

13 PROCEEDINGS

14 (Reconvened at 1:40 p.m.)

15 THE COURT: Please be seated.

16 All right. Let's continue.

17 (Juror No. 948 was recalled to the stand.)

18 THE COURT: Please be seated again, and we're
ready
19 for questions from counsel.

20 Mr. Mearns, you have questions?

21 MR. MEARNS: I do. Thank you.

22 THE COURT: On behalf of the Government.

23 MR. MEARNS: I do. Thank you.

24 VOIR DIRE EXAMINATION

25 BY MR. MEARNS:

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Juror No. 948 - Voir Dire

1 Q. Good afternoon, ma'am.

2 A. Hello.

3 Q. As the Court told you before we broke for lunch, my
name is

4 Geof Mearns, and I'm one of the lawyers for the
Government who

5 will be presenting evidence for the Government in this
case,

6 our evidence in this case. I think we all appreciate
that

7 answering the questions on the questionnaire,
particularly

8 answering the Court's questions this morning was
difficult for

9 you, so if you would just bear with me a little bit --

10 A. Sure.

11 Q. -- I have just a few more that I'd like to ask.

12 You told us a little bit on the questionnaire
and

13 again this morning about your husband's career as a --
in the

14 fire department.

15 A. Yes, sir.

16 Q. And that your youngest son is also a firefighter;
right?

17 A. Correct.

18 Q. Did your husband encourage him to become a
firefighter?

19 A. Yes, sir.

20 Q. What was your view about your son becoming a
firefighter

21 like your husband?

22 A. I was very proud of that.

23 Q. Recognizing that -- how -- having seen your husband
deal

24 with some of the, I guess, difficult situations of
being a

25 firefighter, the emotional situations, how did you feel
about

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1 your son also being put in that position?

2 A. It doesn't happen often. I don't think I was
subjected to

3 it until my husband was on the force about -- maybe ten
years.

4 And it was -- it was very hard for me to not have him
relate to

5 me when something extremely sad happened. I wanted him
to be

6 able to talk to me about it, and he couldn't. So I
just had to

7 learn to stay away from him until he could.

8 Q. I think you told us this morning that your son has
a little

9 bit more of your temperament than your husband's
temperament?

10 A. Yes.

11 Q. And I think you shared with us that you consider
yourself

12 to be an emotional person?

13 A. Very.

14 Q. That you have strong emotional reactions to things?

15 A. I do.

16 Q. And that unlike your husband, you express your
emotions

17 outwardly, is that fair --

18 A. Yes.

but --
page 3,
a young

19 Q. On the questionnaire, which I think you have there,
20 and you may need to refer to it. I don't know. On
21 Question 11, it asks you whether or not a child died at
22 age, a child of a close friend or family member.
23 A. Yes.
24 Q. When was that event?
25 A. This is a nephew who was in the Vietnam War and was

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The
crib
born
before he
know if
just very
one with
this was

1 subjected to Agent Orange. He has had three children.
2 first one died of what they thought at that time was
3 death. None of us know for sure. The second child was
4 with severe heart problems, had open-heart surgery
5 was three. And the third one is very small. I don't
6 he will be a dwarf. You know, I mean, he's -- he's
7 small. And that was the baby we lost, was the first
8 crib death, and it was just less than a month old; and
9 after he came back from the Vietnam War.

some of 10 Q. I see. The Court has told you a little bit about
trial. 11 the evidence that -- that may be introduced at this

12 A. Yes.

it. Do 13 Q. And asked you some questions about your reaction to

you've just 14 you think the death of this child, the child that

15 described, the child of your nephew, is that what --

16 A. Yes.

the 17 Q. Would that affect your ability to -- to deal with

introduced 18 evidence, the somewhat graphic evidence that may be

19 at this trial?

you 20 A. There was nothing graphic with this baby. I mean,

would be 21 know, he was very normal. I guess I can't say that I

22 able to know how I will react until I see the evidence.

in 23 Q. Okay. You told the Court this morning that -- that

you'd 24 relation to dealing objectively with the evidence that

given 25 try very hard. How would you personally be able to --

1 the fact that, as you say, you couldn't turn the
television
2 off, how would you be able to put aside the emotional
reaction
3 to that evidence and deal with the charges objectively
and
4 fairly? How would you be able to separate those two?
5 A. I guess I don't know until I'm put in that
position. I
6 don't know how I will react.
7 Q. Finally, I'd like to ask you a couple of questions
about
8 possible punishment in this case; and the Court asked
you some
9 questions, and I'd just like to follow up briefly. On
the
10 questionnaire -- and if you would turn to it, I think
it's page
11 28. You indicated in -- in Question B that -- "What is
your
12 view of whether the -- the penalty of death should ever
be
13 imposed?"
14 You said, "Yes, in some cases."
15 A. I stated it that particular way saying that I think
I would
16 have to see the evidence. Maybe it would be if someone
very
17 close to me or -- I don't know. Maybe I would -- maybe
it
18 would be revenge if I had a close family member who had
been

19 murdered. I would think this person deserved that
punishment.

20 Q. And you're talking only in a case -- only in a
murder case,

21 that is -- where the defendant was charged and
convicted of

22 having taken another -- another person's life?

23 A. I think so, yes.

24 Q. Down there at the bottom in Question D, again,
questions

25 about the punishment of death. You wrote, "I don't
know if I

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1 could cause anyone's death." And I believe you said in
2 response to one of the Court's questions this morning
that you

3 believe that there was a religious component to -- to
your

4 views of the death penalty?

5 A. It makes me feel like -- like I'm committing a
crime if I

6 would sentence someone to death. Like I'm doing what
they did.

7 Q. And is that because of -- of particular moral or
religious

8 views that you have about the -- the penalty of death?

9 A. I believe so. Yeah. I believe this is God's
position.

10 Q. Do you consider yourself a religious or a spiritual
person?

11 A. I do.

12 Q. Have you ever shared your -- your views that you've
shared

13 with us today, your views of capital punishment with
friends or

14 family members?

15 A. Not much. I keep them pretty much to myself.

16 Q. Do you think if you were selected as a juror and if
we got

17 to the penalty phase -- because, as the Court has
explained,

18 there are two stages in the trial. There's the stage
to

19 determine whether or not the Government has proven the

20 defendant guilty beyond a reasonable doubt and that we
only get

21 to this question of punishment if the jury has
determined, yes,

22 the defendant is guilty. Okay. You understood that?

23 A. Yes. Yes.

24 Q. Okay. If you were selected as juror and if we got
to that

25 second phase, do you believe that it would violate your
own

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1 religious or spiritual beliefs for you to impose a

penalty of

2 death on another human being?

3 A. Possibly. Yes.

4 Q. You say "possibly." I'm -- I'd just like for you
--

5 A. I'm just saying on this case, now you're talking
about this

6 case.

7 Q. I'm talking generally.

8 A. Generally.

9 Q. In a case in which you were a juror in which the
defendant

10 was convicted of murder and you were seated as a juror.

11 A. If -- if it was a -- someone that I knew, a close
friend

12 of -- they wouldn't put me on the jury. I wouldn't be
put in

13 that position.

14 Q. You recognize that. If you had some relationship
to either

15 the defendant or the victim or even a relative of the
victim,

16 you could not be seated as a juror?

17 A. Correct.

18 Q. You recognize that. If you were a juror then in a
case, in

19 an actual murder case?

20 A. I would try very hard to weigh all the evidence and
make a

21 fair judgment.

22 Q. But would you be able to impose the penalty of
death or
23 would that violate your own personal religious or moral
24 beliefs?

25 THE COURT: Well, when you say "impose the
penalty,"

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1 she --
2 You may be confused by what that means. I
think what
3 you're being asked is to participate in the jury
process and
4 make your decision as a member of the jury. I mean,
you don't
5 have to carry out the penalty. That's obvious.

6 JUROR: Someone else carries out the penalty.

7 THE COURT: Yes.

8 JUROR: But I have to decide, along with the
rest of
9 the jury.

10 THE COURT: Correct.

11 BY MR. MEARNS:

12 Q. I believe, as the Judge explained this -- this
morning,
13 it's -- you have an opportunity to listen to all the
evidence.

14 You understand that?

15 A. Yes.

16 Q. Okay. And you could do that?

17 A. Yes.

18 Q. Okay. And you have an opportunity then to
deliberate with

19 your fellow jurors about that.

20 A. Yes.

21 Q. But do you understand that at the end, it comes
down to

22 each individual juror's own views as to the appropriate

23 punishment? Did you understand the Court to explain
that?

24 A. Yes. Yes. I probably -- at that point, I probably
could

25 not impose a death sentence.

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1 MR. MEARNS: Thank you, ma'am.

2 THE COURT: Mr. Woods, do you have questions?

3 MR. WOODS: Yes, your Honor. Thank you.

4 VOIR DIRE EXAMINATION

5 BY MR. WOODS:

6 Q. Good afternoon.

7 A. Hello.

8 Q. As the Judge introduced me this morning, my name is

Ron

9 Woods. Along with Mike Tigar, we were appointed by the
10 district judge over in Oklahoma City to represent Terry
11 Nichols, who the Government charged as being
responsible for
12 the bombing two-and-a-half years ago in May '95.

13 Is Mr. Nichols working at any disadvantage
with you as
14 a juror because he couldn't afford to hire his own
lawyer and

15 the court had to appoint lawyers to represent him?

16 A. No, sir.

17 Q. You would not hold that against him in any way?

18 A. No, sir.

19 Q. Okay. Now, we have to go last; and as a result,
most of

20 the questions have been asked, so I'm not going to
cover a lot

21 of the same ground that has already been covered. I do
want to

22 make sure that you understand that because there is all
this

23 conversation about the penalty stage of the trial, Mr.
Tigar

24 and Mr. Nichols and I are not conceding that we're
going to get

25 to that stage of the trial. The Government's got a
theory

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1 about Mr. Nichols' being responsible for the crime. We
2 disagree with that theory and we're going to challenge
it, and
3 so we're not conceding that we'll get to the punishment
stage
4 of the crime. I hope you understand that.

5 A. Yes, sir.

6 Q. That this is the only time we're able to talk to
you about
7 penalty phase in the event we get there. We couldn't
stop it
8 at that time and bring people back out and then say,
well, what
9 do you feel about the various ranges of punishment?

10 A. Uh-huh.

11 Q. So with that in mind, I -- I want to touch just on
a couple
12 of things. On page 25, page 1 -- Question 113, there's
a
13 question there that asks, "Would you tend to believe
the
14 testimony of a state or federal law enforcement
officer?"

15 And you checked off "More than most
witnesses."

16 It's on page 25, Question 113. And did you
see what
17 the options were there? "As much as any other witness"
or
18 "Less than most other witnesses," and you checked "More

than

19 most witnesses." Can you give me a little explanation
of why

20 you would credit their testimony more than another
witness?

21 A. Only we -- probably that we have always been taught
that

22 they should be a little better than the average person,
and I

23 don't -- I don't know why I feel that way.

24 Q. Okay. By "better," what do you mean by that?

25 A. Well, I mean, they've been through the law and
studied the

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1 law, and they should know more than most of us. I -- I
don't

2 know if that would make them any more honest than the
rest of

3 us.

4 Q. That was the question. Does it make them more
honest as a

5 witness. Say that there's a citizen that comes off the
street

6 who works in a store, he says he saw something, and a
law

7 enforcement officer gets on the witness stand and says,
well, I

8 saw something. Are you going to be in a position where
you

person 9 would always believe the law enforcement officer over a

10 who worked in a store?

any of 11 A. I think you've changed my mind on that. I think --

12 us --

anything. 13 Q. Okay. Now -- I'm not here to change your mind on

14 I'm just trying to elicit your true feelings.

15 A. Probably as much as any other witness.

words in 16 Q. Okay. Okay. And again, I'm not trying to put

there's 17 your mouth or change your opinion. As the Judge said,

answers 18 no right or wrong answers, only your true -- truthful

then make a 19 about what you think and feel; and that way, we can

20 determination on getting a fair jury.

21 A. Okay.

not 22 Q. So as long as we're under that understanding, I'm

23 trying to --

24 A. Sure.

25 Q. -- get you to change your mind on anything.

when I
questions
little

1 A. I probably didn't think that through very clearly
2 was answering. I think at that point in the large
3 here --

4 Q. There were a lot of questions and you're under a
5 time limit there -- to get through it.

6 A. Yes.

7 Q. Had -- when you came out there that day, September
the
8 17th, and we all met there that day, you knew it was
for the
9 Terry Nichols case?

10 A. I did.

11 Q. Because the summons told you that that's what it
was. And
12 you had known that Mr. McVeigh had already been
convicted and
13 sentenced to death by the time you got there?

14 A. Yes, sir.

15 Q. Did you anticipate that there would be some
questions
16 concerning the death penalty?

17 A. I had no idea what the questions would be.

18 Q. Okay. Had you thought about the death penalty
before that
19 day to any extent?

20 A. No, sir.

21 Q. Had you followed any cases in the news where the

death

22 penalty was an issue that you might have talked over
with your

23 husband or your in-laws or anybody?

24 A. No, sir.

25 Q. Did you ever follow the Davis case, the Gary Davis
case?

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1 A. I seen --

2 Q. When it happened and then up into the execution?

3 A. Just this last -- well, you know, years ago, we
knew what

4 he had done.

5 Q. Okay.

6 A. And then it kind of leaves the -- the news.

7 Q. Right.

8 A. And you don't hear anything more about it for 10 or
11

9 years.

10 Q. When it happened years ago -- and I'm not from this
area,

11 so I'm not familiar with what the news was when it
happened --

12 when the verdict came out, did you disagree with the
verdict at

13 that time?

14 A. I thought the crime was horrendous.

15 Q. Yes, ma'am.

16 A. And the fact that his children were there -- or the
17 children of the girl --

18 Q. Yes, ma'am.

19 A. -- made me very sad.

20 Q. Yes, ma'am.

21 A. And I know that they go through a lot of appeals,
and a lot

22 of times, these people never die even if they are
supposed to.

23 And some people have to make these decisions, but I --
I don't

24 think I could.

25 Q. Okay. Did you feel that that jury that made that
decision

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1 did the right thing?

2 A. There are a lot of people who felt that they did.

3 Q. Okay. Do you feel that they committed a crime by
voting on

4 the death penalty?

5 A. I don't know how they feel about it. This is the
way I

6 feel about it.

7 Q. Yes, ma'am. Okay.

8 A. Yeah.

9 Q. And then on the McVeigh verdict, you followed that
in the
10 news or at least you saw in the news where Mr. McVeigh
was
11 convicted of this crime involving the bombing of the
Oklahoma
12 City federal building.

13 A. Yes, sir.

14 Q. And the killing of the children and the federal
agents.

15 A. Yes, sir.

16 Q. Did you disagree with that verdict of death?

17 A. No. I'm just glad I didn't have to make the
decision.

18 Q. Right. Well, as the Judge said, there are no
volunteers,
19 nobody, you know, holds up their hand and walks in off
the
20 street and asks to sit on these juries.

21 A. Correct.

22 Q. The way the process works -- and you understand
because
23 your name got called -- there's a selection of people
from the
24 community, and it's part of the citizen's duty that
they get
25 called in and questioned as to serving on a jury. So
it's not

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1 a comfortable thing. It's not something that people
want to do
2 or volunteer to do.
3 A. That's right.
4 Q. Okay. And the Judge went through the process with
you
5 about how we go through the initial process of guilt or
6 innocence. And then he told you in the event and only
in the
7 event that you find the person guilty of premeditated,
8 deliberate murder of a number of individuals, then --
then do
9 you get to the penalty stage.
10 MR. MACKEY: Judge, objection.
11 THE COURT: Overruled.
12 BY MR. WOODS:
13 Q. And as he advised you, the process in Federal Court
that
14 jurors must follow if they're on the jury, if they're
in that
15 stage -- and keeping in mind they found the person
guilty
16 already of the crime -- if they are in that stage, then
a
17 second hearing is held where the jury receives more
18 information, more evidence from the Government, which
is the

19 aggravating circumstances that they want to offer into
20 evidence, showing why a penalty should be one way, and
then the
21 defense -- if we're in that hearing, the defense will
then
22 offer into evidence the mitigating circumstances. And
as the
23 Court said, the only requirement is that the jury be
able to
24 consider and give effect to all that evidence; that is,
not
25 keep a closed mind as to one side or the other, but be
able to

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1 listen to and consider.
2 And as he told you, there's no automatic death
3 penalty. There's no crime that says if you're on a
jury, you
4 have to give the death penalty for this offense. It's
merely
5 you have to keep an open mind. And as I understood
your
6 answers to the Court, you advised the Judge that yes,
you could
7 take part in that process, you could keep an open mind,
and you
8 could listen to the evidence from both sides.
9 A. I would certainly try, sir.

is, you 10 Q. Okay. And you could give effect to that fact; that
you felt 11 could listen to it and weigh it; and if it's something
ability, 12 was important and relative to your decision-making
13 that you would give effect to it; is that correct?

14 A. Yes, sir.

about your 15 Q. And that's what the Judge was asking initially
going 16 ability to do that. And you understand that you're not
You 17 to be required to give a verdict one way or the other.
punishment 18 don't have to say, I have -- when you go into the
death 19 stage, there's no requirement you've got to give the
mind as 20 penalty. You merely have to consider it, keep an open
21 to that. And can you do that, following the Judge's
22 instructions?

23 A. I would certainly try, sir.

look 24 Q. Okay. If you were selected on this jury, can you
give you 25 Terry Nichols in the eye and say, Mr. Nichols, I will

1 a fair trial?

2 A. I would sure try, sir.

3 MR. WOODS: All right. Thank you very much
for your
4 time. We appreciate your spending the day with us
here.

5 JUROR: You're welcome.

6 VOIR DIRE EXAMINATION

7 BY THE COURT:

8 Q. The -- this matter of your role in a sentencing
decision,
9 if there were to be one, is confusing. And there have
been a
10 lot of questions asked here. I asked some, the
Government's
11 lawyer, defense counsel have asked, as well. And I
guess I'm
12 not clear on your answer, because you've talked about
13 considering, hearing, and so forth. You've also talked
about
14 you have a concern about your beliefs interfering with
your
15 ability to make a decision. That's where the confusion
in my
16 mind is now. So I just -- can you explain now, in your
own
17 words instead of answering a question about it, your
ability to
18 sit on a jury that has that question.

19 A. I would try to be as fair as I possibly could,
listening to

20 both sides. When it came to the sentencing portion --
21 Q. Yes.
22 A. -- if it was severe as they say, I could probably
give a
23 life sentence very easily. A death sentence, I could
not.
24 Q. Well, you could not easily or you could not do it
at all?
25 That's the uncertainty I have. I don't think anybody
is

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1 suggesting that the question is easy.
2 A. Correct. Correct.
3 Q. And, you know, we're not trying to put words in
your mouth.
4 And I think you're struggling yourself.
5 A. I am. I think in my heart --
6 Q. In your own mind --
7 A. In my heart, I could -- I would say no, I could not
8 sentence another human to die. And I don't -- I don't
know why
9 except that I think I'm taking God's place. Should I
have to
10 do that?
11 THE COURT: All right. Well, we can't answer
your
12 question that you're going to have here at the end.

It's just

13 are you going to serve, because we have to sort of sort
it out.

14 JUROR: I understand.

15 THE COURT: And that'll take us some time, and
we'll

16 be talking with additional people. And so please go
from here

17 with the understanding that you will be called back to
serve,

18 so continue to do as I asked you to do when we parted
the last

19 time that you were questioned in the written questions:
Be

20 careful about the things that you read, see, and hear;
and

21 also, please avoid discussion of the matter with all
other

22 persons, including your family.

23 JUROR: Okay.

24 THE COURT: And your mother-in-law.

25 JUROR: Especially.

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1 THE COURT: Well, I wouldn't say especially,
but -- so

2 you're excused for now, and we'll get back in touch
with you.

3 JUROR: Thank you.

I'm 4 THE COURT: 932. Is that -- yeah. No. 347.
5 sorry. Good afternoon.
6 JUROR: Good afternoon.
hand and 7 THE COURT: Would you please raise your right
8 take the oath from the clerk.
9 (Juror No. 347 affirmed.)
10 THE CLERK: Thank you.
11 THE COURT: Please be seated there in the
chair by the
12 microphone. And you're not going to have to lean over
and talk
13 into the microphone. It'll get your voice if you're
anywhere
14 close.
15 JUROR: Thank you.
16 VOIR DIRE EXAMINATION
17 BY THE COURT:
18 Q. You recall, of course, that you got a summons weeks
back,
19 notifying you that your name had come up through our
chance
20 selection process as a person called for jury duty in
21 connection with the trial of the case of the United
States
22 against Terry Lynn Nichols?
23 A. I do.
24 Q. And you responded to that, as we asked you to, with

a short

got a 25 questionnaire, giving us your answers. And then you

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1 notice to come out to the fairgrounds in Jefferson
County, the

2 auditorium building, at which time I was there and met
with you

3 and other members of the jury panel.

4 A. Correct. Uh-huh. Correct.

5 Q. And I introduced people who were there with me, and
they

6 are with me again; so I want to introduce them again so
you

7 know who is with us this afternoon.

8 Beginning with Mr. Lawrence Mackey, at this
first

9 table, and Ms. Beth Wilkinson. You recall I introduced
them as

10 lawyers for the Government in this case. And now they
are

11 joined by Mr. Patrick Ryan, who is next to Ms.
Wilkinson, and

12 Mr. Geoffrey Mearns next to Mr. Ryan, as additional
lawyers for

13 the Government.

14 I introduced also Mr. Michael Tigar and Mr.
Ronald

15 Woods, attorneys for Terry Nichols. Mr. Nichols was
with us as

16 well.

17 And then I explained some things about the
case and

18 handed out -- or you had in front of you a long
questionnaire;

19 and we asked you to fill that out, and so you did. And
we now

20 have taken your answers, as I told you we would, given
copies

21 to the people who are here in this process who have
just been

22 introduced so that they would have them, and to me.
And we've

23 read them. And if you can believe it, we have more
questions,

24 but most of them are by way of some follow-up to what
you've

25 explained to us and then some things that -- that
relate to the

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1 case and trial and the processes of it. So please bear
with us

2 in responding to these.

3 And the first thing I need to do is sort of
review

4 with you what I told the jury panel out there so that
we

All 5 clearly have in mind some fundamentals about it all.
6 right?
7 A. Okay.
remember 8 Q. And this is not to suggest that I don't think you
9 from a month ago, but it is important that on the
record, as we 10 say, we establish a certain foundation of
understanding,
11 beginning with my explanation of the background of the
case,
12 how in Oklahoma City, Oklahoma, on April the 19th of
1995, an
13 explosion destroyed a federal office building, people
were
14 killed and injured in the explosion; that later, there
was an
15 indictment, formal charges filed in Oklahoma City by
lawyers
16 for the Government, alleging that a man named Timothy
James
17 McVeigh and Terry Nichols -- and then the indictment
says "and
18 other persons not named" -- were in a conspiracy, an
agreement,
19 a planning to bomb that building and to kill and injure
people
20 in it.
21 And the indictment goes on in additional
counts or
22 charges to allege that the defendants carried out such
a plan

23 and did, indeed, bomb the building and resulting in
deaths of
24 people and injuries to other people and also alleging
eight
25 charges or eight counts of first-degree murder of law

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1 enforcement agents of the national government who were
in the
2 building and died in the explosion; and that to these
charges,
3 the defendants, Mr. Nichols and Mr. McVeigh, entered
pleas of
4 not guilty, thereby creating the issues to be tried;
and that
5 the case was moved from Oklahoma City here to Denver
because of
6 a concern about having people from the community where
this
7 happened sit on a jury.

8 And so the case came here, and then I entered
an order
9 that separated the defendants for trial and said,
essentially,
10 it would not be fair to either of them to go to trial
together
11 and in front of the same jury because of expected
differences
12 in the evidence as it relates to each of the
defendants.

13 Accordingly, the cases were separated, just as
if they
14 were two separate cases, although the offenses charged
are the
15 same. And there was a trial here of the evidence as it
related
16 to Mr. McVeigh. A jury heard that evidence, returned a
verdict
17 of guilty. The jury then heard more evidence as, we
will
18 discuss, a jury is required to do in such circumstances
on the
19 issue of punishment. And after hearing the evidence at
a
20 second trial on that issue, that jury returned a
recommendation

21 of the death sentence. And these things weren't new to
you; I
22 mean, I assume you had heard them already from other
sources.

23 A. Correct.

24 Q. Then I explained that the trial of Mr. McVeigh and
the
25 outcome cannot be considered now in the trial of Mr.
Nichols.

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1 We start over and beginning, of course, with jury
selection;

2 and that the -- if -- if anyone involved in the trial

were to

3 accept that something about the McVeigh trial means
anything in

4 the Nichols trial, that would violate the very reason

for the

5 separate trial orders. And I take it you understand
that?

6 A. I understand that.

7 Q. So to whatever extent you may have heard, read, or
seen

8 things about that trial, you'd have to put them out of
your

9 mind if you were to serve in this case. You
understand?

10 A. I understand that.

11 Q. And then I went through some of the fundamental
points

12 about the law under the Constitution of the United
States that

13 is applicable in all criminal cases. No matter what
the

14 charges are, who the defendant is, it's the same law
because

15 it's fundamental fairness, sometimes referred to as due
process

16 of law. And the Constitution requires that due process
be

17 applied in each case. And what that means in practical
terms

18 is that a defendant, no matter who that person is, is
presumed

19 to be innocent of the charges made against him. That

20 presumption carries throughout the trial and entitles
that
21 person to an acquittal, a verdict of not guilty, unless
jurors,
22 considering only the evidence as presented at the
trial,
23 following the law as given in the instructions of the
Court,
24 determines that the charges are proved and proved
beyond a
25 reasonable doubt. You've heard of these points before,
I

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1 trust?
2 A. I have.
3 Q. And the -- you know, Mr. Nichols is -- as any other
4 defendant, should have the benefit of that principle.
So you
5 understand that he's sitting with us this afternoon,
presumed
6 to be innocent of these charges?
7 A. I do.
8 Q. Now, no defendant, including Mr. Nichols, has any
burden or
9 duty to prove anything. It's not up to a defendant at
his
10 trial to prove himself not guilty. The Government,
through its

11 lawyers, have the burden of proof. So it is up to them
to call
12 the witnesses and produce the evidence upon which they
rely to
13 support these charges, and the defendant doesn't have
to call
14 any witnesses and the defendant does not have to take
the
15 stand, the witness stand and answer any questions from
anybody
16 and doesn't have to explain anything. Every defendant
has the
17 right to simply remain silent throughout the trial and
18 challenge the case against him by objecting to evidence
and by
19 cross-examining all the witnesses called by the
Government. Do
20 you understand those points?
21 A. I do.
22 Q. And then at the end of the trial, the Court gives
23 instructions about, all right, for these charges, this
is what
24 has to be proved, the elements of the offense, and then
says --
25 asks the jury, well, does the evidence in this case
prove these

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1 things beyond a reasonable doubt. If not, then the
verdict

the 2 must be not guilty. If the proof is sufficient, then
there is 3 verdict is guilty. And what it means then is that if
evidence, the 4 a reasonable doubt after considering all of the
5 doubt must be resolved in favor of the defendant.

6 Now, do you have any question about those
principles?

7 A. I do not.

8 Q. Do you have any disagreement with them?

9 A. No.

10 Q. And are you willing to accept them and follow them
if you 11 were to serve on this jury?

12 A. I am.

13 Q. Now, we took your answers here, as I've said, made
copies, 14 but we know that there's some private things here, at
least I 15 would regard them as private and I think that you
probably do.

16 And we try to respect your privacy all we can and
recognizing

17 there's also a public interest in every trial. So
that's why

18 we avoid the use of your name here. We will, in the
course of

19 questioning, try to avoid things which would sort of
pinpoint

20 and identify you. And also, that's why we have these

special

21 arrangements for you to come and go to the courthouse,
so TV

22 cameramen or photographers can't picture you and put
you in the

23 paper or whatever. All right?

24 A. That's correct.

25 Q. And if there is at any time in the course of the

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1 questioning something that you regard as too intrusive,
you

2 just tell us.

3 A. Okay. I will.

4 Q. I wanted to -- excuse me -- just review with you --
sorry

5 about that coughing -- review with you some of the
things that

6 you've told us about you, beginning with your
background

7 from -- you were born and raised in Wisconsin?

8 A. Correct.

9 Q. And grew up in an area that is farming? Farming in
part of

10 Wisconsin?

11 A. Majorly, yes. There is some industry.

12 Q. A good part of Wisconsin is farming, obviously.

13 A. Okay.

14 Q. And as I understand it, your grandfather had a
farm. Your

15 father also was on that farm?

16 A. In his early age, yes.

17 Q. Yeah.

18 A. My father.

19 Q. Was the farm still in the family when you were a
child?

20 A. When I was a child, yes. My grandparents did have
it, and

21 my aunt and uncle ran it for a while thereafter.

22 Q. Being your brother's sister or -- I mean, your
father's

23 brother?

24 A. My father's sister.

25 Q. Sister.

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1 A. Correct.

2 Q. And did you go out and visit on the farm?

3 A. Yes, I did.

4 Q. Vacations and things?

5 A. Yes, I did.

6 Q. What happened to that farm eventually?

7 A. They sold it to a -- a third party.

8 Q. "They" being your grandparents?
9 A. My aunt and uncle, and my grandfather was living at
the
10 time.
11 Q. Okay. And was it a situation where nobody wanted
to carry
12 on the farming --
13 A. Correct.
14 Q. -- activity so -- as opposed to the sale that, you
know --
15 because of financial reasons?
16 A. Right. Right.
17 Q. Okay.
18 A. No. It was they did not farm at that time, and so
it was
19 an idle farm.
20 Q. And do you remember much about the farm?
21 A. Some. They had it until I was probably about -- in
my
22 early teens or so.
23 Q. And when you visited out there, did you do some
farm work?
24 A. Minor. They had some chickens and things like
that.
25 Q. Anything with the crops, like getting out there and
helping

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anything 1 with the harvest or with planting and fertilizing or

2 like that?

3 A. No.

4 Q. Okay. Then you went to the university?

5 A. Correct.

6 Q. Actually, you went to two schools in Wisconsin?

7 A. Right. One is a two-year college of the
university.

8 Q. Yeah. And then over to Madison?

9 A. Correct.

10 Q. And I sort of got the idea you were going in two
different

11 directions at one time with your degrees, studying, but
I don't

12 know why.

13 A. No. It's -- no. It was always business.

14 Q. What course of study did you pursue?

15 A. Business administration.

16 Q. All right. Well, yeah. I'm getting mixed up with
your

17 husband's education.

18 A. Correct.

19 Q. And then you came out here to Colorado about how
long ago

20 here? Was it -- did you -- well, almost 18 years ago?

21 A. Correct.

22 Q. Did you come from Wisconsin?

23 A. Correct.

24 Q. And to the Denver area?

25 A. Right.

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1 Q. And were you married at that time?

2 A. No.

3 Q. It looks like your husband's from the same hometown
as you.

4 A. He is.

5 Q. Did you know him there?

6 A. Yes.

7 Q. And -- but you married out here, I take it?

8 A. Actually, we stayed out here, married in Wisconsin
since

9 all of our families were there.

10 Q. That's where the ceremony was?

11 A. Right. Uh-huh.

12 Q. And you followed your business education with a
business

13 career.

14 A. Correct.

15 Q. And are in that now and it's a banking career?

16 A. Correct.

you
17 Q. And as I understand it, in your present position,
18 consult with business customers of the bank?
19 A. I do.
20 Q. Doing things like financial analysis with them and
21 suggesting courses that their businesses might take and
--
22 A. Correct.
23 Q. And evaluating them for loans and that sort of
thing?
24 A. Correct.
25 Q. Okay. And that's a service offered by the bank,
even if

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1 they don't end up taking loans, I trust?
2 A. Correct.
3 Q. You -- and so I take it in -- in connection with
that, you
4 reviewed a lot of different kinds of businesses.
5 A. I have.
6 Q. Service businesses, product and some -- do you have
7 anything to do with farm loans?
8 A. No.
9 Q. Or ever have in your banking career?
10 A. No.

11 Q. Your husband is in the business of doing some
consulting,

12 also, and sales with contractors.

13 A. Correct.

14 Q. Who are doing both residential and commercial
projects.

15 A. Correct.

16 Q. And I wanted to turn -- I want to turn and will be
asking

17 you, you know -- you've got your questionnaire there.
Asking

18 you to turn to a couple of pages and -- and then ask
you about

19 them. On page 3, at Question 11, you gave us a yes
answer.

20 A. My cousin's child died of SIDS.

21 Q. In the first six months or year of life?

22 A. I believe he was approximately seven or eight
months old.

23 Q. Okay. And then, as I understand it, also, from
what you

24 said on page 21, at Question 96, you have a friend who

25 practices law in Minneapolis?

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1 A. Correct.

2 Q. And she's someone you've known for a number of
years. Do

3 you know what type of practice she has?

formal

4 A. She is in the DA's office. I'm not sure what her
5 title is.

6 Q. She is -- is in the DA's office?

7 A. Correct.

8 Q. And do you know for how long she's been in the
9 prosecutor --

the

10 A. She has been there for approximately ten years in

Madison,

11 Minneapolis area; and prior to that, she was in

also, in

12 Wisconsin, for approximately five to ten years there,
13 the district attorney's office.

14 Q. All right. So her whole career has been with the
15 prosecution?

16 A. Correct.

17 Q. She tries cases?

18 A. I don't believe she tries cases.

19 Q. Have you talked with her about her work at all?

20 A. I did this summer. My girlfriend got married in
21 Minneapolis and talked to her briefly about it.

22 Q. So you were together for the wedding --

23 A. Right.

24 Q. -- festivities?

25 A. Uh-huh.

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1 Q. Did you say anything about any particular cases or
what her

2 experiences have been or --

3 A. No. In fact, we probably talked about the Ramsey
case more

4 than anything else as far as just giving her ideas on
that.

5 Q. She has some ideas --

6 A. Yes.

7 Q. -- about the way she thought the investigation
might be

8 conducted and that sort of thing?

9 A. Uh-huh.

10 Q. Well, we won't ask you -- we won't ask you what she
said.

11 But would it be fair to say that her comments,
in

12 summary, were somewhat critical of what she understood
was

13 happening?

14 A. I believe so.

15 Q. The way the police and prosecutors were at least
reported

16 publicly to be doing things?

17 A. I think she might have been somewhat critical.
Again, she

18 did not have enough of the facts to really evaluate it
19 appropriately.
20 Q. Yes. And I take it she was relying on whatever
news she
21 got back there in Minneapolis.
22 A. Right.
23 Q. Now, we asked your opinion about the criminal
justice
24 system as a whole, very broad question. And the
question is at
25 page 22, No. 100. And you said in addition to the
multiple

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of
1 choice there, where you took the "adequately," you kind
2 watered that down a little by saying, "So-so"?
3 A. Uh-huh.
4 Q. All right. I mean, that's what you said. And you
know
5 you're not on trial for your opinions. We don't judge
your
6 answers here. All we want you to tell us when we ask
for you
7 to explain or to broaden it or something like that,
just tell
8 us what's in your thinking, what your opinions are.
9 A. I think it just -- it just depends on the actual
case. I

10 think some are handled better than others, and so
that's why I

11 put, "I think it's so-so."

12 Q. All right. You're not going to commit yourself too
much?

13 A. No.

14 Q. And of course, it's not like looking at a balance
sheet?

15 A. Right.

16 Q. And being able to look at the net worth?

17 A. Uh-huh.

18 Q. But you have had some experiences in connection
with

19 matters relating to the criminal justice system because
of your

20 work.

21 A. Correct.

22 Q. In part. And also, there -- and I want to just
review

23 these with you a bit.

24 A. Sure.

25 Q. And ask you a little more about them on 22 and 23,

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1 beginning with the first one there relating to a
shoplifter at

2 a retail store. As I understand what you said, you saw

3 whatever was going on and chased this person outside
the store

4 and caught the -- caught them.

5 A. Yes.

6 Q. By yourself?

7 A. Yes.

8 Q. And then what did you do after you caught this
person? I

9 don't know if it was a man or a woman or a young girl
or --

10 A. It was a woman.

11 Q. Okay.

12 A. And -- and just held her until the security people
came.

13 Q. Was there some struggle? Did she try to get away
from you?

14 A. She was running across the parking lot. Yes. I
almost had

15 to tackle her, so . . .

16 Q. Well, then, was there something of a physical
altercation

17 or did she --

18 A. Well, yeah. I mean, I had to grab her arms and
hold her

19 for a period of time.

20 Q. Hold her?

21 A. Yes.

22 Q. About how long?

23 A. 30 seconds. I mean, the security people from the

mall were

24 coming out at the same time.

25 Q. Probably seemed longer than that to you.

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1 A. Yeah.

2 Q. And then the matter went ahead. There was a -- was
there a
3 trial?

4 A. No. There were just charges filed, I believe.

5 Q. And some kind of a plea; and you say here --
"restitution"

6 was the answer. Do you know that from having gone to
court

7 or --

8 A. No. I -- just what was in the paper as far as the
files --

9 it was charged and the store took over after that, so I
--

10 Q. Were you interviewed by police?

11 A. Yes.

12 Q. More than once?

13 A. No.

14 Q. And was the once right after it happened?

15 A. Correct.

16 Q. Okay. Now, the next one relates to the place where
you

17 work, I take it.

18 A. Correct.

19 Q. And -- but here, you're going on the basis of what
20 witnesses told you? Is that right?

21 A. Correct.

22 Q. I mean, you didn't see this happen, did you?

23 A. No.

24 Q. So this is what the witnesses said, and they
reported that

25 this person had some type of weapon. Do you recall
what it

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1 was?

2 A. Well, there were three different cases.

3 Q. That's right. You do say that. Three times.

4 A. Uh-huh.

5 Q. And I guess my -- to go back to my question,
separating

6 what you saw from what you were told, are all three
situations

7 where you were told by others?

8 A. Correct.

9 Q. Now, did you have some responsibility at that time
for

10 making reports or doing something official with these

reports

11 from the witnesses?

12 A. During the -- two of the three -- well, one of the
three

13 incidents, I was acting security officer. The -- for
the bank

14 at that time.

15 Q. So it was part of your job to get these reports.

16 A. Correct. And work with the authorities and with
the FBI in

17 gathering all the evidence.

18 Q. How long ago was that --

19 A. It was --

20 Q. -- or were these events?

21 A. The one where I was a security officer was
approximately,

22 I'd say, seven or eight years ago.

23 Q. And with respect to the others, what was your role?

24 A. Just as a -- as an employee and an officer of the
bank.

25 Q. Okay. Well, at the times that you worked with the
FBI, was

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1 that the time that you were the security officer?

2 A. Correct.

3 Q. So it was part of your function to be sort of the

4 connecting link?

5 A. Correct.

6 Q. Between the bank and the FBI?

7 A. Yes.

8 Q. And were you present when FBI agents interviewed
the people

9 who witnessed the robbery?

10 A. No. They -- they did that individually.

11 Q. And do you know whether, in those interviews --
well, first

12 of all, did the bank have surveillance cameras for
this?

13 A. Yes, it did.

14 Q. And so was there surveillance film?

15 A. Yes.

16 Q. And as security officer, did you have something to
do with

17 that?

18 A. Mostly, we turned it over to the authorities.

19 Q. And then, if you know, were the interviews by the
FBI

20 agents with the bank employees or anybody else who was

21 present -- did those interviews include things like the
showing

22 of photographs to see if they could identify the person
or

23 persons involved?

24 A. Yes.

25 Q. Were you present at any of those?

3642

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1 A. No.

2 Q. So again, you simply know that that process was
followed?

3 A. Correct.

4 Q. And did you have some follow-up interviews with the
persons

5 who were bank employees who were interviewed by the
FBI?

6 A. As far as the situation themselves or --

7 Q. Yeah. I mean, did you interview these people also
after

8 they got interviewed by the FBI?

9 A. Not in depth, no. We have a formal report that we
set them

10 aside to fill out as soon as the incident is over with
so that

11 they can recall whatever they need and so we have the

12 information.

13 Q. Well, apparently, with what you say here, each --
each one

14 of these events resulted in somebody being charged?

15 A. Correct.

16 Q. And convicted?

17 A. Correct.

18 Q. Do you know if any of them went to trial?

19 A. No. I don't know.

20 Q. Do you know anything about that charging process
and plea
21 bargains or any of that?

22 A. No. No.

23 Q. Okay. So you do say, though, that you think there
was
24 restitution ordered or something. Did you have
anything to do
25 with that?

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1 A. I know that there is one that we had received
checks on a

2 monthly basis. And through our police officers, we
found out

3 that they were in prison for the -- for the crimes.

4 Q. Okay. Then, you had another situation involving a
5 different kind of crime.

6 A. Correct.

7 Q. With respect to the bank. And this was an employee
8 embezzling funds, I take it.

9 A. Yes.

10 Q. Now, did you have any direct participation in that
11 investigation and the follow-up?

12 A. No, she was -- I was a department manager for a
period of

13 time when she had started the embezzlement but,
however, had

14 left the department, and so there was another
supervisor and

15 other individuals involved with the research and --

16 Q. Do you know if that matter was also investigated by
the

17 FBI?

18 A. Yes, it was.

19 Q. And how long ago was this, to your recollection?

20 A. I'd say probably eight to ten years ago.

21 Q. And then, there came a time when you were
subpoenaed as a

22 grand jury witness.

23 A. Correct. For an inquiry.

24 Q. And would it be -- my understanding of that is you
simply,

25 on behalf of your bank, produced documents --

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1 A. Correct.

2 Q. -- that were -- that were called for in the
subpoena.

3 A. Correct.

4 Q. Did you have any role beyond that?

5 A. No.

6 Q. So did you -- and then you've been at county courts
from
7 time to time on matters where the same thing, you
showed up,
8 took the witness stand and produced documents?

9 A. Correct.

10 Q. And said yeah, these are the bank's documents?

11 A. Right.

12 Q. Okay. Now, have we -- have we covered your direct
13 experience with law enforcement investigations?

14 A. Yes. I believe so.

15 Q. Okay. And does your assessment of the so-so relate
to your
16 experiences that you've just talked about?

17 A. No. I don't believe so. I think in all the ones
that I've
18 been in firsthand, that they have been handled well
from that
19 standpoint. I think the so-so is a general statement
as far as
20 the total.

21 Q. The kind of thing you read, see, and hear about --

22 A. Correct.

23 Q. -- from the news and so forth?

24 A. Correct.

25 Q. Cases that get reported and --

1 A. Correct.

2 Q. That's what I was trying to separate. Whatever
opinions
3 you may have from your own direct participation in the
cases
4 that we've discussed versus what I guess you've come to
as sort
5 of an observer based on news.

6 A. Right.

7 Q. Okay. Now, I want to -- I want to turn to the
matter of
8 punishment. And here, you recall in going through the
9 questionnaire that you ran into these questions about
penalties
10 of life in prison without the possibility of release
and death
11 and what you thought about those punishments from the
12 standpoint of someone who's asked whether, in making
the law,
13 the law should provide for such punishment. Do you
recall
14 that?

15 A. Yes.

16 Q. And you answered and your answers are on pages 28
and 29.
17 And before that, on the preceding page, you were given
quite a
18 lengthy explanation of why these questions are being

asked. Do

19 you recall all these parts of it?

20 A. Yes, I do.

21 Q. Had you expected questions like this when you
started in on

22 the questionnaire?

23 A. Yes.

24 Q. And why is that?

25 A. Just from what I had heard previously as far as the
McVeigh

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1 trial and -- and the related --

2 Q. Okay.

3 A. -- process.

4 Q. All right. Now, I want to separate out these any
--

5 anything about the law as it is, because I'll talk
about that

6 with you in a few minutes. But what we want to know
from you

7 before discussing the law as it is and the role that
jurors

8 play in federal law where a person has been found
guilty of a

9 killing and therefore the penalties like this come into
the

10 possibility for sentence, we want to know something

about your

11 overall opinions and attitudes, recognizing that the
death
12 penalty is something that is much discussed and debated
with
13 people expressing some very strong and heartfelt views
on the
14 ends, you know, sort of extremes where some people
would always
15 impose the death penalty for any murder or killing,
intentional
16 killing, and some people never would impose the death
penalty
17 and think the law should not do it, should not take a
human
18 life. I mean, those are views you recognize being
within the
19 community. And you may have thought about this issue
some more
20 since you gave these answers.

21 A. I have.

22 Q. And of course, there have been things in the paper
23 unrelated to this case that could generate further
thinking and
24 discussion about it, including the state case in which
a person
25 convicted in the state courts was very recently put to
death.

3647

1 A. Uh-huh.

2 Q. I mean, that probably is something you're well
aware of.

3 A. I am.

4 Q. Now, understanding that, you know, we're not fixing
you
that
have
answers
views.

5 with the answers here as a static thing and recognizing
6 people, after they have been confronted with this, can
7 further thoughts about it, I want you to review your
8 and then tell us if you have any changes or different
9 A. I believe I do from the standpoint previously, I
felt that
10 it was inappropriate to have the death penalty in many
cases.
11 And I do believe that it -- after the recent state
case, that
12 I'm firmly -- that I could not decide to issue the
death
13 penalty to anyone.

14 Q. Now, let's just go through that a little bit.

15 A. Okay.

16 Q. A step at a time. Not arguing with you, not trying
to put
17 you into a position where you say yes to anything, you
know.
18 We're just trying to explore your thinking. As I
understand

the 19 what you've just said, you viewing the Davis -- that's
20 man's name --
21 A. Correct.
about 22 Q. Do you know anything about that trial or anything
23 what was involved in the evidence of that case?
24 A. No, I don't.
25 Q. You don't --

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1 A. I just know about the crime itself.
2 Q. From what was reported recently?
3 A. Correct.
4 Q. So you don't remember --
5 A. I remember some of the -- some of the -- the
searching for 6 Ms. May and that, but I did not follow it after that.
7 Q. And of course, that was some years back?
8 A. Correct.
9 Q. But now in the recent reportage concerning the
case, did 10 you read most of that?
11 A. Some of it.
12 Q. What papers or what sources did you get your
information

13 from?
14 A. Generally, The Denver Post and the Rocky Mountain
News.
15 Q. You read both of them regularly?
16 A. Correct.
17 Q. Avoiding things about this case, I trust?
18 A. Correct.
19 Q. Okay. Now, from what you read, I think what you
said is
20 that you decided that the death penalty is maybe more
21 appropriate than you thought when you wrote these
answers? Is
22 that what you were saying?
23 A. No.
24 Q. I'm sorry. I misunderstood.
25 A. I don't think I -- I could support the death
penalty

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1 personally. I think it -- after -- because of my
religious
2 beliefs, being Catholic, I feel it is wrong to have the
death
3 penalty. And -- and I think people flippantly can go
ahead and
4 say, yes, it's appropriate for people until they have
to be
5 responsible for that; and I think it brought it to

heart as far

6 as the Davis case was concerned that I could not issue
the

7 death penalty to anyone.

8 Q. And you are a practicing Catholic?

9 A. Yes, I am.

10 Q. And are you aware of some of the teachings of the
Church

11 regarding this issue?

12 A. Yes.

13 Q. And what is your understanding of that?

14 A. My understanding that it is wrong in any -- any --
in any

15 circumstance.

16 Q. So that -- is this what you're saying: That if you
17 participated in that process as a juror, following the
law that

18 says this is one of the things you have to consider if
-- if

19 justified by the law and the evidence, you would not be
able to

20 do that?

21 A. Correct.

22 Q. Because it would violate your religious creed?

23 A. Correct.

24 Q. The Church has a doctrine of sin.

25 A. Correct.

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1 Q. And is it a sin?

2 A. I believe it is.

3 Q. Okay. Well, we're not challenging your beliefs and
not

4 putting them on trial.

5 A. Good.

6 Q. Don't -- you know, don't get defensive about it or
-- we're

7 not challenging you at all, but we simply need to know
your

8 views. And the reason that I ask the questions this
way and

9 also asked you these questions is that what happens
under

10 federal law where there is a death penalty for certain
crimes,

11 including the type of crime charged in this case, after
a jury

12 returns a verdict of guilty, if -- I mean, this issue
isn't

13 involved in the sorting out the evidence -- and I take
it you

14 would have no trouble doing that, you can sit on a jury
and

15 decide whether the evidence shows guilt.

16 A. Yes, I believe I could.

17 Q. Because punishment is not an issue then. And
normally,

18 punishment is not an issue for the jury. It's for the
judge,
19 and the judge makes the sentencing decision. Well,
when the
20 question comes to life or death, we don't rely on
judges. We
21 ask jurors to do that, 12 people coming in and then
hearing,
22 after the trial, a second trial on what we call
mitigating and
23 aggravating factors, the things that tend to support
the death
24 penalty, the things that suggest that death is not
deserved for
25 this person because of who he is and what his life has
been and

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1 all these personal characteristics, and then ask the
jury to
2 decide. And the choices in such a case are life in
prison with
3 no possible release, death, or something less, which
goes back
4 to the judge again. And of course, the -- the ultimate
5 question is can you participate in that process and
make a
6 decision, open-minded decision which includes the
possibility
7 of a death sentence?

8 A. No. I don't believe I could.

9 Q. Because of the things you've just expressed.

10 A. Correct.

11 THE COURT: All right. Any questions from
counsel for

12 the Government?

13 MS. WILKINSON: Just a few, your Honor.

14 THE COURT: Okay.

15 VOIR DIRE EXAMINATION

16 BY MS. WILKINSON:

17 Q. Good afternoon.

18 A. Good afternoon.

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

20 one of the prosecutors who will be presenting the
evidence

21 against Mr. Nichols in this case. I just want to ask
you a few

22 questions.

23 And it sounds to me from the way you've
answered his

24 Honor's questions that you're quite firm about your
views on

25 the death penalty. Is that fair to say?

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1 A. I am.

this
2 Q. You've thought about it a lot since you filled out
3 questionnaire?
4 A. Yes, I have.
5 Q. And is it also fair to say that between the
questionnaire
6 and the Davis case, that it's really been prominent in
your
7 mind these past few days?
8 A. Yes. Very much so.
9 Q. I don't want to be too intrusive to your personal
views,
10 but is your view about the death penalty consistent
with your
11 view as to abortion?
12 A. Yes, it is, very much.
13 Q. So you believe in the sanctity of life?
14 A. I do.
15 Q. And would it be fair to say, then, if you were ever
called
16 to serve in the military, that you would either ask to
be a
17 conscientious objector or serve in some kind of
noncombatant
18 capacity?
19 A. I -- I could agree to that, yes.
20 Q. So you wouldn't want to take a life no matter what
the
21 circumstances were?

22 A. Right.

23 Q. Is that fair?

24 A. Correct.

25 MS. WILKINSON: Okay. Thank you very much.

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1 JUROR: All right.

2 THE COURT: Mr. Tigar.

3 MR. TIGAR: Just briefly, your Honor. Thank
you.

4 THE COURT: All right.

5 VOIR DIRE EXAMINATION

6 BY MR. TIGAR:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. We've -- as the Judge said, my name is Michael
Tigar; and

10 together with Ron Woods, the two of us were appointed
by the

11 United States District Court in Oklahoma shortly after
the

12 charges were filed to help out Terry Nichols. And
there are

13 just three very brief areas that I'd like to ask you
about.

14 The first is about the farm that you -- that your
grandparents

a dairy 15 had and then your aunt and uncle, growing up. That was

16 farm?

17 A. Yes, it was.

the 18 Q. And did they -- did you work on the farm some with

19 cattle or dairy cattle?

time I 20 A. Not very much. They had a very small herd by the

21 was --

22 Q. Okay.

wasn't a 23 A. -- born, I guess, as far as that concerned -- it

24 large farm at all.

25 Q. And did the family getting out of the business have

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supports 1 anything to do, as you remember it, with federal price

2 or the federal government or --

3 A. No, not that I'm aware of.

thing I 4 Q. -- anything like that? Okay. Now, the second

in -- 5 wanted to ask you about is on the summons that you sent

me read 6 and I don't think they gave you a copy of that, but let

7 what you said. "I watched much of the television

coverage via

8 satellite from Oklahoma after the bombing."

9 A. Correct.

10 Q. And then you said the same thing on the
questionnaire and

11 listed a -- a lot of -- you read Newsweek and U.S. News
and the

12 newspaper and so on. You really follow the news?

13 A. I do.

14 Q. So you would have seen many of the very graphic
images of

15 the devastation in Oklahoma City; is that fair?

16 A. I did.

17 Q. Okay. And if you were selected to be a juror on
this case,

18 could you look at the question, Did the Government
prove beyond

19 a reasonable doubt that Terry Nichols did the things
they

20 charged him with, without having the emotional impact
of all of

21 this that you've seen in the past and some of which you
may see

22 again overwhelm you?

23 A. That's a tough question, I guess. And just because
of the

24 emphasis of the children involved and -- and I guess
that --

25 that sticks in your mind, so --

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1 Q. I --

2 A. I would hope I could, but--

3 Q. I understand. And of course, the Judge will have
control

4 over what evidence the jury sees, and the Judge will
over and

5 over again talk about the presumption of innocence and
will

6 give instructions as to how the evidence is to be
received and

7 how it's to be considered. So in that context, is it
your --

8 you know, nobody can say for sure. We're not given
that power

9 to predict. You think you could do it? You think you
could

10 follow the instructions and do it fairly?

11 A. I think so.

12 Q. Okay. Now -- now we get -- it's the same area that
others

13 have talked about, and I don't want to dwell on it, but
you

14 understand why we ask these questions about the
process.

15 A. Uh-huh.

16 Q. About your views about punishment. Now, we
certainly don't

17 concede that we're ever going to get there. In fact,

18 Mr. Nichols is presumed innocent, which means that it's
19 presumed that we won't get there.

20 A. I understand.

21 Q. Okay. Under your view -- and I know you answered a
22 question about this just a moment ago -- do you know --
have

23 you looked at the Church's teaching about participation
in war
24 by the faithful?

25 A. No, I haven't directly.

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1 Q. Have you ever heard -- I mean, it's maybe going
back a

2 number of years because it was more in the news a
couple of

3 decades ago. Have you ever heard teaching or -- about
St.

4 Augustine's idea of the just war?

5 A. No.

6 Q. Okay. And have you ever talked to young men who
share your

7 faith about their decision, making a decision what to
do,

8 whether they should register with their draft board and
whether

9 they should go and be involved in military conflict?

10 A. I have, but not extensively.

men,
in the
role, of
in a

11 Q. Okay. Well, are you aware of whether or not young
12 given the fact that there is this gender discrimination
13 process of selecting who -- who -- who has a combatant
14 whether young men of the Catholic faith do participate
15 combatant role in the military?

16 A. Am I aware that they do?

17 Q. Yes. Uh-huh.

18 A. Yes.

understood
You know,
know,
would you
serve as

19 Q. Okay. And -- and I want to make sure that I
20 your answer, were you confronted with that question.
21 suppose we had a military draft and suppose that, you
22 everybody of a certain age was -- was called. How
23 resolve the question whether you would be willing to
24 a -- as a combatant in that situation?

25 A. How would I --

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1 Q. Yes.

2 A. -- or have I been asked that?

you 3 Q. I know you haven't been asked, but how do you think
4 would if you were asked? That's --
5 A. I can't tell you. I haven't been in that
situation.
6 Q. Okay. And well, let me then describe the process
and --
7 and see. And again, I'm not -- not trying to put this
on
8 trial. I just want to -- want to ask about it as
others have.
9 If a jury returns a guilty verdict in a criminal case
in
10 Federal Court, where there is the possibility of a
death
11 penalty, a jury then has to have a whole 'nother trial;
that
12 is, it's not automatic. Under our law, there is no
such thing.
13 The Constitution, indeed, forbids there to be such a
thing as
14 an automatic death penalty, no matter how serious the
crime.
15 And so in the Federal Courts, the way that the Congress
has
16 chosen to do this is that the same jury that heard the
issue is
17 there proof beyond a reasonable doubt then comes back
and the
18 prosecutors present evidence of aggravating
circumstances,
19 things about the crime, maybe about the defendant. The
defense

20 gets to cross-examine those witnesses. Prosecutors
present
21 other information. The defense then has the
opportunity to
22 present mitigating or extenuating evidence which
relates to
23 perhaps the circumstances of the crime, saying such
things as,
24 well, this defendant might not have had the same role
as
25 somebody else because, given this no automatic thing,
even two

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1 people that participated in the same criminal act might
be
2 judged differently; and pursuing that same theme, a --
the
3 defense introduces evidence about this individual as an
4 individual human being, recognizing the uniqueness of
each one
5 of us. And then the defendant's and the Government
lawyers
6 present their arguments. The judge then instructs and
said --
7 and tells the jury what kinds of aggravating evidence
it's
8 proper to consider, how to look at it, what kinds of
mitigating
9 evidence to consider, and then says ultimately, the

decision is

10 for the jurors, a reasoned moral response as the
conscience of

11 the community, the whole community, to this evidence.

12 And at that point, the jurors deliberate. And
if

13 they -- they have three choices. They can unanimously
say, We

14 choose life. They can unanimously say, We believe that
the

15 state should carry out the death penalty as to this
person. Or

16 in default of that agreement, then the matter would go
back to

17 the judge and -- and the judge would impose a sentence
within

18 the range permitted by law.

19 MR. MACKEY: Judge, objection to that.

20 THE COURT: Well, we're not going to debate it
now.

21 I'll accept your interpretation.

22 MR. TIGAR: Again, I want to say that, you
know --

23 THE COURT: What all that means is there is
some

24 uncertainty in the law about what happens if a jury
doesn't

25 make any decision.

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1 BY MR. TIGAR:

2 Q. That's right. And I'm not trying to get anybody
committed

3 here. They thought I was trying to get a commitment.
I'm not.

4 And if it's wrong, believe me, the last word is always
the

5 judge's. You got that right; is that correct?

6 A. I've got that.

7 Q. Okay. Good. No. All right. That's good. And I
suppose

8 from your reading about what happened in other trials
of which

9 he's presided, it's real clear --

10 A. Yes.

11 Q. -- correct? Okay. So as a juror, in that process,
under

12 the guidance of the judge, saying, Look, we're -- would
you be

13 able to listen to all the evidence?

14 A. I --

15 Q. Okay.

16 A. -- would.

17 Q. All right. And then -- then the only question --
and the

18 next question is, under the judge's instructions, you
recognize

19 that you would not be required to vote any particular
way.

20 A. Right.
21 Q. Okay. Not -- not trying to -- and I'm just asking
the
22 question, do you think that at the end of the day, you
could,
23 in a case in which you'd already found someone guilty
of a
24 crime for which the Congress said the death penalty is
a
25 possibility, consider with an open mind this choice,
leaving

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1 open the possibility of these three different
punishments?

2 A. I don't think I could, knowing that the result
could be the
3 death penalty.

4 Q. All right. And -- and I gather you've thought very
deeply
5 about that?

6 A. I have.

7 Q. And that has to do with your own reverence --

8 A. Right.

9 Q. -- for life; right? Because that's what you
believe and
10 have been taught?

11 A. Right.

ask 12 MR. TIGAR: Thank you very much for letting me
13 these questions and for answering them.

14 JUROR: All right.

15 MR. TIGAR: Thank you.

in 16 THE COURT: We all appreciate your cooperation
17 this, and again, repeating that you have not been on
trial 18 here. And that you're not going to know now whether
you will 19 or won't be asked to serve. So we'll have to have you
leave 20 now, and you'll be excused now --

21 JUROR: Okay.

22 THE COURT: -- with the uncertainty about
that, and 23 we'll get back in touch with you.

24 JUROR: Okay.

25 THE COURT: And what we ask of you is to
continue to

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1 be careful to avoid things about the case that appear
anywhere

2 and avoid discussion about the case, including what
you've been

3 through here this afternoon. And wait to hear from us;
and if

4 something happens -- you get called out of town or
something
5 like that, which is always possible -- let us know. We
-- you
6 have the number to call.

7 JUROR: Okay.

8 THE COURT: Thank you. You're excused for
now.

9 I'd like counsel at the bench a moment.

10 (Bench Conference 33B1 is not herein transcribed by
court

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

12

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14

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23

24

25

1 (In open court:)

2 THE COURT: Good afternoon. Will you please
raise

3 your right hand and take the oath from the clerk.

4 (Juror No. 932 affirmed.)

5 THE COURTROOM DEPUTY: Thank you.

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

7 microphone.

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q. And you've been waiting all day, and we appreciate
what we

11 hope is your patience. And of course, you know that
the case

12 that you've been called in on is the case of United
States

13 against Terry Lynn Nichols and that you got a summons a
while

14 back advising you of that and asking you to send back
your

15 responses to a short questionnaire, which indeed you
did. Do

16 you recall that?

17 A. Yes, I do.

18 Q. And in those responses, you included statements

about what

19 it would mean to your business if you were called to
serve on a

20 jury for an extended time; and also, you responded with
respect

21 to some views about a death sentence.

22 A. Yes, I did.

23 Q. And in spite of that, you got notified to come to
the

24 Jefferson County Fairgrounds to answer some more
questions.

25 Now, I just wanted to reassure you that we didn't
overlook your

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1 answers and we didn't ignore you, but we asked you to
come out

2 there and complete a very lengthy questionnaire, and
you did

3 that, as well. And now we've asked you to come in to
respond

4 in a little more detail, perhaps a bit of explanation
on some

5 of your answers, so bear with us.

6 A. Okay.

7 Q. When you were out there at the fairgrounds, I
introduced

8 myself and explained the background of the case and the

9 procedures that we were following and introduced the

other

10 participants, and they're here again, as you would
expect.

11 So I want to reintroduce to you Mr. Lawrence
Mackey

12 here at the first table, Ms. Beth Wilkinson as
attorneys for

13 the Government, who are now joined by Mr. Patrick Ryan
and

14 Mr. Geoffrey Mearns, also attorneys for the Government.

15 Over here, you remember meeting Mr. Michael
Tigar,

16 Mr. Ronald Woods, attorneys for Terry Nichols; and Mr.
Nichols.

17 There are a few other people here who are assisting,
but these

18 are the lawyers and the defendant.

19 And we took your completed questionnaire, made
copies,

20 shared it with them, and we're all recognizing the
privacy

21 interests that concern you. We'll -- I'm sorry -- to

22 accommodate that, we don't call you by name here. We
even

23 arranged for you to come and go to the courthouse so TV
people

24 can't picture you or publicize the fact that you may be
a

25 juror.

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1 And in -- in ask -- asking you some additional
2 questions, your responses, we'll try to be circumspect,
as
3 well; but of course, you are now in a public courtroom,
and
4 this is a public proceeding, you understand. And
you've told
5 us considerably here about your background, your views
and
6 opinions about a number of things, and a good bit about
your
7 history. I want to go right to these things that
concern you
8 because, again, it's not that we disregarded your
answers or
9 didn't believe you or anything like that. It is, of
course,
10 important that we use a process, an orderly process in
jury
11 selection and that chance has a good deal to do with
it. We
12 don't, you know -- we don't put jury service out for
volunteers
13 or say that only the people who are retired or don't
have a job
14 or don't have anything better to do should serve on
juries.
15 Obviously, that would not serve the constitutional
function of
16 the jury, which is to have a cross section of the
community.

to me or 17 But I want to talk with you a little or have you talk
it 18 to us, more, about your business. Again, the nature of
this. 19 might be identifying, so I -- be a little careful about

activity 20 But as I understand it, you're in a business
now. 21 that doesn't have very many people involved in it right

that's 22 A. Correct.
23 Q. And in fact, you're doing pretty much everything
24 necessary to develop the business?
25 A. Most of it, yes.

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1 Q. And you have maybe two other people?
2 A. Four others.
3 Q. Four others now. And you're -- in addition to
looking to 4 this business for your income, you're also an investor
in it? 5 A. No, I'm not.
6 Q. You're investing your time?
7 A. My time, yes.
8 Q. And just tell me a little bit about what you're
doing and

or
that?
9 the nature of the business without giving us the name
10 something that would quickly identify it. Can you do

We own
their own
11 A. What it is basically is we sell paging services.
12 equipment, and we set up companies for paging out of

bit of my
system and
13 offices and things like that. So it demands quite a
14 time each day to deal with the people that use our

because if
So I
15 to make sure that the system is running properly,
16 it's not, you can imagine the -- how the people feel.

the
like that.
17 spend a good portion of my time each and every day on
18 phone, going to see our business partners and people

19 And right now, I'm the only one doing it.

device
20 Q. Now, does this require the people to have a certain
21 that you provide?

22 A. Yes. We set up the service for them.

wearing and
23 Q. Yeah. Which includes whatever device they're

24 includes the communication linkup and --

nation-
25 A. Yes. We provide the service to fulfill their needs

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1 wide or whatever they want done with it.

2 Q. Yeah. And I assume you connect up with some other
3 telecommunications or communications firms?

4 A. Yes. On occasion, we do.

5 Q. Depending upon the range of calls and all that?

6 A. Right. Correct.

7 Q. Are you -- do you have a certain type of customer
base,
8 like doctors or lawyers, things like -- that kind of
thing?

9 A. It's spread all across the spectrum. We have all
sorts of
10 customers.

11 Q. Anybody who wants this kind of service and ready to
pay for
12 it?

13 A. Yes. Plus other companies that buy our service and
sell it
14 to the public.

15 Q. Is your business still in a developmental stage?

16 A. It's more or less. We've only been doing it for
four
17 years.

18 Q. And you know, I don't have any notion about whether
four
19 years is a long time, short time, or what for this kind
of

20 startup.

short
21 A. Well, with the changing technology, it's -- it's a
your
22 period, because you always have to reinvest, to update
23 equipment.

as I
24 Q. And then it also involves a lot of service by you,
25 hear you.

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1 A. Yes. It does.

customers,
2 Q. Including going out and talking to not just the
3 but the other businesses involved?

4 A. Right.

emergency?
5 Q. And then if the thing goes down, that's an

6 A. Big emergency, yes.

7 Q. And you're involved in the response?

might
8 A. Yes. I have to be able to make it to whatever site

he can
9 be down and then convey that information to our tech so
10 tell me what needs to be resolved.

whether
11 Q. Well, I -- you anticipated what I was about to ask,
12 you have the technical expertise, too.

13 A. No, I do not.

14 Q. You rely on another for that?

15 A. Yes.

16 Q. So you know, in your own words, what happens to the
17 business if you're here 9 to 4, four-and-a-half days a
week for
18 several months?

19 A. It would probably go in the tank.

20 Q. And that's what you said before. I mean, that's
what you
21 wrote.

22 A. Yes.

23 Q. The other thing that you explained in the original
24 questionnaire was that you had some views regarding the
death
25 penalty.

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1 A. Yes, I do.

2 Q. Do you remember that -- you've got your long
questionnaire
3 there, but I don't think you have the short one. And
if you'd
4 like, I can -- I can refresh your recollection by
reading to
5 you what you said. Do you want me to do that?

6 A. That would be fine.

7 Q. Okay.

8 "I'm also a Christian and could not in any
situation

9 impose death upon another human being no matter what
the

10 evidence might reveal. Our God will judge all men in
time."

11 Do you remember writing that?

12 A. Yes, I do.

13 Q. Now, I'll be real frank with you because, you know,
that's

14 the only way to be in all this. We hear that sometimes
from

15 people who recognize that that might be a way to get
out of

16 jury service and who for other reasons, like financial
reasons,

17 want to do that. And I'm putting it to you as -- as
direct and

18 blunt as I can, whether your financial hardship problem

19 motivates you in any way in giving us that response.

20 A. I wrote that -- I wrote that response first.

21 Q. Okay. Well, don't take offense that --

22 A. I don't.

23 Q. -- I'm asking that, because I believe in coming
right out

24 with it.

25 You also said some things in here about some
opinions

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1 that you formed with respect to Mr. Nichols and this
case
2 before answering the questionnaire. You had some
opinions.
3 I'm not going to hide from you here. I mean, page 37.
We
4 asked you some views or opinions. You can -- please
turn to
5 it. I -- this has been a month ago that you wrote
these
6 things, so I wouldn't expect you to have them committed
to
7 memory.
8 A. What question?
9 Q. 163.
10 A. I -- yes, I did write that, and I meant it at the
time; and
11 I feel that way now.
12 Q. And, of course, what we are interested in knowing
is people
13 form opinions based on publicity and then come in for
jury
14 service and set those opinions aside and do what juries
have to
15 do, and that's listen to the evidence and decide on the
basis
16 of that without these opinions interfering.

17 A. Well, I guess I should have -- or could have
elaborated

18 more on that.

19 Q. Go ahead.

20 A. I don't know as much about this as I should,
probably. Or

21 maybe it's better I don't. But when I say
"association," I --

22 I don't mean that I feel he was -- you know, that he
may or may

23 not have known in any sense of the word that Mr.
McVeigh was

24 going to do this.

25 Q. I see. So you are not identifying guilt by
association as

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1 something you would rely on.

2 A. Not the extent that it goes with Mr. McVeigh and
what he

3 did. I'm sure that maybe he's involved in some way.
To the

4 extent, I don't know. But --

5 Q. You made a pretty strong statement here that you
said, "I

6 think that just by his association --"

7 A. "-- he's guilty."

8 Q. Yeah.

9 A. But I don't know to what extent he's guilty.

10 Q. I see.

11 A. I didn't elaborate enough, I guess.

12 Q. Well, I interpreted it differently, you know. I

13 interpreted what you were saying as just by
association, he

14 must be guilty; and what I hear you saying now is just
by

15 association, he may be guilty. About all you know
about is

16 some association.

17 A. Right.

18 Q. Okay. Well, you know how things can get
misinterpreted,

19 and that's why we follow up these questionnaires with
some

20 additional questions and answers here in court.

21 And, you know, what's involved in the trial of
a

22 case -- and I explained this at some length when I
explained

23 the background of the case, how it arises as a result
of this

24 explosion in Oklahoma City on April the 19th of 1995,
the

25 charges filed there in Oklahoma City, the case got
moved to

1 Colorado, separate trials ordered because there was an
2 indictment that charged Timothy James McVeigh as -- and
Terry
3 Lynn Nichols and, as the indictment says, "other
persons not
4 named," with bombing a building in Oklahoma City,
conspiring to
5 do it, doing it, and the murder of eight law
enforcement
6 agents. And that's what the case is all about. And
then I
7 ordered separate trials so Mr. McVeigh would come to
trial and
8 have the evidence presented with respect to him and the
jury
9 decide his case separately from a trial of Mr. Nichols;
that it
10 wouldn't be fair to join them together in the same
trial. And
11 there has been the trial of Timothy McVeigh, and you're
aware
12 of the outcome. The jury found him guilty and then at
a
13 separate trial, dealing with the sentencing question,
decided
14 to recommend a sentence of death.
15 And as I said over there in Jefferson County,
the
16 outcomes there, nothing that happened there can be
considered
17 here. To do so would violate the whole idea of
separate

18 trials.

19 And what a jury has to do now with respect to
20 Mr. Nichols is come in with open minds, listen to the
evidence
21 that is presented, presume Mr. Nichols to be not guilty
or
22 innocent of these charges, which the Constitution
commands that
23 presumption, and then hear all of the evidence in the
case,
24 recognizing that the defendant here, just as any other
25 defendant, is not required to prove anything or to
explain

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Juror No. 932 - Voir Dire

1 anything at trial, can simply remain silent and
challenge the
2 Government's evidence and that that can't be held
against him.
3 And then at the end of the trial, the jury
decides,
4 you know, based on instructions from the Court on the
law as to
5 what has to be proved, has the government proved it
beyond a
6 reasonable doubt, or not, giving to the defendant the
benefit
7 of any reasonable doubt. That's the law, and I'm sure
you
8 heard those points before.

9 A. Yes, I have.

10 Q. And are you in agreement with them?

11 A. I'm in agreement with -- with it, yes. But I could
never
12 change my opinion on the death penalty.

13 Q. Well, I was separating that out. That's not
involved in
14 the question of whether the evidence shows guilt.

15 A. Well, I'm in agreement with your statement. I
shouldn't
16 have --

17 Q. Yeah. And you can serve on a jury to do that?

18 A. I could probably do that, yes.

19 Q. Well, is there any reason you couldn't?

20 A. Just my occupation.

21 Q. Well, yeah. You know --

22 A. Away from that.

23 Q. I'm separating that out, too. I just want to talk
with you
24 about your ability to follow the law.

25 A. I could follow the law, yes.

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Juror No. 932 - Voir Dire

1 Q. All right. And I've explained the law that you
have to
2 follow as a jury (sic) --

3 A. Correct.

4 Q. -- up to this question of participating in
punishment,

5 because in most cases, the jury doesn't get involved
with

6 punishment. That's a judge's decision after a hearing
that a

7 judge has, if a defendant is found guilty. You
understand?

8 A. Yes, I do.

9 Q. But under federal law, where we are, the crimes
charged in

10 this case are such that under the federal statutes
involved,

11 there's the possibility of a sentence to death and a
sentence

12 to -- or a sentence to life in prison with no
possibility of

13 release ever -- you die in prison -- or some lesser
punishment,

14 in which case the court decides instead of the jury.
But this

15 life-or-death decision is for the jury in the federal
system.

16 And that's why we asked you these questions -- and you

17 apparently already knew that, or you wouldn't have said
what

18 you said on your original questionnaire. Right?

19 A. Correct.

20 Q. And the way in which it is done is that in such
cases, if

21 there is a guilty verdict, there really is a separate
trial, an
22 additional trial, on the issue of punishment. And it
is at
23 that trial that things that are introduced that go
beyond the
24 evidence at the trial on the question of guilt -- and
these are
25 the things about additional circumstances about the
crime and

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Juror No. 932 - Voir Dire

1 then a lot about the defendant as a person: who he is,
what his
2 life has been, his attitudes, his character, almost
everything
3 there is that can be said about a person as an
individual and
4 unique human being.

5 And then the jury is given instructions about,
well,
6 these are the things you've heard, these are things you
can
7 consider as aggravating factors; that is to say,
supporting a
8 view that death is a deserved punishment for this
person. On
9 the other hand, these are the things that should be
considered
10 by the jury as mitigating factors, suggesting that
death is not

11 the deserved punishment; regardless of the crime, this
person
12 doesn't deserve to be put to death. And then the
question is
13 put to the jury: Well, you know, having heard it all,
14 considering the aggravators and the mitigators, what is
your
15 decision? Should the defendant live, or die?
16 Now, it is at that point that each juror has
to review
17 all of these things and then make what amounts to a
judgment, a
18 reasoned moral judgment about life or death. And what
is your
19 response to your ability to serve on a jury and make
such a
20 decision?
21 A. It would still be in the back of my mind about
making a
22 decision -- I just couldn't go that way. I'd listen to
the
23 evidence honestly and open-mindedly, but coming down to
that
24 point, I -- I just couldn't do it.
25 Q. So --

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Juror No. 932 - Voir Dire

1 A. If we -- if we went this way. If we went the other
way,

2 life in prison, I could probably do that.

jurors
3 Q. But if, as the jurors discuss this, jurors -- some
is your
4 say, Well, I think that death is the punishment, what
5 ability to respond to that?

evidence.
6 A. Well, you would have to look at the overall

7 Q. Well, sure.
warrant
8 A. You have to pick out things that I don't feel would
9 such a sentence.

jurors are
10 Q. And that's -- that's part of the process, and
trying to
11 supposed to do that. But what I -- you know, I'm not
we're
12 push you into an answer. But what I am interested in,
this
13 all interested in, is if you were convinced from all of
not
14 that the deserved punishment for a defendant -- we're
ability
15 talking about this defendant, we're talking about your
you're
16 to serve on a jury and make a life-or-death decision --
should be
17 convinced that applying these factors, the sentence
18 death, can you say so?

19 A. No.

20 THE COURT: Okay. That's what -- that's what

I am

21 really asking.

there 22 We're going to take a brief recess, and then

more 23 will be an opportunity for lawyers to ask you a few

know you 24 things. But it's sort of mid-afternoon for us, and I

interested in 25 want to get out of here. We recognize you're

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Juror No. 932 - Voir Dire

1 that, but please bear with us a bit longer.

2 THE WITNESS: Okay.

3 THE COURT: You're excused now for 20 minutes.

decide. 4 We'll take the 20-minute recess and then

5 (Recess at 3:19 p.m.)

6 (Reconvened at 3:38 p.m.)

7 THE COURT: Be seated, please.

8 May I see counsel at the bench.

9 (At the bench:)

court 10 (Bench Conference 33B2 is not herein transcribed by

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

12

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Juror No. 932 - Voir Dire

1 (In open court:)

2 MR. TIGAR: May I stand here just to save a
moment,
3 your Honor, rather than get up?

4 THE COURT: Yes.

5 MR. TIGAR: Thank you, your Honor.

6 THE COURT: All right. Thank you.

7 (Juror in at 3:43 p.m.)

8 THE COURT: Mr. Tigar, who has already been
identified

9 as counsel for the defense, wishes to ask you some
questions.

10 VOIR DIRE EXAMINATION

11 BY MR. TIGAR:

12 Q. Just a very few, sir.

13 We were introduced. My name is Michael Tigar.

14 Together with Ron Woods, we were appointed by the
United States

15 District Court in Oklahoma to help Terry Nichols; that
is, the

16 court reached out to us, even though we reside in
Texas, to

17 appoint us. And then, of course, the case got moved
here.

18 I just want to ask about this situation with
your

19 business, if I may.

20 You understand that if -- when this case
starts,

21 actual trial of the case, the jury will sit from 9 to 5
Mondays

22 through Thursdays and then 9 to 1 on Fridays.

23 A. Yes, I do.

24 Q. Okay. I think Judge Matsch had said that out at
Jefferson

25 County and that there are the usual breaks for lunch
and so on.

Juror No. 932 – Voir Dire

1 And I just want to ask you straight out, understanding
that
2 jury service is a hardship, you know -- there is
probably at
3 least one other person in this room that would rather
not be
4 here as well. There is appointed lawyers and, you
know, there
5 is people who work for the public; that is, you know,
people
6 who could be in the private sector. Everybody is
making
7 adjustments.

8 Is it -- and I'm not trying to put a guilt
trip on
9 you. Is it your feeling that if you were involved in
being a
10 juror in this trial, which could last several months,
that this
11 really would be just a disastrous effect on you
financially and
12 on your business?

13 A. Yes, it would be.

14 MR. TIGAR: Okay. Well, thank you very much.

You

15 know, I just needed to look you in the eye and ask that
16 question. Thank you.

17 We're prepared to come to the bench, your
Honor.

18 THE COURT: All right.

19 (At the bench:)

20 (Bench Conference 33B3 is not herein transcribed by
court

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

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25

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Juror No. 932 - Voir Dire

1 (In open court:)

2 THE COURT: We'll take up 244.

3 If you will please raise your right hand and
take the

4 oath from our clerk.

5 (Juror No. 244 affirmed.)

6 THE COURTROOM DEPUTY: Thank you.

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

8 microphone.

9 And that swivels around, so you can make
yourself

10 comfortable. You don't have to lean over and speak
into the

11 microphone or anything like that. It will pick you up.

12 JUROR: Okay.

VOIR DIRE EXAMINATION

13

14 BY THE COURT:

took

15 Q. And you recall that when this oath that you just

jury for

16 refers to the case on trial, we're here to select a

so that

17 the trial of charges made against Terry Lynn Nichols,

Lynn

18 this is the case of the United States against Terry

19 Nichols.

20 A. Yes.

here

21 Q. And you heard about your status as a possible juror

22 when you got a summons in the mail.

23 A. Right.

chance

24 Q. Notifying you that your name had come up in a

25 process to serve as a juror.

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Juror No. 244 - Voir Dire

1 A. Right.

you to,

2 Q. And then you responded to that summons, as we asked

3 with answering some questions on a short questionnaire.

4 A. Yes, I did.

5 Q. Then you got a notice to come to the Jefferson

County

6 Fairgrounds to the auditorium building there on
September 17,

7 almost a month ago.

8 A. Uh-huh.

9 Q. And you and other jurors gathered there; and I was
there,

10 told you something about the case, introduced some
people, and

11 gave you a long questionnaire.

12 A. Right.

13 Q. Which you answered.

14 A. Yes.

15 Q. Now, I want to take you back to the introductions,
because

16 I want to let you know who is here with us this
afternoon.

17 A. Okay.

18 Q. And you may recall that I introduced at that time

19 Mr. Lawrence Mackey, who is right here, Ms. Beth
Wilkinson as

20 attorneys for the Government. They're now joined by

21 Mr. Patrick Ryan and Mr. James Orenstein, additional
attorneys

22 here for the Government.

23 You also were introduced to Mr. Michael Tigar
and

24 Mr. Ronald Woods, attorneys for Terry Nichols; and of
course,

25 Mr. Nichols was with us.

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Juror No. 244 - Voir Dire

gave you 1 And then after introducing these people, I
the 2 some explanation about the background of the case and
that? 3 procedural background in particular. Do you remember

4 A. A little bit.

5 Q. Well, let's review it again.

6 A. Okay.

we can 7 Q. And it's important that we have it in mind so that
questions. 8 follow up with some -- if you can believe it -- more

9 A. Okay.

April 19 10 Q. I explained that this case arises as a result of an
exploded 11 explosion that happened in Oklahoma City, Oklahoma, on
killed; 12 of 1995 on which day a federal office building there
the 13 and was destroyed and people in it were injured and
is 14 that after that, charges were filed in Oklahoma City in
allegations 15 Federal Court there in the form of an indictment, which
16 simply a formal charging document that makes

17 accusing people of crime and that in the indictment
that was
18 filed there in Oklahoma City, the Government named
Timothy
19 James McVeigh and Terry Lynn Nichols -- and then
referred to
20 "other persons not named" -- as being involved in a
conspiracy,
21 a criminal agreement, to bomb that building and to kill
and
22 injure the people in it. And the indictment went on to
allege
23 other crimes besides the conspiracy that related to
carrying
24 out such a bombing and to the murders of eight law
enforcement
25 agents of the national government, various agencies,
who were

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Juror No. 244 - Voir Dire

1 present in the building and died in the explosion.
2 You recall that part of it?
3 A. Yes, I do.
4 Q. All right. And then as I explained, the case was
moved
5 from Oklahoma City to here in Denver, to this court,
and the
6 reason for that was that because of the impact on the
community

7 there in Oklahoma City, it would be difficult for
people in
8 Oklahoma City to sit as jurors in the case. So it was
moved to
9 this court, and then I entered orders separating the
two named
10 defendants for trial on a conclusion that it would not
be fair
11 to either one of them for Mr. McVeigh and Mr. Nichols
to be
12 tried in one trial before a jury, one jury, because of
13 differences in the evidence against them and for other
reasons.

14 And so separate trials were ordered. Mr.
McVeigh came
15 to trial. The case with respect to Mr. McVeigh has
been tried;
16 and as a result of that trial, a jury returned a
verdict of
17 guilty on the -- all charges as related to Timothy
McVeigh.
18 That same jury was then asked to hear more in a second
trial on
19 punishment and make a recommendation on sentence and
did decide
20 on a death sentence for him.

21 Now, you probably knew that anyway.

22 A. Yes, I did.

23 Q. Without my having to tell you that. But what I did
tell
24 you is that the outcome of that case and anything that
anyone

25 may have seen, read, or heard about the evidence and
about the

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Juror No. 244 – Voir Dire

1 trial itself cannot be considered now in the case to be
tried

2 where Mr. Nichols is the defendant on trial. And he
isn't the

3 defendant on trial in a sense; it's the evidence that
relates

4 to him that's on trial, because I then explained some
things

5 about the criminal justice system and certain
fundamentals of

6 the law under the United States Constitution. You
recall that

7 part of my explanation?

8 A. I do some of it.

9 Q. And you were probably, while I was talking,
thinking,

10 What's in this long questionnaire that's sitting in
front of

11 me? I suppose a natural reaction. But let me just
review

12 those things, because they are also very important to
all of

13 us.

14 What the Constitution says, our federal
Constitution,

15 which applies across the board throughout the states

and the

16 national courts, is that each person who is accused of
any
17 crime in any court in this country, regardless of who
that
18 person is or what the crime is, is presumed to be
innocent of
19 that crime. And that presumption carries throughout
the trial
20 and entitles that person to an acquittal, a verdict of
not
21 guilty, unless the Government who has made the charges
comes in
22 and proves what is charged by the evidence.

23 No person who is accused has any burden or
duty of
24 proving anything in his case. He doesn't have to come
in and
25 prove himself to be not guilty and he doesn't have to
prove

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Juror No. 244 – Voir Dire

1 anything actually. He doesn't have to call any
witnesses or
2 introduce any evidence, and no accused person has to
testify
3 responding to questions or explaining anything. He can
simply
4 remain silent and say to the prosecutors: You charged
it, you

5 prove it. Understand?

6 A. I understand.

7 Q. And so it is the duty or burden on the Government
through

8 its lawyers to come in with the evidence, call the
witnesses,

9 produce the exhibits, produce those things that are
relied on

10 to support what they say is true in the indictment;
that is,

11 support the charges made. And the duty of the jury is
to

12 listen carefully to all of that evidence and to judge
that

13 evidence finally and decide whether it convinces them
that the

14 elements of the crime have been proved.

15 At the end of the trial, the court, the judge,
gives

16 instructions to the jury and outlines in some detail
what it is

17 that the evidence must show before there can be a
guilty

18 verdict.

19 We refer to it as the elements of the offense,
the

20 specific things that have to be proved before a
defendant can

21 be found guilty of each charge. And it's different
among the

22 charges.

23 You follow me so far?

24 A. Yes, I do.

burden 25 Q. And what the presumption of innocence means and the

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Juror No. 244 - Voir Dire

if 1 of proof beyond a reasonable doubt is simply this: that

the trial, 2 after hearing it all, everything that's presented at

seen and 3 and considering only that evidence that is actually

discussing it 4 heard at the trial -- if the jurors then after

proved the 5 have a reasonable doubt about whether the evidence

benefit of 6 crimes charged, they must give to the defendant the

that? 7 that doubt and find him not guilty. Do you understand

8 A. Yes.

does not 9 Q. And with respect to a case in which the defendant

himself, 10 testify or does not offer any evidence, any witnesses

about 11 the jury is regularly instructed, Look, you can't think

can be no 12 that. He doesn't have any duty to testify, and there

he's 13 inference drawn. Nobody can say, Well, you know, if

14 innocent, why didn't he tell us that, or what is he
hiding? In
15 fact, what I instruct jurors in those situations is you
can't
16 even talk about it. It's not a subject of discussion
in jury
17 deliberation. Do you follow me on that?

18 A. Yes.

19 Q. Now, do you have any question about these points
that I've
20 explained?

21 A. No, I don't.

22 Q. And of course, as I said, they apply to all cases;
and
23 certainly they apply to this one. You understand?

24 A. I do.

25 Q. And are you ready to accept those principles and to
follow

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Juror No. 244 - Voir Dire

1 them under your oath as a juror if selected in this
case?

2 A. Yes.

3 Q. Now, we did then ask you to give us a lot of
information;

4 and you cooperated with us, and we appreciate that, in
5 answering all these questions, some of which are quite
personal

6 in nature. And we certainly respect your privacy, and
we don't
7 want to interfere with it or invade any more than is
absolutely
8 necessary for this process. But, of course, we need to
know
9 things about people before deciding whether they should
serve
10 as jurors.

11 So to try to balance out the public interest
in this
12 trial and your own privacy interests, we, you know,
have you in
13 here without using your name. We arrange for you to
come and
14 go to the courthouse so press photographers can't take
your
15 picture or publish it; and in the course of our
questioning,
16 we'll try to be careful and not ask you things that
cause you
17 to identify yourself.

18 A. Okay.
19 Q. But, of course, we also need to know some
information; and
20 this questionnaire has not been made public. The only
people
21 who have it are the people in front of you here, and
they're
22 not going to use it for anything other than this
process.
23 Okay?

24 A. Okay.

25 Q. And if anything should come up where you feel that
it would

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Juror No. 244 - Voir Dire

1 be unfair to you to answer, you tell us about it and
we'll try

2 to work it out.

3 A. Okay.

4 Q. Now, you -- you did -- let me just -- you've got
your

5 questionnaire there with you; right?

6 A. Yes, I do.

7 Q. So you have your answers. You did serve on a jury
one time

8 before, as I read your answer on page 26 at the top of
the

9 page, Question 117, five years ago or so.

10 A. Uh-huh.

11 Q. In Denver.

12 A. Yes. In Denver.

13 Q. But when you wrote this answer on your
questionnaire, you

14 weren't able to remember just what it was about, I
guess.

15 A. No, I couldn't and I still can't.

16 Q. You still can't?

17 A. No.

18 Q. You anticipated the question, which is: Now that a
month

19 has gone by, do you remember it any better?

20 A. No, I don't.

21 Q. Tell us what you do remember about the experience.
Did you

22 go through a process when you came in the court and
answered

23 questions, something like what we're doing now?

24 A. It was something like this. It was just they
actually had

25 us all in the room and they just asked us a few
questions and

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Juror No. 244 - Voir Dire

1 then dismissed us, you know, if they didn't need us.
So it was

2 just a day process, and then I served on the jury I
think for

3 three days or four days; so it wasn't quite as intense
as this

4 is.

5 Q. But you did go into a courtroom and hear a trial?

6 A. Yes, I did.

7 Q. And there were lawyers on both sides.

8 A. Uh-huh. Yes.

9 Q. And a judge?

10 A. Yes.

11 Q. And do you remember whether it was a criminal trial
-- that

12 is, somebody charged with doing something criminal --
or

13 whether -- there are two kinds of trials, let me
explain.

14 A. Okay.

15 Q. There are criminal cases, as this is, where the
issue is

16 did the -- does the evidence show that the defendant
did what

17 he's charged with as a violation of the criminal law.
And on

18 the other hand, there are civil cases, which are I
guess we

19 could think more as private disputes.

20 A. Uh-huh.

21 Q. The kinds of things where -- take an automobile
accident,

22 where the issue is who is at fault and, if somebody is
hurt,

23 how much has that person been hurt and what the damages
are.

24 A. I don't think it was a criminal case. I think it
was more

25 of a -- of a civil case.

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private 1 Q. Something in the nature of a dispute between
2 parties.
3 A. Yeah. I think so.
contracts or 4 Q. All right. And, you know, sometimes those are
5 an apartment lease, or all kinds of things can come in
on the 6 civil side.
7 A. Yeah. That, I don't remember.
8 Q. Do you remember how many persons on the jury?
9 A. I think eight. I think.
civil 10 Q. Well, that -- that's another indicator that it's a
11 case, because we don't -- a lot of courts don't require
12 people on a civil.
or 13 But do you remember anything about the lawyers
14 about anything that happened in the trial?
15 A. No. I don't.
16 Q. Well, that's not against you.
17 A. I don't.
rules are 18 Q. Well, civil cases are different anyway and the
19 different; so we won't have to bother with talking
about those 20 differences because we've talked already about and I've

of proof 21 explained to you about a criminal trial and the burden
22 and the presumption and so forth.

23 A. Okay.

I'm 24 Q. Let me just review a few of the things that I think
25 aware of as a result of reading over your questionnaire

3700

Juror No. 244 – Voir Dire

in 1 answers. Excuse me. As I understand it, you were born

2 California.

3 A. Yes, I was.

too. 4 Q. And you spent -- you were raised in California,

5 That's where you spent your school years?

when I 6 A. Well, my dad was in the military, so we left there

throughout 7 was about eight, went to New Mexico, had to travel

my last 8 the United States, and I ended up in Cheyenne, Wyoming,

9 two years of high school.

10 Q. Okay. Yeah.

11 A. So I was a little bit everywhere.

12 Q. Was your father in the Air Force?

13 A. Yes. He was in the Air Force.

14 Q. And all through your -- the time that you were
growing up

15 in the family, was he in the Air Force?

16 A. Yes.

17 Q. Has he retired now?

18 A. He did. He retired, oh, five years ago or so.

19 Q. And does he live here in this area?

20 A. No. He lives in San Diego.

21 Q. And then you -- so, what, you came to Colorado on
your own?

22 A. No. I remarried a gentleman that's from Colorado,
so I

23 moved here in 1984.

24 Q. Okay. And that's your second marriage.

25 A. Yes, it is.

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Juror No. 244 - Voir Dire

1 Q. Where were you during the first marriage?

2 A. I was in Cheyenne, Wyoming.

3 Q. And was your then husband in the Air Force?

4 A. No, he was not.

5 Q. What did he do?

6 A. He worked for a dairy company there, and then later
on he

7 worked for the post office.

8 Q. How long were you married?

9 A. Four years. Almost four years.

I

10 Q. And then you have remarried, as you've said; and do

and one

11 understand you have one child from the first marriage

12 from the present -- your present husband?

13 A. That's correct.

14 Q. And these are the children you show on page 3.

15 A. Is that page 3?

16 Q. I think it's page 3, yes.

17 A. Okay.

with you

18 Q. Question 10. And you say your older son is living

19 and stepfather, being your present husband.

20 A. Correct.

participate in

21 Q. And is he formally the stepfather? Did he

referring to

22 formally becoming the stepfather, or are you just

23 him by that because he is your husband?

24 A. I just refer to him as that.

with

25 Q. Okay. Now, let me turn to your experience, if any,

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uncles

1 farming. As I understand it, your mother, aunts, and

page 6. 2 had a farm, at any rate, in California. I'm over on

3 A. Page 6? Okay.

4 Q. And Item 28.

5 A. Okay. No. 29?

6 Q. Yes.

7 A. Okay. My mother -- that's when she was small. I
mean,

8 when I -- by the time she got married and I came along
-- I

9 mean, that was just something that her mother and
father had

10 done as they were growing up, was farming. But I mean,
as far

11 as me --

12 Q. Well, was the farm still in their family when you
were

13 around?

14 A. No, no. It wasn't.

15 Q. Do you know what happened to it?

16 A. You know, I don't.

17 Q. Okay.

18 A. I don't.

19 Q. I understand that you work in -- in -- you have
been a

20 dental technician and now you're an office manager.

21 A. Right.

22 Q. Is that right?

23 A. That's correct, uh-huh.
24 Q. And how long were you a dental technician?
25 A. I started in 1979 in Cheyenne.

3703

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1 Q. In Cheyenne.
2 A. Uh-huh.
3 Q. And then you pursued the same work here?
4 A. Same work here.
5 Q. In Denver.
6 A. Right.
7 Q. And then you became office manager in this office
that you
8 described on page 9, I guess, about six, seven years
ago.
9 A. That's right. Well, I've worked there seven years,
and
10 I've been managing the office probably three to four
years. I
11 mean, I did some off and on before, but it finally
became
12 permanent probably three or four years ago.
13 Q. Okay. And without knowing, I just assume that an
office
14 manager in a dental office takes care of a lot of
things
15 including appointments and billings and scheduling, all
that.

16 A. Correct.

17 Q. Now, do you do any hands-on work with patients
anymore?

18 A. You know, I haven't done much of that in the last
three

19 years. I'll help them out if a gal is sick or on
vacation; but

20 usually, we get somebody else to fill in for them.

21 Q. Now, you recognize that serving on this jury will
take you

22 away from that office.

23 A. Yes, I do.

24 Q. And that we can't forecast how long this trial will
be, but

25 certainly it may take several months once the trial
gets

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1 started. And we don't even know what day it will get
started

2 because all that depends on jury selection, and we
don't know

3 how long that will take.

4 With all of these uncertainties, have you
talked to

5 your employers there about the possibility of your
being on

6 jury service here?

7 A. I have. I have told my boss.

8 Q. Sure. We expect that you would; and I did caution
you

9 about discussing the case --

10 A. Right.

11 Q. -- with others, but certainly we expected you to
talk with

12 your employers.

13 A. Right. I did.

14 Q. And did you tell him what case you'd been called in
on?

15 A. I did tell him what case. I didn't give him any
specifics.

16 I just wanted him to be aware that there was a
possibility --

17 and nothing is for sure, but it was a possibility so
he'd be

18 somewhat prepared to either get somebody in there to
cover me

19 or get someone else in the office there that's cross-
trained to

20 help out, just so he'd be aware of what was going on.

21 Q. What kind of response did you get from him or her?

22 A. Well, he wasn't thrilled. No, he wasn't thrilled
because I

23 do run the office; but on the other hand, you know, if
it

24 becomes my responsibility, it does and we have to just
deal

25 with it.

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1 Q. And what do you see as happening to your family
income?

2 A. I'm hoping that -- we kind of discussed that a
little bit,

3 too, and he said we would, you know, work it out
somehow.

4 Q. Okay.

5 A. He didn't really set any specifics. He just --
tried to

6 put my mind at ease just to let me know that he would
be

7 willing to just work with me and we'll see what
happens,

8 so . . .

9 Q. Okay. Well, as you sit here now, are you worried
about

10 that?

11 A. I'm not worried. I'm concerned. I'm not worried.

12 Q. Well, of course.

13 A. I'm concerned, yes, I am.

14 Q. Okay. Your husband is working.

15 A. Yes, he is.

16 Q. And you told us where he works, here at the bottom
of

17 the -- of page 10 and top of 11.

18 A. Uh-huh.

several 19 Q. And as I understand it, he has worked there for
20 years and has secure employment there.
21 A. Yes, he does.
employer, as 22 Q. And he did the same kind of work for another
23 you've already identified there at No. 50. Right?
24 A. No. 50? Yes.
25 Q. Page 11.

3706

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1 A. Yes.
personal 2 Q. Okay. We asked you some things about any prior
3 experience with crimes, and you told us some things on
pages 22 4 and 23. Will you please turn there.
5 A. Okay.
broke into 6 Q. And beginning with the very first one, somebody
7 your house, I guess.
8 A. Yes, they did.
9 Q. And about how long ago was that?
residence four 10 A. That was probably -- I'd been in my present
11 years, and the three times the home was broken into was
over

12 the ten-year period of time that we lived at that
address.

13 Q. An earlier address?

14 A. Right.

15 Q. Okay. What kinds of things were taken in these
burglaries?

16 A. Actually, they took jewelry, video recorders, VCRs,
TVs,

17 things like that.

18 Q. And you never got any of it back, I take it.

19 A. Never got any of it back.

20 Q. And as far as you're concerned -- you have become
aware --

21 nobody has ever been arrested for it?

22 A. No.

23 Q. Any of them.

24 A. No.

25 Q. And then there was a vehicle -- next page, there is
a

3707

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1 vehicle stolen, too.

2 A. Right.

3 Q. Was that your husband's car or the family car, or
what --

4 A. It was a pickup.

5 Q. And how long ago was that?

6 A. That was within that ten-year period of time
between 1984
7 and '94 that we lived in that building; and that was
never
8 found, and whoever took it was never found, either.
9 Q. Okay. Now, do any of those things, do you think,
have any
10 influence or effect on your attitudes about law
enforcement or
11 the criminal justice system?
12 A. No.
13 Q. And indeed, when we asked you a very general
question here
14 on page 22 at No. 100 about your opinion about the
15 effectiveness of the system, you said, "It's working
very
16 well."
17 A. Uh-huh. I did.
18 Q. "And it's the most effective system we have"?
19 A. The best one I know of.
20 Q. Okay. Now, I want to turn to another subject that
you
21 responded to and told us about, and that is the
question of
22 punishments for crimes, and particularly with respect
to the
23 punishment of life in prison without the possibility of
ever
24 getting out, truly a life sentence, and death. We're
going to

25 be going to page 28, so --

3708

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1 A. Okay.

2 Q. It looked like you were looking around for that.

3 A. Thank you.

4 Q. But before addressing these particular questions
that we

5 put to you, you remember in your original
questionnaire, which

6 you do not have, but I want to refer back to it because
what

7 you said there. We asked a question, "Is there any
reason that

8 would prevent you from serving on this jury?"

9 And you wrote yes. Do you remember that?

10 A. Yes.

11 Q. And then we asked you to explain; and you said, "I
believe

12 in capital punishment. I believe Terry Nichols is
responsible

13 to some degree for the deaths in the bombing of the
Alfred P.

14 Murrah Building."

15 A. I recall that.

16 Q. Remember writing that?

17 A. Yes.

38 some 18 Q. And in this questionnaire, we asked you on 37 and
163, 19 questions about your beliefs or opinions. And on 37 at
"waits to be 20 you said that you had no opinion of Terry Nichols,
21 seen." Do you see that?

22 A. At 160.

23 Q. I'm sorry. 163 at the bottom of 37.

24 A. Okay.

think of 25 Q. And on the next page where we asked you can you

3709

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verdict, 1 any reason preventing you from a fair and impartial

2 and you said no.

3 A. Okay. On page 38?

4 Q. Yes.

5 A. I see that.

you 6 Q. Okay. And obviously, what I want to ask you is did

considered, 7 change your mind, or was this first response well

8 or -- there is an apparent difference here.

the same 9 A. Well, I think -- on 159 I put that -- on page --

10 page 37 that all I knew about Mr. Nichols was that he

played

11 some part in it, the same thing I put there. I don't
know

12 specifics. I just know they put a connection in the
beginning;

13 so that's -- kind of goes with that same answer. And I
really

14 don't think I have enough information about any of it
to

15 honestly say yes, this man, you know, committed this
crime or

16 whatever his charges are. I don't have enough
information.

17 Q. Well, now that we've reviewed what is really
involved

18 here -- and you didn't have all this when you answered
that

19 first questionnaire.

20 A. Right.

21 Q. So, you know, the question is whether you've
prejudged this

22 case or whether what you said there was an initial
impression,

23 and now you're willing to set that aside and be open-
minded in

24 judging actually the evidence as a jury is required to
do. A

25 long question. Do you understand what I'm asking?

3710

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1 A. Yes, I understand what you're asking.

2 No, I haven't set a preset mind as to where
we're at

3 right now. You know, my response to that question was
just

4 what I knew at the time, and that's what I wrote in
there.

5 That's what I felt was being asked.

6 Q. Okay. Well, I'm not forcing you to defend
yourself. There

7 isn't any right or wrong here in responses.

8 A. I understand.

9 Q. We just want to be -- first of all, for you to
recognize

10 your own frame of mind and what it is and then for you
to tell

11 us about it; because, you know, we know that this
process is

12 not something that goes on every day in people's lives
and

13 that --

14 A. Sure.

15 Q. -- we're asking people to undertake a very
responsible and

16 difficult task.

17 A. Yes.

18 Q. Which is patiently to hear and consider evidence
and to

19 follow the rules of law and to be open-minded in doing
so. And

to do 20 all we're trying to understand from you is your ability
21 that. Fair enough?
22 A. I understand. Yes, it is.
began to 23 Q. Okay. And then to turn back to this matter that I
we asked 24 discuss, and that is punishment. And the reason that
concerning 25 you some questions about your attitudes and opinions

3711

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like this, 1 possible punishments under the law is that in cases
possibility 2 where the crimes charged under statute involve the
-- 3 of sentences to death or life in prison with no release
4 excuse me -- the jury is involved in making that
decision.
5 A. Uh-huh.
opinions and 6 Q. And so we wanted to know something about your
before you 7 attitudes with respect to those possible punishments
just 8 heard anything about the process and the law involved,
If you 9 what do you think about it, these ties of punishments.
10 could write the law, would you include them in the law?

And 11 Excuse me. And then you gave us some answers.

you've 12 now we want to turn to 28. Take a moment to read what
13 written.

14 A. Okay.

asked 15 Q. Is this something you thought much about before we
16 you these questions?

17 A. About which, the death penalty?

And, 18 Q. Or life in prison with no chance of being released.
19 you know, that's the kind of life sentence we're
talking about.

20 A. Uh-huh.

21 Q. There are life sentences that still involve
somebody being
22 paroled; but that isn't what we mean here. What we
mean here
23 is you spend all the rest of your life in prison.
That's the
24 life imprisonment we're talking about.

25 A. Okay.

3712

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discussing 1 Q. So yes, you know, most people probably in
2 punishments and murder and all that sort of thing talk

about

widely 3 whether there should be a death penalty. And that's

4 discussed. I mean, you're aware of that.

5 A. Yes, I am.

because 6 Q. And it's been widely discussed in Colorado recently

such a 7 a man was recently put to death in the execution of

8 sentence.

9 A. Uh-huh.

10 Q. You're aware of that.

11 A. Yes.

suppose 12 Q. And so there was a lot in the papers recently and I

death 13 on radio or television about people's attitudes toward

14 sentence and maybe that one in particular.

15 Did you follow that discussion or debate?

the news. 16 A. No. I haven't read the paper or watched much of

17 I know how I personally feel about it.

18 Q. Well, tell us.

across 19 A. Well, I do believe in the death penalty not right

20 the board. I think if things are done in malice and

21 forethought, then I do believe in the death penalty.

aforethought" 22 Q. And so you would put the words "malice
in as

that 23 a requirement before the death penalty is available; is
24 what you say?
25 A. Yes.

3713

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you 1 Q. And what I was asking you, is this an opinion that
it? Have 2 formed recently? Have you had different views about
3 you thought much about it?

just 4 A. I've always felt that way. It's not something I've
always 5 thought about the last, you know, months, years. I've
6 felt that way.

here. 7 Q. And I guess that's pretty much what you've said

8 A. Right.

9 Q. It depends on the crime.

10 A. Yes.

certain 11 Q. And you said in specific under D that there are
order 12 things that you would have to know the circumstances in
that 13 to make this decision. Now, what are the circumstances
now in 14 you were thinking about or that you're thinking about

15 that response?

16 couldn't just

A. Well, I guess what I meant there was I -- I

17 knowing the

make a decision like that without knowing the case,

18 pretty big

situation, knowing what happened. I mean, that's a

19 decision to make.

20 Q. Very big?

21 need to

A. You don't want to make it halfheartedly. I mean, I

22 make that

know evidence. I need to know what I'm looking at to

23 decision.

24 actually

Q. So let me discuss with you now how the matter is

25 done in court.

3714

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1 A. Okay.

2 Q. Because we asked you this without telling you that.

3 cases, it's

A jury's first job in any case -- in most

4 proves the

their only job -- is to decide whether the evidence

5 this.

crime beyond a reasonable doubt. We've talked about

6 And, of course, if after hearing all the evidence the

jury is

7 not persuaded beyond a reasonable doubt, it is over,
the

8 verdict is not guilty, and that's the end of the case.

9 And in cases not involving this type of
punishment as

10 a possibility, a jury returning a verdict of guilty,
it's still

11 all over as far as the jury is concerned. They've done
their

12 job, they've made a decision, guilty or not guilty.

And

13 they're not involved in the next phase, and that's what
to do

14 about it, what sentence should be imposed, because in
cases

15 unlike capital punishment cases, a judge decides what
the

16 sentence should be, and that's the responsibility of
the judge.

17 And the judge makes that decision on a very
18 individualized basis. So before deciding that for this
19 burglary or for whatever the crime is the defendant
found

20 guilty should be sentenced to a certain length of time
or

21 whatever, there is a lot of information presented to
the judge.

22 It's collected, it includes the circumstances of the
crime,

23 what happened, what the consequences were to people,
things

24 that aren't in evidence, weren't introduced in evidence
at the

25 trial, and then also a lot of things about the
defendant as an

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1 individual human being, these things including, you
know, where

2 this person was born and raised, what the family was
like, what

3 the continuing family relationships have been like,
marriages,

4 divorces, jobs, military service, things that this
person has

5 done for others, things that have been done to him, any
prior

6 criminal conduct, attitudes and beliefs, all of the
things that

7 taken together make each one of us unique and
individual. And

8 you agree we are.

9 A. Yes, I do.

10 Q. And in large part, it depends on what's happened to
us in

11 life. You agree with that?

12 A. I do.

13 Q. And so then there is a hearing in front of this
judge, and

14 the lawyers on each side present their positions. And
the

15 judge says, having heard it all, considering it all,
this is
16 the sentence that this person deserves for this crime.
And
17 that sentence can be different. Take a case where two
or more
18 persons actually are involved in the very same crime:
The
19 judge can make a sentencing decision that's different,
20 sentencing one person in one way and another person a
different
21 way, a different sentence, because it so much depends
upon the
22 individual circumstances.

23 You are listening carefully and --

24 A. Yes.

25 Q. -- I think you understand what I'm saying.

3716

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1 A. Yes, I do.

2 Q. Now, when it comes down to a question of life or
death and

3 the issue of capital punishment, in Federal Court --
and there

4 are differences among the states, you may have heard.
We're in

5 Federal Court, and the federal law is clear that it's a
jury

for a 6 that has to decide life or death. That's not something
7 judge to decide.

8 And a reason for that is that we're really
asking the 9 people who come in as jurors and represent the
community to 10 make a judgment about not only the crime but the person
who has 11 been found guilty of it.

12 And so the first task of the jury, of course,
is just 13 like in any other case: Does the evidence show guilt
beyond a 14 reasonable doubt? If not, not guilty, that's the end.
But if

15 guilty, then the jury has another job to do and that's
listen 16 to a lot more information. There is really a second
trial.

17 And the question that -- at this second trial is,
having found 18 this person guilty, now what should his or her sentence
be.

19 And so just as I explained about judge
sentencing and 20 how individual it is, so jury sentencing must follow
the same 21 approach. And the information is presented to the jury
in the 22 same way as it is at the trial on the evidence.
Witnesses are 23 called in, exhibits are offered. It is the very same

type of

24 process as the trial. And there are two sides to the
case, so

25 it is to be expected that the prosecution brings in
witnesses

3717

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1 and exhibits and evidence that they feel supports a
death

2 sentence, and the defense brings in information through
3 witnesses and other documents and things that suggests
that

4 while the crime may be deserving of death as a
punishment, the

5 defendant does not deserve that punishment.
Understand?

6 A. Yes.

7 Q. And they present these things that I've already
talked

8 about, about this person as a unique human being,
everything

9 about his personal history, his life, up to the very
day that

10 this information is being presented. It can also
include

11 things about the crime, because in cases where more
than one

12 person may be involved in the same crimes, there may be

13 differences in their roles, differences in their
involvement,

14 how much one was involved compared to another, and so
forth.
15 You understand those possibilities. And you know, we
cannot
16 forecast what may be heard at the sentencing hearing in
this
17 case, if it ever got to that, any more than we can
forecast
18 what the evidence might be at trial.

19 As of today, Mr. Nichols is presumed to be not
guilty
20 and there wouldn't be any sentencing hearing at all.
21 Understand?

22 A. Yes.
23 Q. But in selecting jurors, we have to think ahead to
all of
24 the possibilities. And there is that possibility that
if the
25 jury found him guilty, then we'd have to be talking
about the

3718

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1 question of a sentencing trial.
2 Now, I know you've listened carefully to this
and you
3 understand the difficulties involved in asking these
questions
4 and in your answering them, because it's a very
significant

5 responsibility for jurors.

6 And what happens procedurally is after this
second
7 trial, after all of this information is presented, the
court
8 gives instructions again, outlining for the jury the
things
9 that have been presented and sort of separating them
into what
10 we would call aggravating factors, those things that
suggest
11 that death is a deserved punishment, and mitigating
factors,
12 those things that suggest that while death is an
available
13 punishment for this crime, it should not be imposed on
this
14 person, recognizing his individual characteristics and
all of
15 these things that have been presented about him.

Understand?

16 A. Yes, I do.

17 Q. And as a part of that summing up, as it were, the
court may
18 give some questions to the jury to help in the analysis
of
19 these things, sorting it out and deciding; but there is
no
20 yardstick, there is no formula, there is no equation.
It comes
21 down to considering all that the jury has heard and
then making

then, 22 a judgment about the crime and the person and deciding,
the 23 considering it all, the circumstances of the crime and
background and 24 information provided about the defendant, his
that 25 his individual characteristics and then decide whether

3719

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1 person should live or die. Understand?
2 A. Yes, I do.
3 Q. And what we want to learn from you is whether you
believe 4 that you can participate in that process and make a
decision 5 based on all the things that you hear.
6 A. Yes, I can.
7 THE COURT: Okay. Now, lawyers on each side
will have 8 some additional questions.
9 JUROR: Okay.
10 THE COURT: Our fairness standard says they
should 11 have a chance to ask you some questions, too, so bear
with us. 12 We have some more questions.
13 And we start with Mr. Orenstein for the
Government.

14 MR. ORENSTEIN: Thank you, your Honor.

15 VOIR DIRE EXAMINATION

16 BY MR. ORENSTEIN:

17 Q. Good afternoon, ma'am. How are you?

18 A. Hi. I'm fine.

19 Q. As his Honor introduced me, my name is Jamie
Orenstein, and

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

21 colleagues here at the Government's counsel table,
we'll be

22 responsible for presenting the evidence in this case
against

23 Mr. Nichols. That's our job.

24 Your job, if you were here as a juror in this
case,

25 would be to listen to the evidence fairly with an open
mind,

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1 without any preconceived ideas, and at the end of all
of the

2 evidence deliberate with your fellow jurors and come to
a fair

3 and honest decision. Do you think you could do that?

4 A. Yes.

5 Q. All right. I wanted to ask you a couple of
questions about

6 your family, if I may. You explained how you ended up
here in

7 Colorado. How did both of your brothers end up in
Ohio?

8 A. Well, one is in Ohio, in Youngstown, Ohio. He's a
football

9 coach there. The other one is in Massachusetts.

10 Q. I'm sorry. I misread your questionnaire. How did
he end

11 up there?

12 A. He works for Kaybee Toys. He designs toys for
Kaybee.

13 Q. And you mentioned that your father was career Air
Force.

14 Is that right?

15 A. Yes, he was.

16 Q. What rank did he retire at?

17 A. Major.

18 Q. Did he enlist or did he enter the Air Force as an
officer?

19 A. No. He was enlisted for, I think, 12 years.

20 Q. So he rose through the ranks?

21 A. Right, and then he went to college and came out an
officer

22 and --

23 Q. In -- in moving around a lot with your dad when he
was in

24 the service, did you ever live overseas?

25 A. No, I didn't.

3721

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1 Q. Now, I'd like to ask you, if I may, a few more
questions
2 about some of the subjects his Honor touched on with
you in his
3 conversation with you. And I'd like to start,
actually, with
4 one of the questions in the questionnaire at page 22.

5 A. Okay.

6 Q. You see Question 100, where you were asked about
your
7 opinion of the criminal justice system?

8 A. Uh-huh.

9 Q. And you wrote there that "This is the most
effective system
10 we have"; and you said something similar this
afternoon. What
11 is it in your opinion that makes our justice system so
12 effective?

13 A. Well, I think the fact that you're innocent until
you're
14 proven guilty -- you're presumed that you are innocent
and it
15 has to be proven that you are guilty. I mean, I think
-- I
16 mean, I don't really know the ins and outs of the
system like
17 you do, but I just --

is this 18 Q. But that's the basic idea you have going into it,

19 presumption of innocence?

how it 20 A. Well, it is. I mean just the trial of a nation and

works any 21 works -- I don't know of any better one or one that

22 better than what we have in comparison to.

23 Q. I'm sorry. I didn't mean to cut you off.

24 A. That's okay.

because of 25 Q. The reason I ask the question, of course, is

3722

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that you 1 what his Honor asked you about, which is the answers

then when 2 gave the first time when you had the jury summons and

it 3 you had the more involved questionnaire, and obviously

possibility of 4 became more real to you at that point about the

if 5 serving as a juror, that difference in the answers; so

your own 6 you're a juror in a system, as opposed to just having

you set 7 sort of views, you know, at home in your own life, can

8 aside anything that you've heard in the media and come

into

9 this with a completely open mind about any preconceived
10 ideas?

11 A. You mean anything that might have already set my --
my
12 thoughts about the situation?

13 Q. Yeah, any thoughts that you've had based on what
you've
14 heard in the media.

15 A. No, I haven't. I mean, I haven't read the paper.
I really
16 don't read the paper that often. I don't really know
enough to
17 be able to -- to base an opinion.

18 Q. So you come here with a clean slate.

19 A. Right.

20 Q. And on a related note, I imagine you've heard at
some point
21 about what happened in Mr. McVeigh's case; is that
right?

22 A. You know, with that case, I know the end result. I
didn't
23 follow the trial to know any specifics or anything like
that.

24 I just know the end result.

25 Q. So if --

3723

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1 A. I mean, it wasn't anything that I kept up on as --

2 Q. If all you know is the end result, do you know how
you
3 could decide a case involving the same crime but a
different
4 defendant without knowing any of the facts?

5 A. You mean this situation, how I could make a
decision?

6 Q. Right.

7 A. Now, or do you mean --

8 Q. Well, since -- all you know is the result from the
first
9 case. You can't know what your result would be in the
second
10 case; right?

11 A. No, I don't know what my result would be.

12 Q. And -- and that has two parts. First is whether
you have
13 any preconceived ideas about guilt or innocence.

14 A. No, I don't.

15 Q. All right. And the second part is the issue of
punishment,
16 which I'd like to discuss with you for a moment.

17 A. Okay.

18 Q. You wrote in your questionnaire that you'd have to
know all
19 of the circumstances of a crime in order to make a
decision.
20 Is that right?

21 A. Yes.

22 Q. Do you understand that that's -- that's very much
what --

23 like what his Honor was describing to you is in fact
the

24 process in a capital case, which is that no matter what
the

25 crime is, if you find the defendant guilty of that
crime, there

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Juror No. 244 - Voir Dire

1 is still a second trial to be had.

2 A. Right.

3 Q. Can you just give me your understanding of what
happens at

4 that second trial?

5 A. The second trial, from what I understand, you put
-- you

6 still have more witnesses coming forth and you put
together all

7 the information on the defendant and everything -- I
understand

8 you put everything together to try to make a decision,
a

9 personal decision on if that's correct, death penalty,
or life

10 in prison. You make more of a personal decision.

11 Q. Right.

12 A. Is that correct? Do I have --

13 Q. Well, you understand that you're going from a
consideration
14 of simply was the crime committed by that defendant in
the
15 first trial to in the second trial, if you get there,
Well, now
16 we know that he's committed the crime; what is the
right
17 punishment for this person.

18 A. Right.

19 Q. And as his Honor explained to you, that involves
not just
20 evidence about the crime but how much -- to what extent
that
21 person was involved in the crime, who that person is,
what his
22 background is. You understand all that?

23 A. Yes.

24 Q. So are those the circumstances that you'd want to
consider
25 in making that decision?

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1 A. Yes.

2 Q. And you understand that there would be no need for
that
3 second trial if there was any such thing as an
automatic

4 punishment.

5 A. Right.

6 Q. So no matter how horrible the crime, what are the
crimes,
7 blowing up a plane, no matter what, if you get to that
second
8 stage, that second trial, the law demands that the
jurors
9 hearing that trial have to be open-minded about the
right
10 punishment. They have to be open to life or death.

11 A. Yes.

12 Q. Would you be able to be an open-minded juror?

13 A. Yes.

14 Q. And, you know, his Honor also explained to you that
at that
15 second trial, ultimately the jurors are called on to
make a
16 moral judgment, moral judgment about whether a person
should
17 live or die. You understand that?

18 A. Yes.

19 Q. There is no formula that's going to tell you what
the
20 decision must be. You understand that?

21 A. Yes.

22 Q. Given that that's how the law is -- and you
understand,
23 we're looking for jurors who can follow the law; and if
you

24 can't, be honest and say so.

25 A. Right. I would.

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1 Q. Given that law, could you -- are you the kind of
person who
2 could make a moral judgment about whether a person
should live
3 or die without knowing about that person?

4 A. No.

5 Q. Okay. So right now, is there any way that you
could
6 predict what your sentence would be if you were to be
in that
7 position on any crime, no matter how horrible, without
knowing
8 about the defendant?

9 A. No.

10 Q. My final question to you, then, ma'am, in all good
11 conscience as you sit here today, can you say that you
are open
12 to a life sentence as well as a death sentence no
matter what
13 the crime is?

14 A. I probably have to say, yes, I'd be open.

15 MR. ORENSTEIN: Thank you very much for
answering my
16 questions.

17 THE COURT: Mr. Tigar?

18 MR. TIGAR: Yes, your Honor.

19 VOIR DIRE EXAMINATION

20 BY MR. TIGAR:

21 Q. Good afternoon.

22 A. Hello.

23 Q. My name is Michael Tigar. We were introduced
before.

24 Along with Ron Woods, who is sitting here, we were
appointed by

25 the United States District Court -- the judge in
Oklahoma -- to

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1 help out Terry Nichols in this case. And our job is to
2 represent Mr. Nichols; and in doing that, I'd like to
ask a few
3 questions about some of the same things that have been
asked
4 here.

5 There has been a lot of talk about the
question of
6 punishment, and I want to start by underlining a basic
idea,
7 and that is that we do not concede that that will ever
be an
8 issue. In fact, it's presumed that it will not be
because

that 9 Mr. Nichols is presumed innocent. And our job will be
examine those 10 when the Government presents witnesses, to cross-
it's 11 witnesses. And they go first, you know. And then when
in the 12 our turn, we will present witnesses and evidence. And
the 13 end, the jury makes a decision on this question of has
Okay? 14 Government proved its case beyond a reasonable doubt.
15 A. Okay.
about -- 16 Q. Now, I'd like to start by finding out a little bit
17 you were born in Santa Maria. Right?
18 A. Yes, that's right.
19 Q. Did you all live in town, or outside town?
20 A. We lived in town, and then my dad was stationed at
21 Vandenburg Air Force Base, which is in Lompoc.
22 Q. Which is nearby.
23 A. It's not that far. I mean, it's close by.
family home. 24 Q. A ways away. And that also, though, was your
25 You had relatives there, aunts, uncles and --

1 A. My mother's side of the family.

2 Q. When you were growing up, were any of your family
still

3 involved in farming?

4 A. No.

5 Q. Okay.

6 A. No.

7 Q. Everybody -- so everybody lived in town.

8 A. Right. It was basically my mother's parents as she
was

9 growing up; and then after that, I don't know what
happened,

10 but everybody kind of went their own way.

11 Q. Now, your husband is presently employed and works
on

12 boilers. Is that right?

13 A. Right.

14 Q. Okay. Now, the company with whom he was previously
15 employed -- and I'm talking around in circles like this
because

16 we want to protect your privacy -- was that in the
Denver area

17 that he did that work for that company?

18 A. Yes.

19 Q. And basically the same kind of work?

20 A. Yes.

21 Q. And you told us at page 15, Question 69, that you
are

22 reading a book; and I didn't know what book that was or

what it

23 was about. Could you help me there?

24 A. Actually it's just about the Aztec Indians.

25 Q. I see. So --

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one 1 A. Just their life. It's a history and story of just

2 man's journey.

3 Q. Oh, in the Aztec empire?

4 A. Right. Right.

arrived? 5 Q. And is that at a time before Cortez and his people

6 A. Uh-huh.

that you 7 Q. Okay. So it's a -- and is that the kind of book

8 enjoy reading?

haven't 9 A. I do enjoy it. It's a pretty thick book, and I

it. 10 even gotten close to finishing it; but yeah, I do enjoy

11 Q. Okay. Now, I want to turn to your -- the first

that you 12 questionnaire that you filled out. And I don't know

mail a 13 have a copy of that, but do you remember getting in the

14 jury summons?

15 A. The first one?

16 Q. Right, the first one.

17 A. Yes.

18 Q. And when you got it, what did you think?

19 A. First I couldn't believe it, and then I read
through it and

20 I thought, okay, I've got to fill this out; so I did.

21 Q. And you knew that it was about the case involving
Terry

22 Nichols; correct?

23 A. Right. Because it states that, I think, on the
front page.

24 Q. Sure. Did you talk about it with your husband, the
fact

25 that you had received it?

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1 A. Oh, he knows I got the letter, but we didn't talk
about the

2 case.

3 Q. I understand. Yeah. Did you talk -- did you
mention the

4 fact you received it to anybody at work?

5 A. Just my boss, my employer.

6 Q. Did your boss give you any advice about, you know,
what you

7 should say or that you should try to get out of it or
not get

8 out of it or whatever?

9 A. No, he just said he hopes I didn't get it; but no,
he
10 didn't.

11 Q. Do you remember that on that questionnaire it
asked, "Is
12 there any other reason that would prevent you from
serving on
13 this jury," and you wrote yes?

14 A. Yes.

15 Q. Okay. And then at the next question, it said, "If
yes,
16 provide a detailed explanation."

17 You wrote, "I believe in capital punishment.
I
18 believe Terry Nichols is" -- and then I don't know if
you
19 remember this. You wrote it -- it looked like you
wrote
20 "guilty" and then crossed it out.

21 A. Uh-huh.

22 Q. And then wrote "responsible to some degree for the
deaths
23 in the bombing of the Alfred P. Murrah Building."

Right?

24 A. Yes.

25 Q. Now, what were you basing at that point your belief
that

Juror No. 244 - Voir Dire

1 Terry Nichols was responsible for these deaths?

2 A. I scratched out "guilty" because when I thought
about it --

3 I know you didn't ask me this, but I didn't know enough
to say

4 yes, this man is guilty. Responsible because of what I
had

5 probably heard at the time; not that I really heard a
lot, but

6 just pieces here and there. And that's why I put that
in

7 there.

8 Q. Okay.

9 A. I mean, I didn't have enough information; but at
that time,

10 that's what I thought.

11 Q. No, I understand; and you understand, there are no
-- there

12 is no such thing as a right or wrong answer, nobody is
being

13 graded. I'm just trying to get what you can remember
was in

14 your mind.

15 And when you say "responsible," in what way
did you

16 mean responsible; that he's responsible for the deaths?

17 A. Probably not any specifics, just responsible in the
sense

18 of a connection, I guess, at the time of the McVeigh

trial and

19 that from the very beginning, not really the trial
itself, but

20 just the beginning when they made the arrests, I just
recall

21 hearing, you know, both the names together, so . . .

22 Q. Right.

23 A. That's the only -- I mean, I don't have anything
else to go

24 on besides that.

25 Q. I understand. Well, let me go back to "the
beginning." By

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1 "the beginning," you mean when the bombing occurred,
when the

2 bombing happened?

3 A. Right.

4 Q. And do you remember reading, seeing, hearing about
the

5 bombing on television or radio?

6 A. I remember seeing it on television.

7 Q. And when it first happened, how did you learn about
it?

8 How did you first learn about it, if you remember?

9 A. Probably on the television, on the news.

10 Q. Okay. Were you -- do you have radio and TV at your
dental

11 office?

12 A. We have a radio.

13 Q. Do you remember hearing about it at work?

14 A. No.

15 Q. So it would have been what, after work?

16 A. Yeah.

17 Q. And do you remember seeing, then, the pictures of
the
18 building and the rescue effort and so on?

19 A. Yes.

20 Q. When is the first time -- and I'm not looking for a
21 particular date. Do you remember how Timothy McVeigh
got into
22 the hands of the federal authorities?

23 A. No.

24 Q. Okay. Do you remember about how long after the
bombing

25 that he got into the hands of the federal authorities?

3733

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1 A. No.

2 Q. Do you remember seeing a picture of him, you know,
being
3 arrested and so on?

4 A. Yes, after he was arrested.

with 5 Q. Right; and is that the one in the orange jumpsuit
6 the -- you know, this bunch of people around him?
7 A. I don't remember if he had an orange jumpsuit.
8 Q. Okay.
9 A. I don't remember.
that Terry 10 Q. Now, do you remember then hearing at some point
11 Nichols was also somebody that was arrested?
12 A. Yes.
contact 13 Q. And do you remember specifically how he came in
14 with the federal authorities?
15 A. No.
how 16 Q. Do you remember from what you saw, read, or heard,
17 he -- where he was at the time of the bombing?
18 A. No.
led you 19 Q. Okay. What -- can you describe for me what things
20 to believe that he was responsible for the deaths of
those 21 people?
22 A. Specifics, no. I have to be honest with you. I
mean it 23 doesn't -- just to be honest, no, I don't remember
specifics. 24 I just remember seeing the arrest -- or not the arrest
itself 25 but showing him being escorted somewhere. I don't

remember

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saying 1 where and just a brief, you know, thing on the news

McVeigh. 2 that -- something about the connection between him and

that's -- 3 I can't even remember now exactly what it was, but

4 that's all. I mean, I didn't have anything solid.

there is 5 Q. And when you got the questionnaire, what was it --

refers to 6 nothing in the printed part of the questionnaire that

7 the death penalty, I don't think. What do you remember

something or 8 thinking was the reason that you needed to write

9 should write something about capital punishment?

question 10 A. You know, I don't know. I just answered the

11 and -- I mean, I couldn't tell you. I just answered it

12 honestly and put what I thought down.

that 13 Q. I understand. And you said that there is a reason

"yes." 14 would prevent you from serving on the jury. You had

15 What were you -- go ahead. I'm --

I 16 A. I figured that I didn't know if that would or not.

17 assumed that if that's how I felt, you know -- I was
just being

18 honest, writing yes, this is what I think.

19 Q. Sure. And did you think that capital punishment or
the

20 death penalty might be an issue in the case?

21 A. I wasn't sure. You know, I just knew that it -- it
had

22 been in the McVeigh trial, and I didn't know if --
That's how I

23 felt, so I assumed I should let you know that's how I
felt.

24 Q. Okay. Well, then let's -- if you would, take a
look at

25 pages -- page 28 of your questionnaire. And if you
notice

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1 this, it says in the second paragraph, "In answering
the

2 following questions, assume that you alone have the
power to

3 decide what the law should be as to whether there
should be a

4 death penalty and, if there is such a penalty, how and
when it

5 should be used." Do you recall seeing that?

6 A. Yes, I see that.

7 Q. So I wanted to ask you in light of one of your

other

8 questions, if you were making the law, would the law
provide

9 that if a person is convicted of killing several people
with

10 malice aforethought that that person should receive the
death

11 penalty?

12 A. Yes.

13 Q. And if you were making the law, would there be a
provision

14 in it that if a person was convicted of killing several
people

15 with malice aforethought that there should be a life
sentence

16 for such a person?

17 A. You mean just straight across the board?

18 Q. No. A possibility of a life sentence for such a
person.

19 A. There is a lot to consider there, but yes. I mean,
that's

20 a pretty -- there is a lot to decide there.

21 Q. Okay. Well, that's what I'm -- trying to ask you.
In the

22 law that you were writing, how would you distinguish
between

23 people who killed several people with malice
aforethought,

24 those who would get life sentence, and those that would
get a

25 death penalty?

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1 MR. MACKEY: Judge, objection.

2 THE COURT: Overruled.

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q. Just to be clear here and because of the objection,
if I
is not
you if
before we
6 may intervene, you understand Mr. Tigar's premise here
7 based on what I told you about the law is. He's asking
8 you could write the law, going back to the situation
9 discussed it today. You understand that?

10 A. I think so.

11 Q. Well, we want to make --

12 A. Okay, clarify it a little more.

13 Q. We're making a distinction here, if I may --

14 MR. TIGAR: Yes, of course, your Honor.

15 BY THE COURT:

16 Q. -- between what I've talked about as the process
and the
jury
17 kind of -- the way the issue comes up and then what the
18 has to consider as the law as it is. Mr. Tigar is
taking you

19 back before that to the time that you were writing on
the
20 questionnaire and with the same premise: that if it
were up to
21 you to decide what the law should be, what would you
say with
22 respect to when punishment of death and punishment of
life in
23 prison should be imposed? Do you understand now?
24 A. Yeah, I do; but do you mean on what type of crime,
or you
25 just mean if I found somebody had done something, had
planned

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Juror No. 244 - Voir Dire

1 something, like you had stated and -- did you say
"murdered"?

2 VOIR DIRE EXAMINATION

3 BY MR. TIGAR:

4 Q. Several people.

5 A. Would I just impose a death penalty automatically?
Is that

6 what you're asking me? Or would I also consider the
life in

7 prison without possibilities of parole?

8 Q. That's right. If it were up to you to make the
law.

9 A. If it were up to me to make the law, I guess I
would --

10 well, not "I guess." I feel that if it had been
planned and

11 thought out, then, yes, I do believe in the death
penalty.

12 Q. Okay.

13 A. If that answers your question.

14 Q. No, it does and --

15 A. Okay.

16 Q. And subject to what the Judge said. It's clear
that that's

17 what we're talking about.

18 A. Yeah. I'm trying to put that aside to answer the
question.

19 Q. I want to then step back for a minute and talk a
little bit

20 about -- a little bit more about the process. Okay?

21 A. Okay.

22 Q. Because in the real world -- all right -- in the
real

23 world, I don't make the law and the Government doesn't
and --

24 except as voters. In this room, we get our law from
what the

25 Judge instructs the jury. Whether we agree or
disagree, that's

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1 the rules.

has to 2 Now, the first thing a jury that's seated here

3 do is to look at the evidence; right?

4 A. Right.

5 Q. And when you talked about the criminal justice
system, I

6 guess I heard you say that the most -- well, tell me.
What's

7 the most important thing about our system of criminal
justice?

8 A. That you're innocent until proven guilty.

9 Q. Okay. And would you understand that there would
have to be

10 12 people, jurors, and every single one of them has got
to

11 really believe that?

12 A. Right.

13 Q. Okay. And here's my question: I'm sitting here
14 representing Mr. Nichols --

15 A. Uh-huh.

16 Q. -- and there is a lot at stake.

17 A. Yes. I understand.

18 Q. Okay. And I look at a questionnaire in which you
say, I

19 believe he's responsible to some degree for the deaths
of those

20 people; and we all know a lot of people died. And then
I look

21 at page 36 and 37 --

22 MR. MACKEY: Judge, may I interpose an

objection to

23 the argumentative form of the question?

going to
24

THE COURT: No -- well, yes, you may, but I'm

25 overrule it.

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1 Go on.

2 MR. TIGAR: All right.

3 BY MR. TIGAR:

4 Q. And then I look at pages 36 and 37; and at Question
159,

5 you say, "All I know about Terry Nichols from the media
is he

6 played some part in the bombing with Tim McFee" (sic).

7 And then from 162, "What have you heard or
read about

8 Terry Nichols as a result of the trial?"

9 "Just that he was involved, but I know no
specifics,

10 nor did I really follow."

11 And then in 163, you say, "No opinion."

12 I look at those answers and any others in the
13 questionnaire.

14 Can you look at me and say, I can fully,
unreservedly

15 from the depths of my heart give, say I believe in the

16 presumption of innocence in this case?
17 A. Yes.
18 Q. You can do that?
19 A. Yes, I can.
20 Q. Okay. From the deepest place inside you?
21 A. Yes.
22 Q. You understand why I would ask that.
23 A. Yes, I understand.
24 Q. I'm not trying to insult you with it.
25 A. No, I understand.

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your
for
didn't

1 Q. Now, then, let's turn to this question. What was
2 reaction to the jury's decision about the punishment
3 Timothy McVeigh?
4 A. What was my reaction?
5 Q. Yes. If you can remember.
6 A. I don't really -- I mean, I didn't follow -- I
7 follow the trial --
8 Q. I understand.
9 A. -- as to know --
10 Q. Right.

11 A. -- their decision.

12 Q. And, well, let's look at some other cases. Do you
remember

13 the publicity about this -- a man named Davis who was
executed

14 recently?

15 A. Yes.

16 Q. Okay. And what did you feel about that decision by
the

17 authorities?

18 A. I felt it was a good decision.

19 Q. Okay. And not in a death penalty context, did you
follow

20 the trial of Mr. Simpson?

21 A. A little bit.

22 Q. Okay.

23 A. I mean, only because of the publicity part; but I
mean, I

24 did a little bit.

25 Q. I understand. In all of these -- this is not a
test like

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1 how many things did you know and check the box, because
we all

2 have a life, you know, and we do other things.

3 A. Right.

4 Q. What did you think about that decision, the jury's
decision
5 on guilt or innocence in the criminal case?
6 A. As pertaining to him killing --
7 Q. Yes.
8 A. -- Nicole Simpson? Well, I don't think there was
enough
9 evidence.
10 Q. Okay. So --
11 A. I didn't follow it every day, but --
12 Q. You don't have any quarrel with what that jury did?
13 A. No.
14 Q. Okay. Now, let's then come to the process in a
federal
15 case. And I have to speak a little hypothetically
here,
16 because although you knew when you got the summons that
this
17 case involves Mr. Nichols -- and you certainly saw him
at the
18 Jefferson County Fairgrounds -- nobody in this room
knows what
19 the evidence will be in this case. And so -- and it
would be
20 wrong for me to try to tell you what I think it's going
to be,
21 because if you're selected as a juror, you need to hear
it from
22 the witness stand right from the get-go.
23 So looking at a case in which you were a juror

and you

many 24 had found somebody guilty of the intentional murder of

about 25 people -- all right -- then there would be a trial

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1 punishment. And as you sit there, you said in your
2 questionnaire that before assessing a death sentence
you would 3 want to know about the case, the circumstances, what
happened.

4 You remember writing that?

5 A. Yes.

6 Q. Okay. Tell me a little more about that. What were
you

7 thinking when you wrote that?

8 A. I was thinking of evidence in a case.

9 Q. Right.

10 A. I was thinking of the person. I was thinking of
everything

11 all the way around. That's a serious decision to make;
that I

12 want to know the whole situation --

13 Q. Okay.

14 A. -- before I made that decision.

15 Q. And if you concluded -- if you were on a jury and
you

several 16 concluded that someone was guilty of a murder of
17 people, intentional murder, would you be able still to
approach 18 the question what the punishment would be and consider
the full 19 range of punishment?

20 A. Yes.

21 Q. Okay. Now, when you do that, there are a lot --
obviously,
22 there are steps; and of course, there is evidence
that's
23 presented, mitigating evidence, aggravating evidence.
You'd be
24 able to listen to that; right?

25 A. Right.

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1 Q. And then would you feel -- would you start out,
then, after
2 you had heard that evidence, leaning towards one
punishment or
3 another in a case in which you had already found the
defendant
4 guilty of murders of several people?

5 MR. MACKEY: Objection.

6 THE COURT: Overruled.

7 JUROR: You mean would I make a -- would I

make a

8 decision before --

9 BY MR. TIGAR:

10 Q. No, not would you make a decision. I'm talking
about as

11 you sit there today, would you start out leaning one
way or

12 another?

13 A. No. I have to -- I'd have to hear everything
that's being

14 presented or go through everything that's being
presented, then

15 make a decision.

16 Q. Now, in that process, would you be open to
listening to

17 evidence about a different role that a defendant might
have had

18 than somebody else who was also charged?

19 A. If I understand you correctly --

20 Q. Well, I'll concretize it.

21 A. Okay.

22 Q. Is it okay with you that two people who are charged
with

23 different -- who are charged with committing the very
same

24 crime, one could get one sentence and one could get
another

25 sentence? Is that okay with you, that idea?

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1 A. Do I think that's possible?

2 Q. Yes.

3 A. Or can be done? Yes.

based

4 Q. Okay. And when you say do you think it's possible,

--

5 on what the Judge explained about the process -- right

6 A. Uh-huh.

as to

7 Q. -- what kinds of things does that make you think of

people?

8 why sentences might be different for two different

9 A. A different level of involvement.

10 Q. Okay.

11 A. Evidence.

12 Q. Uh-huh.

13 A. I can't -- the nature of the person.

14 Q. Let me take -- let me take the next step.

15 A. Okay.

looking at

16 Q. Would you be open in considering the question to

remember the

17 the individual background of the defendant? You

18 judge listing a bunch of different things --

19 A. Yes.

20 Q. -- that might come up?

21 A. Yes.

22 Q. And it isn't just a question of, okay, could you
consider

23 them now that you recall them; but in your mind, can
you think

24 of yourself giving effect to them?

25 A. Yes. I understand what you're saying.

3745

Juror No. 244 - Voir Dire

1 Q. Yeah. Because, you know, my -- if a child of mine
says,

2 you know, can I -- would you buy me something and I say
no and

3 the child says, Well, will you consider it, I might
say, Yeah,

4 I will, but that doesn't mean that it's going to
happen; right?

5 So that's why I use "consider" and "give effect." And
in

6 giving effect, would you be able to recognize that each
of us

7 is an individual human being?

8 A. Yes.

9 Q. That Terry Nichols is an individual human being?

10 A. Yes.

11 Q. He's different from everybody else in the world.

12 A. Yes.

13 Q. Well, one more question, and I don't know if you

were asked

14 this before. As you sit there today, can you look
Terry

15 Nichols in the eye and say that you will give him a
fair trial

16 and respect the fact that he is presumed innocent as he
sits

17 there?

18 A. Yes. I think I did answer that.

19 Q. And it's still the same answer: You can?

20 A. Yes, it is.

21 MR. TIGAR: Thank you very much.

22 THE COURT: We all appreciate your time with
us,

23 including the waiting time, and then answering all of
these

24 questions. But I can't answer what I -- we all know is
your

25 question, and that is are you going to be on this jury.
And I

3746

1 can't say that because it takes this process that we're
going

2 through and talking to a number of people.

3 And then, also, I can't answer the question:
Well,

4 when will we know? And, you know, we ask for your
continuing

to 5 patience, because we can't estimate the time necessary
people; and 6 review these same types of questions with different
talk 7 of course, everybody has got different backgrounds to
8 about, too. So please bear with us.

go with 9 But as you go now -- and you're excused now --
juror; 10 the understanding that you will be in here serving as a
talking 11 and therefore, you have to continue to be careful about
about all 12 about the case or anything connected with it, careful
called 13 of the things that you read, see, and hear so that if
the same 14 upon, you can come back here at a later time and be in
expressed 15 frame of mind and the same open attitude that you've
16 today.

call 17 In the event that something happens that would
serve on 18 you out of town or in any way affect your ability to
19 the jury, please let us know immediately.

20 JUROR: Okay.

21 THE COURT: And you've got the number to call.

22 JUROR: Yes.

23 THE COURT: And we'll call you when we know

more.

24 JUROR: Okay.

25 THE COURT: Thank you very much.

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1 JUROR: You're welcome.

2 THE COURT: You're excused.

3 (Juror out at 5:08 p.m.)

4 THE COURT: May I see counsel at the bench a
moment.

5 (At the bench:)

6 (Bench Conference 33B4 is not herein transcribed by
court

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

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1 (In open court:)
2 THE COURT: We'll recess now until 8:45
tomorrow
3 morning.
4 (Recess at 5:11 p.m.)
5 * * * * *
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REPORTERS' CERTIFICATE

2
transcript from

We certify that the foregoing is a correct

Dated

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

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

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Paul Zuckerman

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Bonnie

Carpenter

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