for a judge to do  
time. 20 have to sort of compartmentalize ourselves all the

21 A. Uh-huh.

professionally 22 Q. It may not be as easy for those who are not  
some of 23 trained and experienced in doing it, and so that's why  
24 the questions get asked.

addition 25 But you know that when we were together, in



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about 1 to giving the explanation about the case, I also talked  
2 some principles of the law, points of law.

3 A. Yes.

4 Q. And you served on a jury one time before.

5 A. Yes.

this was 6 Q. Page 26 is where you had a reference to that. And  
7 some trial out in Jefferson County.

8 A. Yes, sir.

9 Q. You live in Jefferson County.

10 A. Yes, sir.

you to 11 Q. And do you -- what you say is it's pretty hard for  
12 remember what it was all about because it's been years  
since.

13 A. Yeah. It was a trivial case.

14 Q. About how long ago was it?

was one 15 A. Oh, I really think the only reason they picked me  
16 married to of the men in the trial was a firefighter and I was

17 one. And maybe he thought I could help his side. I'm  
18 guessing.

some 19 Q. Okay. Yeah. Well, I'm just trying to get from you

years 20 estimate about how long ago it was, whether it was 10

21 ago, 20 years ago, or whatever.

children 22 Maybe you can fix it in terms of how old your  
23 were.

24 A. Yeah. I'm trying to remember.

25 Let's say 15, guessing. It's a guess.

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1 Q. All right. Rough estimate, 15.

civil case. 2 And I'm also -- if I could guess -- it's a

about 3 It was about a contract dispute or some kind of dispute  
4 playing for -- paying for fixing an airplane?

5 A. Something about repairs, I believe, yeah.

hurt 6 Q. And did it have anything to do with anybody getting  
7 or --

8 A. No, sir.

9 Q. -- or a crash or something like that?

10 A. No, sir.

a 11 Q. It's just like if you took your car in and there is  
12 dispute about how much it costs to fix it up.

13 A. Correct.

14 Q. Is that the kind of thing?

15 A. I think so, uh-huh.

mean --  
16 Q. Did -- do you remember how long the trial took, I  
17 the case in presenting it?

18 A. I don't think I was there three days, two days.

jurors  
19 Q. Including the time that you talked with the other  
20 and reached a decision?

21 A. Correct.

a  
22 Q. Do you remember what the decision was? If there is  
23 dollar amount, we're not asking you for that, but which  
side  
24 the jury decided to go with.

wrong.  
25 A. It was against the fireman. They felt he was

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1 Q. And which side was he? I mean the fireman.

if I  
2 A. He was trying to get them to fix this plane again,  
3 understand correctly. It wasn't fixed to his --

4 Q. So he was the one who brought the case.

5 A. Yes.

you got  
6 Q. We call him "plaintiff" in civil cases. Okay. And

7 some instructions from the judge about how to judge the  
8 evidence, and so forth? Do you remember anything like  
that?

9 A. Yes, sir.

10 Q. And then you and others talked about it and you  
decided  
11 against the man who brought the case?

12 A. Yes, sir.

13 Q. So if the -- if he was counting on you as a fellow  
14 firefighter, it didn't work.

15 A. Correct.

16 Q. Because you decided it based on what you heard as  
the  
17 evidence and not letting this fact that there might be  
some  
18 affinity for firefighters get in the way --

19 A. Correct.

20 Q. -- is what happened.

21 A. Correct.

22 Q. Because you understood that was your duty.

23 A. Yes, sir.

24 Q. Now, we're here in a criminal trial. Criminal  
cases are  
25 different from civil cases in many important ways.  
It's the

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has to 1 same in one way, in that the person who brings the case  
way, the 2 prove it and has the burden of proof. So in that same  
the 3 Government through its lawyers brings the case, files  
prove 4 charges. And therefore it's up to the Government to  
5 them.

remember 6 But the burden is different. You probably  
7 hearing something like the preponderance of the  
evidence or the 8 greater weight or more persuasive effect of the  
evidence, 9 something like that, on either side.

because 10 Well, it isn't like that in a criminal case,  
11 in criminal cases we're not talking about money, we're  
talking 12 about the liberty of human beings. And therefore,  
before any 13 person, no matter who that person is or what the crime  
charged 14 might be and in any court -- in what court it is, as  
long as 15 it's in the United States and under the Constitution of  
the 16 United States, the person accused is presumed to be  
innocent. 17 And that means the trial starts, no evidence against  
him; and

admitted 18 nothing can be considered except legal evidence that's  
19 during trial can be considered.

20 And no person charged with a crime has to  
prove 21 anything. They don't have to call witnesses or bring  
in any 22 evidence, and no person charged with a crime has to  
take the 23 witness stand and answer any questions or give any  
and say 24 explanations. A person charged can just remain silent  
proof 25 in effect, all right, prove it, and then challenge the

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called, 1 that's offered, cross-examining the witnesses who are  
admissible, 2 objecting to evidence on the grounds that it's not  
3 arguing the case.

4 You understand those points?

5 A. Yes, sir.

is it 6 Q. And then what we say in criminal cases is not only  
the 7 important to recognize that the Government counsel have  
to 8 burden of proof but also that that burden of proof is

doubt so 9 convince the jury by the evidence beyond a reasonable  
10 that after hearing it all, if the jurors still have a  
11 reasonable doubt about whether the evidence shows that  
the  
12 defendant committed the things that are charged -- and  
the  
13 court instructs in detail what has to be proved -- if  
the jury  
14 then finds that there is a reasonable doubt, they've  
got to  
15 give the benefit of the doubt to the defendant.  
Understand?

16 A. Understand.

I've 17 Q. And not only -- do you have any question about what  
18 talked about?

19 A. No, sir.

it but 20 Q. I have to ask you not only whether you understand  
21 whether you agree with it.

22 A. I do.

require 23 Q. And whether you under oath would be bound by it and  
doubt. 24 that the Government prove the case beyond a reasonable

25 A. I would.

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the  
1 Q. And give Mr. Nichols sitting here the benefit of  
2 presumption that he sits here not guilty.  
3 A. Until they can prove otherwise.  
4 Q. Or unless they can prove otherwise.  
5 A. Yes.  
satisfied  
6 Q. And return a verdict of not guilty if you're not  
7 beyond a reasonable doubt.  
8 A. Correct.  
with me.  
9 Q. Okay. Again, I'm not trying to get you to agree  
10 I'm just asking you some questions. All right?  
11 A. Yes, sir.  
to  
12 Q. Now, I have to ask you some more about your ability  
13 serve, because with the charges of the statutes  
involved in  
14 this case, the jury is involved in the question of  
punishment.  
15 A. Yes, sir.  
about  
16 Q. And that's why we asked you some questions in here  
17 your opinions concerning punishment. Ordinarily, in  
cases that  
18 do not involve the possibility of a death sentence, the  
jury  
19 has nothing to do with punishment, so that what juries  
do is



beyond a 20 come in and hear the evidence and then say proven

reasonable doubt, 21 reasonable doubt, guilty; not proven beyond a  
reasonable doubt,

to the 22 not guilty. And then if the verdict be guilty, it's up

23 judge to decide what to do about it.

24 A. Uh-huh.

person 25 Q. Meaning what sentence to impose on the particular

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doesn't 1 found guilty. Sentencing is an individual thing. It

this is 2 happen automatically: This is the crime found guilty,

3 the sentence. More has to be considered.

jury has 4 So when judges impose sentences, after the

hearing 5 decided and gone home and days later, there is a second

sentencing 6 before the judge. And we usually call that a

7 hearing.

is 8 Now, between those times, a lot of information

circumstances of 9 gathered and submitted to the judge about the

10 the crime, things that go beyond the evidence that was

11 presented at trial, including effects on the community  
or the  
12 people whose life or property was involved in the  
crime, the  
13 victims, and also a lot of information about the  
defendant as  
14 an individual human being.

15           And by that I mean the things that make us all  
16 different from everybody else, how each person is  
really a  
17 unique human being, affected by all the things that  
happen to  
18 us in life, beginning with the early family; continuing  
family  
19 relationships; marriages and divorces; employment  
history; any  
20 educational history; any prior involvement with the  
law;  
21 attitudes and beliefs; and in cases where more than one  
person  
22 was involved in the same crime, something about how  
much this  
23 person was involved compared to another, and so forth.

24           And then the judge at that hearing considers  
all that  
25 and considers the arguments made by lawyers on both  
sides for

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1 the defense and for the prosecution and then says,

well, based

2 on all that I have heard, for this crime this defendant  
should  
3 be sentenced in this way, and it's particular to the  
person.

4 Now, that's the way it is when the sentence  
involves  
5 things like how many years in prison or how big a fine  
or that  
6 kind of thing.

7 And it is different, though, when the issue is  
life or  
8 death. We don't have judges deciding life or death.  
We rely  
9 on the people, the jurors, to decide such questions.

10 And, of course, there are differences in the  
law here.

11 There are some states where there is no death penalty  
available  
12 under the law, and there are states that have a process  
13 involving that decision that doesn't include the jury.

14 But what we're going to be talking about here  
in a  
15 moment is federal law; and this is a Federal Court, so  
federal  
16 law applies. And the jury does make decisions about  
punishment  
17 in cases where there has been murder, killing of other  
people.

18 And, of course, the kinds of cases that get involved  
with this  
19 type of punishment for practical purposes here we can

describe

20 as cases where people are killed as a result of a  
defendant's

21 conduct. Understand?

22 A. Yes, sir.

23 Q. So what we wanted to know from you before you ever  
came in

24 here is something about your opinions about the death  
penalty

25 and about the penalty of life in prison without ever  
being

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1 released. And, you know, that's what we're talking  
about under

2 the federal law. It's not "life but we really mean 15  
years"

3 and then you're out on parole or something like that.  
Under

4 federal sentences, if it's life, that means you die in  
prison.

5 Understood?

6 A. Yes, sir.

7 Q. So you gave us some responses to that, and I am  
turning now

8 and ask you to turn your attention to page 27 -- is  
where there

9 is the preliminary about this and then page 28 is where  
you

10 have given us some answers. If you want to look at 27  
first,  
11 please do so.

12 I mean, all we said there, just to remind you,  
is that  
13 we're not asking you here in this questionnaire about  
what you  
14 know about the death penalty or the law concerning it.  
What  
15 we're just asking you is if you could decide whether  
there  
16 should be a death penalty or a penalty of life in  
prison with  
17 no release, what would your decision be? How would you  
write  
18 the law? Do you understand that's the way we're asking  
you  
19 here?

20 A. Okay.  
21 Q. And you responded, and your response includes --  
it's on  
22 the following page, 29.

23 Now, what I want to ask you first is how much  
you've  
24 thought about the death penalty and life in prison  
without  
25 release and what punishment should be imposed in  
certain kinds

1 of cases before you got these questions.

2 A. Well, I think punishment should fit the crime.

3 Q. Okay. That's one thought you've had. You know,  
this issue

4 of the death penalty is something that people really  
divide on.

5 A. Yes.

6 Q. And we've got people with very strong views on two,  
I

7 suppose, ends of kind of a spectrum or range, where  
there are

8 people who say, It should not be; the law should not  
include

9 the taking of another person's life through the court  
process.

10 There are others who say, Well, if somebody takes a  
life, they

11 forfeit their life and there should be death every time  
there

12 is a killing.

13 Now, I'm just -- just hold on a minute. I'm  
just

14 trying to give you the two, what I think are sort of  
the ends

15 of this; and there is a lot in between. And, of  
course, people

16 can change their minds from one way to another  
depending upon

17 their own attitudes and opinions about what they see  
and hear

18 around them. And, you know, there are states with no  
death

19 penalty, as I've said. And the matter gets debated  
every now  
20 and then in the legislatures. And of course, every  
time that  
21 there has been a death sentence ordered and it's  
carried out,  
22 naturally this issue comes up and gets much discussed,  
and  
23 that's happened here in Colorado recently, you're  
aware.

24 A. Yes.

25 Q. And -- excuse me -- and of course, we're not under  
Colorado

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1 law now, we're under federal law; and this case isn't  
about  
2 Colorado law. But how much have you thought about the  
matter  
3 of the death penalty, let's say, before you came out to  
4 Jefferson County to answer this questionnaire?

5 A. Oh, only my religious beliefs.

6 Q. And tell us a little about that, will you? Your  
religious  
7 beliefs in relationship to the death penalty.

8 A. I just believe it should be up to God, and I  
personally  
9 could not enforce the death penalty. I -- life in  
prison, yes.

10 Q. Well, now we're not talking about your participation in it

11 right now.

12 A. Okay.

13 Q. I want to sort of take this a step at a time. What we're

14 talking about now is what you think the law ought to be, if you

15 could make the law, including, you know, let somebody else do

16 it; but should there be in the court system a punishment that

17 includes putting another person to death for a crime.

18 A. I'm sure in certain cases, yes.

19 Q. Okay. And that's what you said when you answered the

20 questionnaire, isn't it?

21 A. Yes, sir.

22 Q. Now, don't let me put you on the defense. I'm not going to

23 try to argue with you, because we don't -- you know, your views

24 are your views and all we're trying to do is make sure we

25 understand what they are.

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1 After you answered these questions, did you



think some

anybody 2 more about what we asked you about here or talk with

3 about it?

4 A. The comments from family and friends. You get  
their views.

5 Q. Without asking for them; right?

6 A. Correct. Correct.

7 Q. What kind of comments have you heard?

8 A. Just -- well, if I had to choose, you know -- they  
said

9 they would -- they would kill him -- whoever did the  
crime.

10 Q. Well, I mean, you know, there is nothing wrong with  
this.

11 Has somebody said to you, If I were on Terry Nichols's  
jury,

12 I'd put him to death?

13 A. Yeah. I've heard that.

14 Q. And what -- I'm not asking you for names. Have you  
heard

15 it from family members, workers, who?

16 A. Someone -- family member from out of state.

17 Q. Okay. Who learned in some way that maybe you were  
going to

18 get on this jury?

19 A. Called on the jury, correct.

20 Q. And is that a person you've talked to -- I mean,  
you keep

21 in regular communication?

22 A. Probably once a week.

23 Q. So it's a brother or sister?

24 A. Mother-in-law.

25 Q. Mother-in-law. All right. I don't know why I  
laugh about

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1 that. I guess --

2 A. Mother-in-laws are funny.

3 Q. Okay. I guess we have several or a few --

4 So in connection with -- by telephone, is this  
--

5 A. Yes, sir.

6 Q. Regular telephone, you said -- you've been called  
in for

7 jury service and then --

8 A. Can I tell you why it happened?

9 Q. Sure. That's what I'm asking.

10 A. Okay. My husband and I have recently retired, and  
we

11 bought a fifth-wheel trailer; and his father was very  
ill, and

12 they live in Las Vegas. We spent the last three  
winters, six

13 or seven months, in Las Vegas taking care of Mom and  
Dad and

14 having fun.

15 Q. In their home?

16 A. No, no. We took our fifth-wheel trailer --

17 Q. Oh, that's right. Okay.

18 A. -- during the winter months. We have our home  
here, so we

19 had to come back, take care of that. And Grandpa  
passed away a

20 year ago last August; so we took the trailer out and  
took care

21 of Grandma last year, and she was hoping we would come  
back.

22 And when I told her I could not come back this  
winter,

23 she had to know why. I said, "Well, there is a  
possibility

24 I'll be called on this trial." And that's her comment.  
She

25 wants us there.

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1 Q. Okay. So sort of the tone of it also is, You just  
tell the

2 judge --

3 A. Yes, and you'll get off.

4 Q. -- that you think he ought to be put to death and  
you'll

5 get off the jury, and you'll come over and be with me?

6 A. Yes. She's almost 77.

7 Q. I understand. Well, 77 isn't too old.

8 A. No.

9 Q. Well, thank you for that explanation. Saves a lot  
of other

10 questions.

11 A. You're welcome.

12 Q. And anytime you want to come forth with something  
and give

13 it to us as an explanation, feel free.

14 A. Okay.

15 Q. So you didn't consider that any way as something  
for you to

16 follow.

17 Are you and your husband, though, concerned  
about

18 his -- this is his mother?

19 A. Yes.

20 Q. -- about his mother's welfare over there --

21 A. She's fine. She's fine. She's getting --

22 Q. Has your husband said anything like, Get off that  
jury so

23 we can go home tomorrow?

24 A. No, sir.

25 Q. All right. Well, we're getting back to this matter  
of your

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guess  
different  
talking  
about  
person in

1 views of punishment and what you've said here. And I  
2 what I was asking about is whether you have any  
3 answers today as a result of thinking about this or  
4 about this in any way or anything you've read or seen  
5 other matters, including the recent execution of a  
6 Colorado that caused you to make any change.

to -- to

7 A. Just what I said. I think it would be hard for me  
8 give the death penalty.

at this

9 Q. Yeah, we'll come to that. But, you know, I'm still  
10 first question of whether the law should provide for  
11 think your answer here and as I understand your answer  
12 in some cases.

13 A. Correct.

14 Q. All right. Now, can you just expand on that and  
15 what you mean? In what kinds of cases do you think

16 law may provide for the punishment of death, or life in  
17 with no release?

18 A. Maybe if someone murdered someone very close to me,  
I could

19 say yes, this person has to go.  
20 Q. Okay. Because you would see that as some sort of  
personal  
21 vengeance or --  
22 A. Correct.  
23 Q. -- or revenge or anything like that?  
24 A. That's the only way I can look at it. I mean, you  
know,  
25 maybe if I was closer to these people -- and yet I  
think I am

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1 in a way because of being connected with the firemen.  
We see a  
2 lot of that. And maybe you lose some -- you have to  
harden  
3 yourself to it, but I have never been able to. Some  
people  
4 can. I'm extremely emotional. I cry very easily, and  
I have a  
5 lot of children in the family. We have grandchildren.  
We have  
6 two great-grandsons, so we have babies, and they affect  
me  
7 strongly.  
8 Q. When this happened in April of 1995, did you watch  
TV news  
9 and --

10 A. Some. When it got bad, I had to turn it off.  
11 Q. Because you were crying?  
12 A. Yes, sir.  
13 Q. Did it affect your sleep? Did you have nightmares  
about  
14 it?  
15 A. No nightmares. I did cry.  
16 Q. Well, how much of it did you see? I don't mean in  
hours or  
17 minutes, just generally what you saw.  
18 A. Newscasts. I would get a few minutes, you know;  
and if it  
19 got gory, I would turn it off. I had to.  
20 Q. Did your husband watch after you turned it off?  
21 A. No, no. He --  
22 Q. You know, like you left the room and he still  
watched?  
23 A. Uh-uh. No. No, he's -- he's gotten away from the  
fire  
24 department, and I think he's trying very hard to keep  
himself  
25 away from it.

3594

Juror No. 948 - Voir Dire

1 Q. If you're on a jury here, you can't turn off what  
gets put  
2 into evidence.

3 A. I understand that.

4 Q. And if there were pictures and videotapes showing  
the  
5 immediate aftermath, including rescue efforts and so  
forth --

6 A. It would affect me.

7 Q. -- would you be able to watch that?

8 A. I don't know how quiet I would be. I would try.

9 Q. And then you said it would affect you.

10 A. Yes, sir.

11 Q. Tell me what you are saying there. How would it  
affect  
12 you, besides making you cry and sad?

13 A. I just can't stand to see babies hurt. It's very  
hard for  
14 me.

15 Q. And could -- you know, nobody knows exactly what a  
person  
16 can do until they're in a situation and do it.

17 A. Correct.

18 Q. That's how we are. I mean, how can anybody say in  
advance?  
19 But we have to try to anticipate. And certainly, you  
could  
20 anticipate -- it sounds to me like it's something  
you've  
21 already thought about, anticipating what the evidence  
might be.

22 A. Correct.

23 Q. Now, this isn't evidence that would have anything



directly

This 24 to do with whether Mr. Nichols is involved in any way.  
25 would be evidence about what happened.

3595

Juror No. 948 – Voir Dire

1 A. Correct.  
2 Q. And, of course, what happened is a part of what  
normally  
3 has to be proved. But what jurors have to do, what  
people who  
4 make decisions about evidence have to do, is take it in  
steps  
5 and not jump to any conclusions because what happened  
is  
6 horrible or is sad or makes us angry. Those are  
emotional  
7 responses.  
8 And of course, emotion is a part of us; but  
you have  
9 to set aside emotions like anger and sadness in  
deciding  
10 whether other evidence in the case connects up the  
accused  
11 person with the horrible event. And that's what we're  
12 exploring with you, whether your emotions would be such  
that  
13 you couldn't use the discipline to separate the horror  
of what

any 14 happened with the evidence as it may or may not show  
15 connection with the defendant.  
16 A. I would try very hard to be fair.  
not to 17 Q. Well, that's what fairness is. I mean, fairness is  
not have 18 judge a person based on something that the person may  
19 had anything to do with --  
20 A. Correct.  
21 Q. -- just because that was horrible.  
22 A. Yes, sir. I understand.  
That's 23 Q. And people have different abilities in this regard.  
24 why we are talking with a lot of people.  
25 A. Yes.

3596

Juror No. 948 - Voir Dire

if you 1 Q. And, you know, you have to assess with us whether,  
it that 2 saw this kind of evidence, you would be so affected by  
sort of 3 it would be in your mind throughout the whole trial and  
4 color everything else.  
anything 5 A. I guess that's possible. Never, ever been through  
6 like this. I don't know how I would react; only that

when it's

7 on television, if it gets to be too much for me, I turn  
it off.

8 I can get away from it.

9 Q. But you can't do it on a jury.

10 A. I know that.

11 Q. Okay. Well, let me just go through a few more  
questions

12 with you. And I know these are hard questions to  
answer. And

13 again, there is no right or wrong; there is just your  
answers.

14 And it comes down now to what you were talking about, I  
think,

15 before: that you could see the law as being that there  
may be a

16 death penalty --

17 A. Yes, sir.

18 Q. But you're drawing a distinction as to whether you  
could be

19 a part of the process --

20 Now, let me explain the process so that this  
becomes

21 clearer. I have talked about the way judges approach

22 sentencing as an individual decision and how, of  
course, the

23 first thing is that judges have to follow the law and  
sentence

24 according to it. And there are some limits on what a  
judge can

25 do on sentencing. He can't just say, you know, Out of

my own

3597

Juror No. 948 – Voir Dire

1 general notions of things, this is how I'm going to  
sentence.

2 There are limits, guidelines.

3 And so are there guidelines in respect to jury  
4 sentencing. And here's what happens in the event of a  
guilty

5 verdict: Now, this matter of sentencing and punishment  
has

6 nothing to do with whether a jury reaches a verdict of  
guilty

7 or not guilty. For that purpose, you consider only the  
8 evidence. Understood?

9 A. Okay.

10 Q. And punishment doesn't come into it. Jurors, when  
they're

11 talking about does the evidence show guilt beyond a  
reasonable

12 doubt, may not talk about, Well, what will happen if we  
find

13 him guilty? That's out of bounds. And if the jury has  
a

14 reasonable doubt, they have to find him not guilty and  
not

15 speculate about what might happen.

16 On the other hand, if the jury decides the  
evidence

17 does persuade them beyond a reasonable doubt, the  
verdict is  
18 guilty, as we've already discussed. And in a case of  
this  
19 type, it's not over for the jury. They go on in having  
to  
20 decide punishment, because as I've said, the kinds of  
21 punishment we're talking about here, the law doesn't  
say judges  
22 decide that. This is where the people decide, the  
people as  
23 represented by the 12 juries -- jurors.

24 But before the jury can make a decision,  
they've got  
25 to hear a lot more than what they heard at the trial,  
because

3598

Juror No. 948 - Voir Dire

1 now, the issue is not whether the defendant did it, you  
know.

2 And by "did it," I mean whether the evidence shows the  
3 defendant committed the crime.

4 Now the question is having decided that he did  
it,

5 what do we do about him. And so the individual human  
being

6 being sentenced is now a subject of the second hearing.  
And,

7 of course, the crime is, too. And so the government

lawyers

8 bring in witnesses and evidence dealing with the  
circumstances

9 of the crime, what happened to people and anything else  
that

10 could relate to considering the nature of the criminal  
conduct.

11 And the defense comes in with a lot of information  
about the

12 defendant as an individual human being, just as I've  
talked

13 about with respect to a judge wanting to know these  
things.

14 So there would be -- and I don't know what  
will happen

15 here, of course. We don't know that there would ever  
be a

16 guilty verdict. The presumption is not.

17 And, of course, I don't know what the evidence  
will

18 be; and so if there were to be a guilty verdict in a  
punishment

19 trial, I have no idea what that will be, except we  
can't talk

20 about specifics and we can't talk about this case; we  
can only

21 talk about general concepts and the categories of  
things. And

22 the categories of things would include factors that --  
or

23 information all about the defendant's background, his  
life

24 history, the full story and including these things

about

25 marriages, divorces, early years, work history,  
attitudes,

3599

Juror No. 948 - Voir Dire

1 beliefs, opinions as expressed, and so forth, because  
the issue

2 then becomes should this defendant for this crime be  
put to

3 death, or put in prison until he dies. Understand?

4 A. Yes, sir.

5 Q. And at the end of this second trial or hearing, the  
court,

6 the judge, outlines for the jury what it has heard,  
sort of

7 summarizes it and says, Well, now, what we have heard  
here

8 during these days of second trial is these things that  
suggest

9 that death is the deserved punishment for this person  
and

10 these, you can consider as aggravating factors. And  
then there

11 are these things that you've heard that suggest that  
death is

12 not deserved for this crime -- might be for some other  
person,

13 but not for this person, considering him as an  
individual human

14 being, called mitigating factors; then, in the end,

suggest

and 15 some questions so the jury may analyze the aggravating  
the 16 mitigating factors and help them think it through. But  
anything 17 instructions don't include any formula or equation or  
because 18 like add the numbers and subtract. Nothing like that,  
has a 19 it's human judgment that is involved, a judgment that  
response to 20 strong moral sense to it. But is also a reasoned  
of reason 21 everything that has been heard, so it's a combination  
22 and judgment.

23 Do you follow what I'm trying to say?

24 A. Yes, sir.

25 Q. And then we have to ask the jury, well, what is the

3600

Juror No. 948 - Voir Dire

think, has 1 punishment? And the jury, as I've already said, I  
remaining -- 2 the choices of life in prison -- all your life  
the 3 death, or something less than that and turn it back to  
4 judge to decide. Those are the choices.  
5 A. Okay.



6 Q. Do you understand that?

7 A. I do, sir.

8 Q. Any question about what I reviewed with you in  
terms of the

9 process?

10 A. No, sir.

11 Q. So with that explanation and with your own views in  
mind

12 that you've expressed about a concern about your  
ability to

13 participate, I have to ask you now, can you under those

14 circumstances make a decision about whether a person  
should be

15 punished with life imprisonment or death or something  
else and

16 give a full consideration to all that you've heard both  
with

17 respect to the crime and with respect to the person?

18 A. Would that make me as bad as the person that  
committed the

19 crime if I had to say they had to die?

20 Q. Well, that's a question for you to have to answer.  
I can't

21 answer it. Obviously, what I am talking about is a  
process in

22 which you as a citizen come in here and join with other

23 citizens and discuss with them their views of the case;  
but in

24 the end, you have to make an individual decision. I  
mean, each

25 juror has to decide this question, life or death.

3601

Juror No. 948 - Voir Dire

1 A. I would do my best.

2 Q. And you know that's -- we're just searching for  
what your

3 best is. And I think all I'm trying to ask you is  
would you

4 automatically turn out the possibility of a death  
sentence and

5 say that can't be, or would you include it. You know,  
some

6 people might look at it that way, just as some people  
might say

7 I'm not going to consider anything but death; I don't  
want to

8 hear about all this stuff about this individual --

9 A. It would --

10 Q. -- I'm satisfied hearing about the crime. That's  
the other

11 side of sort of the extremes.

12 A. Yes.

13 Q. And then there are the people who can say it's a  
very

14 serious question, a very difficult question, and I'm  
going to

15 decide it now on the basis of everything that I've  
heard.

16 A. That, I would do.

17 Q. Okay.

18 THE COURT: Well, we're going to take a break  
before

19 asking counsel to ask you some questions. You  
understand they

20 have the chance to. This is a fairness process, and  
it's only

21 fair that they get to explore some of these same things  
with

22 you. Bear with us a little while longer. We'll get  
there; and

23 we're going to take an hour and a quarter, our usual  
lunch

24 break, and then you'll be back in and answer some more

25 questions.

3602

1 Bear with us, if you will.

2 JUROR: I will.

3 THE COURT: Okay. You're excused for now.  
We'll have

4 you back in here in an hour and a quarter.

5 JUROR: Okay. Thank you.

6 (Juror out at 12:25 p.m.)

7 THE COURT: Which, I think, will be 1:40. Is  
that --

8 okay. Recess.

9 (Recess at 12:25 p.m.)

10 \* \* \* \* \*

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11 REPORTER'S CERTIFICATE

12 I certify that the foregoing is a correct  
transcript from

Dated 13 the record of proceedings in the above-entitled matter.

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

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Paul Zuckerman

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