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Transcription
Street,
629-9285

Proceeding Recorded by Mechanical Stenography,
Produced via Computer by Paul Zuckerman, 1929 Stout
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11 Colorado, 80203, appearing for Defendant Nichols.
12 * * * * *

13

PROCEEDINGS

14

(Reconvened at 1:35 p.m.)

15

THE COURT: Be seated, please.

16

(Juror No. 139 was recalled to the stand.)

seat

17

THE COURT: All right. If you'll resume the

18

there, please.

19

Mr. Woods, you have some questions.

20

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

21

VOIR DIRE EXAMINATION

22

BY MR. WOODS:

23

Q. Good afternoon.

24

A. Good afternoon. How are you?

25

Q. I'm going to be the last one.

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Juror No. 139 – Voir Dire

1

A. Oh, okay.

of

2

Q. And it'll all be over, and I've only got a couple

3

questions.

4

A. Only a couple?

asking is

5

Q. Just a few. As the Judge told you, all we're

here. We're

6

your opinion. There are no right or wrong answers

about a 7 just trying to get your opinion about what you think
test your 8 couple of issues in this matter. We're not trying to
9 knowledge of the law or anything.

is Ron 10 The Judge introduced me this morning. My name
the 11 Woods. And along with Mike Tigar, we were appointed by
12 District Court over in Oklahoma City shortly after the
for the 13 Government charged Mr. Nichols with being responsible
14 bombing. How do you feel about Mr. Nichols having
15 court-appointed lawyers?

16 A. Fine. Just like any other lawyers.
juror on, 17 Q. I assume that in those two cases that you were a
18 it didn't matter to you if the lawyers were court-
appointed or 19 hired; is that correct?

20 A. That's correct.
they were 21 Q. Okay. You probably didn't even know, did you, if
22 court-appointed or hired?

23 A. You know, I don't even recall.
other in 24 Q. Okay. It's not going to affect you one way or the
25 this case; is that correct?

Juror No. 139 – Voir Dire

1 A. That's correct.

2 Q. Okay. Thanks. Now, I noticed in the
questionnaire, you

3 stated that you had studied the Constitution some
because you

4 wanted to look at some of the U.S. laws?

5 A. Yes. That was a long time ago, yes.

6 Q. Was that back in school?

7 A. Yes.

8 Q. When you were doing that?

9 A. Yes.

10 Q. Okay. And have you followed it any since? When
you see

11 some interesting decision out of the Supreme Court, do
you look

12 at the Constitution at all in that?

13 A. No. Not much anymore.

14 Q. Okay. Okay. Now, in your job, your present job of
driving

15 kids at the school, you mentioned that you drive them
to and

16 from school, but you also drive them other places. Do
you take

17 the athletic teams on trips?

18 A. Occasionally, we do, yes.

19 Q. And then you take like the civics classes if they
go down

trips you 20 to the courts and watch cases, or what are the other

21 make with --

22 A. Basically, other trips are just to museums and, oh,
parks

23 and --

24 Q. Okay.

25 A. -- you know, maybe going to Rockies game or --

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Juror No. 139 - Voir Dire

1 Q. Yes, sir.

2 A. -- things like that.

3 Q. And I believe you told the Court that that's all
grades; is

4 that correct?

5 A. Yes. That's correct.

6 Q. Okay. And then you do the same thing for the
church?

7 Evidently, you drive the van?

8 A. Yes, I do.

9 Q. You do that for Sunday schools for their trips?

10 A. Yeah. I drove for Sunday schools and other trips.

11 Q. Okay. Okay. And when you worked as a security
guard for

12 Burns, did you work in any schools or anything dealing
with

13 children?

a 14 A. No. Basically, all I did with Burns was watch over

15 parking lot and watch cars.

16 Q. Okay. Okay. And that was just for a short term,
17 evidently?

something like 18 A. Yes. It was for about three or six months,

19 that.

publicity of 20 Q. Okay. Okay. Let me ask you some about the

-- and 21 the case. On Question No. 159, on your questionnaire

22 that's on page 37.

23 A. All right.

involved 24 Q. Your answer there was, "Not anything except he was

to 25 in this." And who was the "he" that you were referring

3898

Juror No. 139 - Voir Dire

1 there?

2 A. The -- McNichols (sic). Okay.

Nichols, the 3 Q. McNichols (sic) -- are you speaking of Terry

4 defendant here?

5 A. Yes, yes, I am.

6 Q. Okay. And that he was involved. Involved in what?

7 A. He was involved in the incident.

8 Q. In what --

9 A. In the bombing.

10 Q. Okay. Okay. Now, from what you've seen and read
and heard

11 over the last -- it's been two-and-a-half years now --
do you

12 recall how many people were killed in this incident?

13 A. I don't really recall how many.

14 Q. Not the specific number, but can you give me a
rough

15 estimate?

16 A. Well, I was thinking of 168, but I don't know if
that's --

17 Q. Okay.

18 A. -- close or not.

19 Q. Do you know whether or not there were any children
killed?

20 A. Yes. There were several children. I remember that
part

21 very well.

22 Q. Do you recall what the circumstances were as to why
there

23 were children killed in a bombing of a federal
building?

24 A. Yes. Because they had a care center in the
building.

25 Q. All right. And do you remember approximately how
many

Juror No. 139 - Voir Dire

1 children were killed?

know it

2 A. No. I don't recall exactly how many children. I

3 was several.

the

4 Q. Okay. And do you recall how the bomb was placed at

5 federal building?

6 A. It was placed in a van.

7 Q. Okay. And do you recall what type of bomb it was,

8 according to the press?

9 A. No. I just know it was a very powerful explosive.

10 Q. Okay. Do you recall how Mr. McVeigh was arrested?

11 A. No, I don't.

or heard

12 Q. Okay. Do you recall from what you've seen, read,

contact

13 over the past couple years how Mr. Nichols initiated

14 with the federal authorities?

15 A. No.

the

16 Q. Okay. Do you recall where he was at the time of

17 bombing, according to the press?

18 A. According to the press, I believe he was at home.

19 Q. And do you recall where that was?

20 A. No. I don't recall where it was.

City? 21 Q. Do you recall whether or not he was in Oklahoma

22 A. I think it was in Oklahoma City. In his home.

McVeigh 23 Q. Okay. Do you recall whether or not he was with Mr.

24 at the time of the bombing?

25 A. I don't believe he was. Not that I can recall.

3900

Juror No. 139 - Voir Dire

When you 1 Q. Okay. Can you help me just a little bit here.

except that 2 say that you don't recall anything about the case

based on 3 he, Mr. Nichols, was involved in this incident, just

your 4 what you've seen, read, or heard in the media, what is

5 recollection of how he was involved?

I 6 A. I think he was involved in making the explosive, if

7 recall correctly.

8 Q. And anything else?

9 A. Not that I remember.

10 Q. When you say "making the explosives," do you recall
11 anything about that?

involved 12 A. No. I just remember that's all I know he was

claim. 13 with. I think he was involved with. That's what they

not. 14 I have no idea if he was actually involved in it or

TV. 15 Q. Okay. Now, you told the Court that you watch Court

take it. 16 And one of the things you watch is "People's Court," I

17 A. Yes. That's correct.

that 18 Q. Okay. And you try and watch that regularly. Does

19 come on in the evening?

on in 20 A. I usually watch it quite regularly in times it came

21 the evening, and sometimes it came on during the day.

during the 22 Q. Okay. What -- what are your hours that you work

23 day?

24 A. I work from 11:45 to 6:15.

morning 25 Q. Okay. So you don't go to work until 11:45 in the

3901

Juror No. 139 - Voir Dire

1 right before lunch?

2 A. Uh-huh.

3 Q. And then you're off at 6:15?

4 A. That's correct.

5 Q. And you try to watch the evening news when you get

home?

6 A. Sometimes I do, sometimes I don't.

7 Q. Okay. Now, when the O. J. Simpson case was going
on, did

8 you have an occasion to watch any of that?

9 A. I watched very small parts of it.

10 Q. Okay. Were you not interested in that?

11 A. I was interested in it when it began; but after a
while,

12 they carried it on so long, that --

13 Q. It did go on for a while.

14 A. Yeah. It was kind of -- it seemed like to me it
was kind

15 of repetitious.

16 Q. What did you think of how that case was handled --
or was

17 tried, rather?

18 A. I think it was tried fine, handled very well from
what I

19 can, you know, get out of the paper.

20 Q. Okay.

21 A. And the news.

22 Q. And you just stopped watching it because it became
23 repetitious?

24 A. Yes.

25 Q. Okay. Did you form any opinion about the court
system, the

Juror No. 139 - Voir Dire

1 criminal court system from watching that case?

2 A. No. I didn't.

3 Q. Did you agree or disagree with the verdict?

4 A. Well, I'm kind of in the middle on that one.

5 Q. Okay. Okay. And is that because you didn't watch
all of
6 it on -- on television?

7 A. Yeah. That's basically because I didn't follow it
that
8 close.

9 Q. Would you agree that the people who really
understood the
10 case were the ones -- the jury that watched all the
evidence
11 come in?

12 A. I'm sure they did.

13 Q. Okay. Now, on Court Television, have you seen
individual
14 lawyers talking about this case, the Oklahoma City
bombing
15 case?

16 A. I don't recall seeing it.

17 Q. Okay. Did you see them talking about the O. J.
case, the

18 lawyers from all over the country who weren't involved
in the
19 case?

20 A. That, I've seen, those, yes.
21 Q. What did you think of that when lawyers were just
talking
22 about a case that they weren't participating in and
knew very
23 little about?
24 A. I think it's very -- you know, natural, human
nature, and a
25 lot of people are going to talk about it.

3903

Juror No. 139 - Voir Dire

1 Q. A lot of people talked about the O. J. case?
2 A. Yeah. Sure.
3 Q. Okay. What about cases where -- did you ever see
them talk
4 about the McVeigh case?
5 A. No -- not that much.
6 Q. Okay.
7 A. Very little.
8 Q. When lawyers are talking about cases, do you give
special
9 attention to them because they may have some inside
knowledge
10 that you want to listen to?
11 A. Yes. I would. Yes.
12 Q. Okay. And again, do you recall any of them talking
about

13 this case that you might have overheard?
14 A. I haven't heard any talk about this case, no.
15 Q. Okay. Now, the Judge asked you about your feelings
on the
16 death penalty and your wife's feelings, and you smiled
when you
17 said that you and your wife had a different opinion.
Have you
18 all had some good discussions on that?
19 A. Yeah. We've had a few discussions.
20 Q. Okay. And you mentioned that she does not feel
that it's
21 right morally; is that correct?
22 A. Morally, she doesn't, that's correct.
23 Q. Okay. And I take it that you've had some fairly
strong
24 views on the death penalty for some time, or am I not
correct?
25 A. I've had mixed feelings on it.

3904

Juror No. 139 - Voir Dire

1 Q. Okay. And have they changed over the years?
2 A. Oh, I think everyone's opinion changes over the
years.
3 Q. How would you characterize how yours have changed
going
4 from one position to the other? How have they changed?

used to 5 A. Oh, I think I'm kind of in the middle more than I
6 be.
7 Q. How were you in the past?
8 A. In the past, I was more for it.
middle? 9 Q. What's caused you to change and become more in the
I used 10 A. Oh, I think I try to think things through more than
11 to.
12 Q. Has your wife been the influence on that?
13 A. No.
14 Q. Okay. Just your own --
15 A. Just my own opinion.
extensive in 16 Q. Your own opinion. Were your discussions more
areas of 17 the past than they are now, or are you finding more
pretty 18 agreement with your wife now, or are there still some
19 good extensive discussions?
we get -- 20 A. Oh, we -- we don't discuss it a whole lot because
off and 21 sometimes arguments get too heated, and we just back
22 kind of forget it.
questionnaire 23 Q. Okay. Okay. I noticed you mention in your
24 that there are four people living in your home; that
you have a

25 couple of friends.

3905

Juror No. 139 - Voir Dire

1 A. Yes, I have a couple good friends.

2 Q. Is that -- have you ever had exchange students from
3 overseas living with you?

had

4 A. No. I haven't. But we've had friends that have
5 exchange students.

6 Q. Okay.

7 A. And they find it very rewarding.

living

8 Q. Right. Right. Without getting too personal, who's

because I'm

9 with you now? We don't need any names or anything,
10 not trying to identify --

11 A. I won't give you names anyway.

12 Q. Okay.

13 A. Just -- just good friends.

death

14 Q. Okay. Have they entered into the discussion on the
15 penalty issue with you and your wife?

16 A. No, they have not.

Davis

17 Q. Okay. And I assume that you're aware of the Gary
18 case that's been in the media here lately?

19 A. Yes. I -- I've read about it as they put him to
death with

20 the needle.

21 Q. And for several weeks before the execution, there
were

22 articles in the newspaper that have guest columnists
writing

23 for and against the death penalty. Did you ever read
those in

24 the two newspapers?

25 A. No. I didn't -- I didn't read any of those.

3906

Juror No. 139 - Voir Dire

1 Q. Okay. You take the Rocky Mountain News, as I
understand

2 it; is that correct?

3 A. Yes. That's correct.

4 Q. Okay. Did you intentionally not read those or did
you just

5 not have time or weren't interested or what?

6 A. I just wasn't interested at the time. I just read
other

7 articles and stuff.

8 Q. Okay. Okay. Well, can you give me an example of
what your

9 views are on the death penalty today?

10 A. I think in a lot of cases, it's -- it's not
justified; and

mixed 11 others, it is justified. I'm kind of -- still got
12 feelings on that one.
bit on 13 Q. Okay. And the Court covered that somewhat a little
to you 14 the questionnaire. You know the Court was explaining
you 15 that what we're asking you on that questionnaire was if
write that 16 were writing the law, what kind of cases would you
some 17 should have the death penalty. And can you give me
should be an 18 examples of cases you think that the death penalty
19 option on.
person killed 20 A. Well, if it was proven without a doubt like a
yes. 21 someone -- another person, then I would definitely say
of 22 Q. Okay. And that's -- somebody's been found guilty
23 premeditated, deliberate murder?
24 A. Yes.
killing 25 Q. Okay. Now, is that for just one murder or for a

3907

Juror No. 139 - Voir Dire

1 that involves multiple people?

2 A. I'd say one.

3 Q. Okay. One --

4 A. Or multiple.

5 Q. Or more, of course?

6 A. Yes. Multiple.

7 Q. If you believe it on one, you certainly believe it
on more

8 than one?

9 A. Yeah.

10 Q. Okay. And what kind of cases would you write the
statute

11 for that would cover life in prison without release?

12 A. I'd say very -- it would have to come in very bad
acts of

13 law, that, oh, murder or -- or maybe deliberate --
deliberate

14 rape or something like this.

15 Q. Okay. Okay.

16 A. Deliberate, you know -- intents to human being to
do bodily

17 harm to them.

18 Q. Yes, sir. Yes, sir. Now, you mentioned murder
again there

19 in cases where it would be life without release. Are
you

20 distinguishing different kinds of murder? Because you

21 mentioned in the death penalty it would be those
murders where

22 it's proved beyond a reasonable doubt and it's
premeditated and

23 deliberate. What kind of murders are you thinking of
where you
24 would write the statute that life in prison would be
the
25 option?

3908

Juror No. 139 - Voir Dire

1 A. Well, like, for instance, if someone went out and
actually
2 shot someone else and they -- like in a grocery store
or
3 something like that.

4 Q. Okay. Now, are you saying that that's the same
kind of
5 murder, a deliberate, intentional, premeditated murder
that you
6 would write a statute that would be life imprisonment
for?

7 A. Yes.

8 Q. Okay. Now, you heard the Judge explain the
circumstances
9 of how we might get to a punishment stage of a case?

10 A. Yes.

11 Q. And did you understand that we're certainly not
conceding
12 that we're ever going to get to a punishment stage of
the case?

13 Mr. Tigar and Mr. Nichols and I are not conceding the
guilt of

a 14 the accused, and we're not conceding that we'll get to
has got a 15 punishment stage. The Government here at this table
that 16 particular theory that Mr. Nichols is responsible for
to be 17 bombing. We disagree with that theory. They are going
up their 18 calling witnesses to this witness stand here to prove
each of 19 theory, and Mr. Tigar and I are going to cross-examine
said we're 20 those witnesses. And even -- even though the Court
get 21 not obligated to call witnesses ourselves, when they
calling some 22 through presenting their case, we're going to be
23 witnesses that contradict their theory, and they'll
the 24 cross-examine those witnesses. And then it'll be up to
into 25 jury to consider all the evidence that's been offered

3909

Juror No. 139 - Voir Dire

with a 1 evidence -- into evidence and then to vote and come up
the 2 decision. And if the jury has a reasonable doubt as to
3 guilt of the defendant, what would have to be the vote

of the

4 jury?

would be

5 A. Well, the jurors that have the reasonable doubt

6 kicked out.

doubt as

7 Q. What about if all twelve of them had a reasonable

8 to the guilt of the defendant?

9 A. Then they would probably change the whole jury.

that

10 Q. Well, did you agree with the Court's instruction

11 Mr. Nichols is presumed innocent as he sets here today?

12 A. Yes, he is innocent.

doubt.

13 Q. And all defendants are presumed innocent until the

14 Government can prove the case beyond a reasonable

15 A. Yes.

all the

16 Q. And my example was if at the close of the evidence,

a

17 evidence is in, but all twelve members of the jury have

would

18 reasonable doubt as to the guilt of the defendant, what

19 have to be the vote of the jury?

evidence would

20 A. Well, if they all thought he was guilty, the

21 be good then.

doubt, we

22 Q. And if they all felt no, there's a reasonable

23 don't believe he's guilty beyond a reasonable doubt,

what would

24 their vote have to be?

25 A. Not guilty.

3910

Juror No. 139 – Voir Dire

that

1 Q. And would you have any trouble participating in

2 process?

3 A. No, I would not.

you mean

4 Q. Now, when you mentioned that the jurors who have a

5 reasonable doubt would have to be kicked out, what do

6 by that?

you know,

7 A. Well, if they're not positive of their decision,

8 they should say so and --

deliberating?

9 Q. That's back in the jury room when they're

10 A. Yes. Uh-huh.

problem

11 Q. Okay. Now, I'm not trying to get into the way you
12 deliberated on those two prior cases. Did you have any

13 there with the jury reaching a unanimous decision?

14 A. We had some.

15 Q. Were any of the jurors asked to leave?

16 A. No. We worked it out.

those
leave.
their
to -- a
had a
doubt. I
would

17 Q. Okay. Okay. But back to your statement here that
18 jurors that would have a reasonable doubt would have to
19 Can you expand on that a little bit?
20 A. Well, I think if they're -- they're not positive of
21 decision, they, you know -- they -- then they have got
22 large doubt in their mind, that's all I'm thinking.
23 Q. Okay. What if there were three or four jurors that
24 large doubt and said, you know, I've got a reasonable
25 don't believe he's guilty. If you were on a jury, how

3911

Juror No. 139 - Voir Dire

1 you handle that?
2 A. Well, everybody's entitled to their own opinion.
3 Q. Yes, sir.
4 A. And you would just -- you would have to thrash it
out and
5 you'd have to make one decision which you all agree
upon, the
6 way I understand it. Is that correct, sir?
7 Q. Yes, sir.

8

VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q. Yeah, but I think what Mr. Woods is trying to find
out from

11 you -- and I have the same -- I have the same concern.
I

12 thought you said -- and maybe we didn't hear you right
-- that

13 if they -- the jurors weren't able to decide or had
some doubt,

14 they should be thrown out or taken out or something.

15 A. Well, I guess that's a little bit rash.

16 Q. Yeah. That's quite rash. That's why we wanted to
know

17 what you meant by it.

18 A. That's a little bit too rash, thinking about it.

19 Q. Well, what did you mean when you said that?

20 A. Well, just they should -- just talk it over and try
and

21 make a decision.

22 Q. Okay. Well, you know, we don't pull jurors out
because

23 they disagree --

24 A. No. I understand.

25 Q. -- with other jurors.

3912

Juror No. 139 - Voir Dire

1 A. I realize what I said, and it was invalid.

2 THE COURT: Okay.

3 MR. WOODS: Thank you, your Honor.

4 VOIR DIRE EXAMINATION

5 BY MR. WOODS:

6 Q. I'm not trying to put words in your mouth. We're
just
7 trying to get your honest opinion.

8 A. I know you were.

9 Q. About how you feel about these issues, because it's
10 important to both sides.

11 A. I know. I know it is.

12 Q. What your honest opinion is. And let me go back
then to
13 that one issue. If there are three or four jurors who
say,
14 I've got a reasonable doubt about the guilt of the
defendant,
15 how would you work that out if you were on the jury?

16 A. I think the jury ought to discuss it and go over it
and
17 hash it out.

18 Q. All right. Could you foresee a possibility where
it just
19 couldn't be worked out?

20 MR. MACKEY: Judge, objection.

21 JUROR: It could happen, sure.

22 THE COURT: Okay. He's answered.

23 BY MR. WOODS:

about if 24 Q. Now, you heard the Judge explain the process here
following on 25 there is a punishment stage. Did you understand

3913

Juror No. 139 - Voir Dire

1 that?

2 A. Yeah. If there is a punishment stage.

not 3 Q. If there is -- and again, we're not -- again, we're
4 conceding that there's going to be.

question. 5 A. No. No. I know that. You're just asking the

mean about 6 Q. Yes, sir. What did you understand the Judge to

would be 7 the mitigating circumstances? He told you that there

there would 8 aggravating circumstances offered into evidence and

What did 9 be mitigating circumstances offered into evidence.

circumstances? 10 you understand him to mean about the mitigating

side. 11 A. Well, there are different circumstances on each

all the 12 Q. Okay. And if you were on a jury and you'd heard

sides, 13 circumstances that were offered into evidence by both

14 and you were on a jury where the jury had found the

defendant

15 guilty of premeditated murder of a number of
individuals, are

16 there any cases where you feel that the death penalty
would be

17 the only appropriate verdict, regardless of what was
offered

18 into evidence?

19 A. Well, I -- I really don't know how to answer that
one.

20 Q. Okay.

21 A. I've never been confronted with it.

22 Q. Okay. Well, let me offer another way then. If you
were on

23 a jury and the jury had found the defendant guilty of

24 premeditated, deliberate murder of several individuals,
can you

25 think of a circumstance where you think life
imprisonment would

3914

Juror No. 139 - Voir Dire

1 be the appropriate verdict after hearing all the
evidence on

2 both sides?

3 MR. MACKEY: Judge, objection.

4 THE COURT: Sustained as to asking him for
particular

5 circumstances.

6

VOIR DIRE EXAMINATION

7 BY THE COURT:

8 Q. You know what we're trying to find out is whether
you're

9 open --

10 A. Yes, I am open.

11 Q. -- to both possibilities, regardless of the crime
itself.

12 A. Yes, I am open to that.

13 Q. You're sure.

14 A. Yes. Positive.

15 Q. Regardless of the crime, itself.

16 A. Regardless.

17 Q. That's what Mr. Woods is trying to press.

18 A. Yes. Yes. That's correct. I'm open to it.

19 THE COURT: All right.

20 MR. WOODS: Thank you, your Honor.

21 THE COURT: Okay.

22 VOIR DIRE EXAMINATION

23 BY MR. WOODS:

24 Q. So is it my understanding then that your death
penalty

25 beliefs -- and you're fairly strong in the death
penalty as I

3915

Juror No. 139 - Voir Dire

formed on 1 understand; is that correct? Your views have been
2 that?
3 A. They haven't been formed in concrete as per se, so
--
jury 4 Q. Okay. But you are of a position if you were on the
at the 5 and you'd heard both sides of the evidence that came in
guilty of 6 punishment stage, even though a person had been found
could 7 premeditated murder of a number of individuals, you
8 consider both life in prison for that sentence for that
9 defendant, given the number of individuals that were
killed?
10 A. Yes, I could.
11 Q. And you could consider the death penalty, also?
12 A. Yes, I could.
13 Q. Okay. And you don't have any preformed beliefs
about what 14 you think would be the appropriate punishment for a
person 15 found guilty of deliberate, premeditated murder?
16 A. No.
17 Q. Now, can you look Mr. Nichols in the eye here and
tell him 18 that, Mr. Nichols, I'll give you a fair trial if I were
19 selected on the jury?
20 A. Yes.

much, 21 MR. WOODS: Okay. All right. Thank you very
22 sir. We appreciate you giving us your opinion on these
23 matters.

24 JUROR: Okay.

in 25 THE COURT: We all appreciate that and share

3916

first of 1 expressing our thanks to you for coming in; and, well,
coming in 2 all, for answering that long questionnaire and then
questions, too, 3 and answering some more. Now, you've got some

The 4 I know, which are, well, am I going to be on the jury.
5 answer is I don't know.

6 JUROR: I know that.

Answer 7 THE COURT: The question is, when will I know.
8 is, I don't know.

9 JUROR: Okay.

of 10 THE COURT: And we're sorry to keep you sort
11 hanging out there without --

why. 12 JUROR: That's all right. I can understand

13 THE COURT: It takes a while.
14 JUROR: Yes, it does.
15 THE COURT: And it may take considerable time
yet.
16 JUROR: Yes, sir.
17 THE COURT: So here's what I want you to do.
Assume
18 that you're going to be on the jury.
19 JUROR: Okay.
20 THE COURT: Assume that you're going to be in
here,
21 trying this case, on whatever day it starts. And then
you will
22 have the responsibility to do what you've told us you
can do:
23 Give a fair trial to both sides in the case.
24 JUROR: That's correct.
25 THE COURT: And we don't want anything to
happen

3917

1 between now and then that would affect that, so be very
careful
2 about all of the things that you read, see, and hear.
Be very
3 careful about conversations with others, avoiding
anything
4 which could in any way influence you on your ability to

judge

5 this case.

6 JUROR: I understand.

7 THE COURT: Will you do that?

8 JUROR: Yes, I will.

9 THE COURT: And if anything happens, you know,
that

10 changes your status in any way, if there were an
emergency in

11 the family, you had to go out of town or something --

12 JUROR: I'll let you know.

13 THE COURT: -- let us know immediately. Keep
in

14 touch, and we'll get back to you when we can, but we
can't tell

15 you when.

16 JUROR: Okay. I understand that.

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

18 JUROR: Thank you.

19 THE COURT: 9 -- 953.

20 Sir, would you raise your right hand and take
the oath

21 from the clerk over here -- or left hand, whichever.
Whichever

22 you're comfortable with.

23 (Juror No. 953 affirmed.)

24 THE COURTROOM DEPUTY: Thank you.

25 THE COURT: Please be seated there in that

chair.

3918

Juror No. 953 - Voir Dire

1 VOIR DIRE EXAMINATION

2 BY THE COURT:

3 Q. And as you know, we've called you in for possible
service

4 on the jury in this trial of the case of the United
States

5 against Terry Lynn Nichols.

6 A. I understand.

7 Q. And that you received a summons for possible jury
service

8 here about two months ago --

9 A. I did.

10 Q. -- informing you of that fact, and then you were
asked to

11 come to the Jefferson County Fairgrounds' auditorium
building a

12 month ago to answer some questions on a long
questionnaire.

13 A. Yes.

14 Q. And you remember doing that?

15 A. I do remember.

16 Q. And you remember I was there and introduced myself
and

17 introduced some other people who were with me, and I
want to do

18 that again because they're with me now. And I want you
to know
19 who they are again because we wouldn't expect you to
remember
20 everybody.

21 But here at this table immediately in front of
you is
22 Mr. Lawrence Mackey, Ms. Beth Wilkinson. They were
with us
23 there. They are lawyers for the Government. They are
joined
24 now by Mr. Patrick Ryan and Mr. Geoffrey Mearns, who
are also
25 lawyers for the Government, but they weren't there
before.

3919

Juror No. 953 - Voir Dire

1 They have joined us here now.
2 You also recall Mr. Michael Tigar and Mr.
Ronald
3 Woods, attorneys for Terry Lynn Nichols; and of course,
4 Mr. Nichols was with us then and is now.
5 And I gave you at that time -- you and the
other
6 people who were out there as potential jurors -- an
explanation
7 about the background of this case and told you some
things that
8 probably weren't news to you; that there had been an

explosion

9 in Oklahoma City, Oklahoma, on April the 19th, 1995, at
a
10 federal office building there. The building was
destroyed.
11 People in it were injured and killed; that later,
lawyers for
12 the Government filed charges in the form of an
indictment,
13 which is a statement of charges, in the United States
District
14 Court in Oklahoma City, charging a man named Timothy
James
15 McVeigh, along with Terry Nichols -- and then the
indictment
16 says "and other persons not named" -- with a
conspiracy, a
17 criminal agreement to bomb that building and to kill
and injure
18 people in it.

19 The indictment includes charges that in
addition to
20 the planning and conspiracy, the defendants carried out
such a
21 bombing, and the charges include eight murder charges,
22 first-degree murder of the -- of eight law enforcement
agents
23 of various agencies of the U.S. Government who were
killed in
24 the explosion. To those charges each defendant pleaded
not
25 guilty, thereby creating the issues that are to be
tried.

3920

Juror No. 953 - Voir Dire

1 The case then got moved here to Denver because
of a 2 concern that since all of this happened in Oklahoma
City, it's 3 difficult to ask people there to serve on a jury.

4 And so after the case got moved here, I
entered an 5 order that separated the two defendants for trial,
finding that 6 it would not be fair to anybody to have the case as to
each of 7 the defendants in front of the same jury at the same
time 8 because of expected differences in the evidence as it
may 9 relate to each of Mr. McVeigh and Mr. Nichols.

10 And there has been a trial with respect to the
11 evidence as it relates to Timothy McVeigh. A jury
heard that 12 case, reached a verdict of guilty on those charges,
then the 13 jury was required to hear more on the question of
sentencing 14 and had a sentencing trial and came back with a
recommendation 15 of the death penalty. You know these things?

16 A. I know these things.

17 Q. And that as I explained to you and the other jurors
who
18 were with us, you know, whatever happened at the --
whatever
19 you may know about the Timothy McVeigh trial because of
20 something you've read, seen, or heard, it can't be
considered
21 now. And the outcome of that case, what a jury did
with the
22 evidence it heard as to Mr. McVeigh, can in no way be
23 considered by a jury hearing the evidence as it relates
to
24 Mr. Nichols. Do you understand that point?
25 A. I understand.

3921

Juror No. 953 - Voir Dire

1 Q. And you understand that's the very reason for the
order for
2 separate trials. If there were to be any spillover
from
3 Mr. McVeigh's trial to this trial, that would be
unfair, and it
4 would violate this Court's order that there be separate
trials
5 and separate consideration.
6 A. I understand.
7 Q. Okay. Now, I then also went on to explain some
principles

what's 8 of jury trials and of the criminal justice system and
jury. 9 involved in that. And I believe you served before on a

10 A. That's correct.

11 Q. And that was down in Midland?

12 A. Yes, sir.

You've got 13 Q. Midland? And as I -- I'm looking at page 26.
14 your questionnaire there, have you?

15 A. Yes.

16 Q. Please turn to that page. And what I want to
explain to

17 you is we did take your answers and make copies for the
people

18 who are here with us, but not for anybody else. They
haven't

19 shared them with anybody else. We're using your
answers just

20 for this purpose. And you know that we're trying to
protect

21 your privacy, too, by avoiding the use of your name and
also

22 having you brought in and out of the courthouse so the
news

23 people can't take your picture or any of that. We are
now in

24 open court, so the things that are said now are public.
You

25 understand that now?

Juror No. 953 - Voir Dire

1 A. I understand.

in

2 Q. Okay. Turning to this prior jury service then back

3 1956, quite a while ago. And this was a juvenile case?

4 A. Yes, sir.

guessing

5 Q. And I don't know about the law of Texas. But I'm

young

6 that what this involved is were you to declare these

7 people delinquent?

8 A. Yes, sir.

on

9 Q. And having a delinquent status, and that depended

10 whether they did something?

11 A. That's correct.

be a

12 Q. Some criminal -- conduct that would, for an adult,

13 crime. Is that what you understood?

14 A. That's what I understood.

that case?

15 Q. What did it involve? Do you remember much about

accepted

16 A. Two juveniles presented before the court allegedly

park

17 a ride from a -- an adult, and they arrived at the city

struck

18 and it was late at night. Allegedly, the two juveniles

with a 19 the owner, driver of the car, the adult, about the head
20 pipe and robbed him and then left the scene.
people 21 Q. All right. How old were those people? I mean, the
22 on trial. If you remember.
23 A. 13 to 15. One was slightly older than the other.
24 Q. They were both tried at the same time?
25 A. Yes.

3923

Juror No. 953 - Voir Dire

1 Q. And they -- there were lawyers on each side and --
defense 2 A. There was the prosecutor for the county and a
3 attorney.
4 Q. One attorney for both or two attorneys?
5 A. I believe there was one attorney for both, sir.
situation; 6 Q. And witnesses were called as the ordinary trial
7 right?
8 A. I believe that the only witness that was called was
the 9 victim or alleged victim of the incident.
10 Q. Do you remember anybody else testifying?
11 A. Not presented before the jury, I don't remember
that there 12 was.

13 Q. What -- what did the jury decide in that case?

14 A. That -- the jury unanimously decided to declare the
two youths juvenile offenders or juvenile delinquent.

16 Q. So the jury decided they did what was alleged?

17 A. That's correct.

18 Q. And there were -- you weren't the foreman or --
were you
19 or --

20 A. No. I was not the foreman.

21 Q. Now, is that the only time you've been on a jury?

22 A. I was selected for a jury one year later. The case
was
23 settled actually just moments before the trial began.
It was a
24 civil trial.

25 Q. All right. And I just want to review with you
certain

3924

Juror No. 953 - Voir Dire

1 fundamentals about the criminal justice system now.
And to the

2 extent that it may have been different with what you
were told

3 in that juvenile case, we'd understand that. But
various

4 states treat juvenile offenders differently. But
basically,

5 it's the same process, you know, are you satisfied from
the
6 evidence that these people did what they're accused of.
I
7 mean, you saw that as being the issue, I take it.
8 A. Yes.
9 Q. But let me just make sure here because this is a
long time
10 ago. And that -- I mean, that you sat there in Midland
in the
11 courtroom. But there are some fundamental points that
-- that
12 apply across the board to any kind of a trial in the
criminal
13 system and it is that any person accused of crime, no
matter
14 who she or he may be, is presumed to be innocent of
that crime
15 regardless of the crime. Understand?
16 A. I do.
17 Q. And that's called the presumption of innocence.
And a part
18 of that is the burden of proof, that the prosecution
has to
19 come in and prove the case against this person with
evidence,
20 witnesses, exhibits, the things that are admissible
under the
21 rules of evidence. And no person who is accused, again
no
22 matter who he is or what the crime is, has any burden
or duty

23 of proving himself to be not guilty. He doesn't have
to prove
24 anything at his trial. He can simply remain silent and
25 challenge the proof against him brought in by the
prosecution,

3925

Juror No. 953 - Voir Dire

1 cross-examine the witnesses, object to the
admissibility of
2 evidence and all that. And in a case in which a
defendant does
3 not testify, a defendant -- you know, not only does he,
of
4 course, not have to offer any witnesses, he doesn't
have to be
5 a witness. He doesn't have to answer any questions or
give any
6 explanations. And in cases where a defendant does not
take the
7 witness stand and say anything, the jury can't consider
that.
8 That's not some kind of an inference that he's guilty
or can't
9 be considered, well, you know, if I was innocent, I'd
testify.
10 None of that can be talked about. You understand?
11 A. I understand.
12 Q. And at the end of the trial, the court gives
instructions

proved 13 to the jury about these are the things that have to be
elements 14 beyond a reasonable doubt for the crime charged. The
have to 15 of the offense, we refer to that, exactly what they
crime 16 prove before a jury can find the person guilty of the
have a 17 charged. And if, given all that is heard, the jurors
what's 18 reasonable doubt about whether the evidence proves
not 19 charged, the duty of the jury is to find the defendant
20 guilty, thereby giving him the benefit of that doubt.
21 Understood?
22 A. Understood.
points? 23 Q. Now, do you have any disagreement with these
24 A. I have no disagreement.
if you 25 Q. Are you ready to follow them and be bound by them

3926

Juror No. 953 - Voir Dire

1 were to serve on this jury?
2 A. I am ready to follow them.
with us 3 Q. Okay. So you're recognizing that Mr. Nichols sits
4 this afternoon, presumed to be innocent of these

charges the

5 Government made against him in Oklahoma City?

6 A. I understand.

7 Q. I want to review with you a few things about
answers that

8 you have given us on the questionnaire. We're not
going to go

9 over the whole thing. But there are certain areas that
I want

10 you to explain a little bit more; and then when I'm
done with

11 this questioning, a lawyer on each side will have a
chance to

12 ask you some more questions, and that's only fair.
Will you

13 agree?

14 A. I agree.

15 Q. Now, you were born, raised, and lived for quite a
while in

16 Texas.

17 A. Yes, sir.

18 Q. And you lived in Midland and Fort Worth?

19 A. That's correct.

20 Q. And went to school in Abilene?

21 A. That's correct.

22 Q. And you went to New Orleans then?

23 A. Not directly, but very nearly so, sir.

24 Q. Well, where were you between time there?

25 A. I spent a brief time in New Mexico, then returned

to Texas.

3927

Juror No. 953 - Voir Dire

1 Q. Oh, yeah. And then over to New Orleans?

2 A. That's correct.

3 Q. And you did some farm, ranch work during the
summers when

4 you were a young man?

5 A. Yes.

6 Q. Where was that?

7 A. New Mexico and central Texas.

8 Q. And what kind of places did you work on?

9 A. A wheat ranch, relative's wheat farm and cattle
ranch near

10 Raton, New Mexico, and in central Texas, Erath County,
Dublin.

11 Q. Okay. And then when you went over into New
Orleans, you

12 had a hardware store?

13 A. I worked in the retail hardware business for a
number of

14 years and then started my own firm with my wife as my
partner.

15 Q. Now, you're married. You have a previous marriage?

16 A. I did.

17 Q. And when were you married to that woman?

18 A. My first marriage took place in 1955, and we

separated and

19 eventually were divorced in 1969. I married my second
wife in

20 1974.

21 Q. Okay. So she was with you when you were in the
hardware

22 business?

23 A. Yes.

24 Q. And did that store have some affiliation with a
hardware

25 chain like a TruValue and that sort of thing?

3928

Juror No. 953 – Voir Dire

1 A. You got it right. The TruValue chain.

2 Q. Yeah. You almost have to to make a living in that
line of

3 work, I suppose.

4 A. Just about.

5 Q. Yeah. And even then, it's hard as what, the -- you
ended

6 up liquidating the business?

7 A. Yes. It was very successful. It was in operation
for

8 seven years, partially was liquidated, but it's still
in

9 existence in New Orleans under the ownership of our
son-in-law.

10 Q. Oh, all right. Well, you had a bankruptcy

somewhere along

11 the way, and I guess I just assumed that was connected.

12 A. A long ways before that, and they were not
connected.

13 Q. Not connected. Thank you for straightening that
out. So

14 the business worked okay?

15 A. Very -- very successful.

16 Q. Why did you leave it?

17 A. My wife and I had come to Colorado. And she was
from south

18 Louisiana, the Bayou country and had never seen
mountains or

19 even rocks. And we took a trip -- we took a trip
starting in

20 New Orleans and ending up on the West Coast and came
back

21 through the Rockies and visited at the ranch where I
had

22 worked.

23 Q. By Raton?

24 A. In New Mexico. And on a trip that we took in 1981
after we

25 were in the hardware business, we went through Cripple
Creek

3929

Juror No. 953 - Voir Dire

1 and Victor and saw a real estate ad for a couple of old
miner's

2 houses and some lots in the ghost town, really, of
Goldfield,
3 and we made an offer on them and purchased those houses
which
4 had been connected together into one larger house.
Came up in
5 1982 and 1983 for a couple of weeks in the summer from
New
6 Orleans to Goldfield, and she had informed me that we
are
7 moving. So -- she loved it. There's far fewer insects
and
8 snakes and things of that nature, and she really liked
it. And
9 I was afraid she couldn't stand the climate change, but
I'm the
10 one that wears longjohns year round. Anyway, we did
not come
11 up in 1984. We were busy setting our affairs in order.
And we
12 made the move in early June of 1985, and that has been
our
13 residence since that time.

14 Q. And now you work for a -- a mining company?

15 A. Yes.

16 Q. And don't tell us the name of it. But you work for
a
17 mining company as a security officer?

18 A. I have held several positions at the mining
company. My

19 current position is refinery security with the gold
mining

20 company.

21 Q. And is it an active mine, operating now?

22 A. Very much so, your Honor.

23 Q. And does your security include like personnel,
making sure

24 they're not walking off with ore or things like that?

25 A. The actual refined product as we ship it in dorÇ
form,

3930

Juror No. 953 - Voir Dire

1 which is about 80 percent gold, and I'm aware that that
2 internal shrinkage is the -- a primary form of loss of
-- of
3 precious metals at a mine like ours. So the security
involving
4 the employees that enter that area would be my primary
job
5 description and also being aware that we could lose our
product
6 from an outside entry into that area.

7 Q. So here you are down there in an historic part of
Colorado,
8 doing what they were doing down there 125 years ago.

9 A. You got it.

10 Q. Yeah. And any regrets about the move up here?

11 A. Very -- one of the top five best things I ever did.

12 Q. Okay. Now, going back to the hardware business for

a

13 while, you sold firearms?

14 A. I did have a federal firearms license.

Not

15 Q. How much was firearm sales a part of your business?

16 percentagewise, but did you sell very many guns?

17 A. No, sir.

dynamite,

18 Q. Did you also have a license to sell explosives,

19 things like that?

20 A. No, sir.

somebody comes

21 Q. Did you arrange any sales for persons, like

ditching

22 in and said, I want to -- you know, I want some

have

23 dynamite, I want to blow an irrigation ditch? Did you

24 customers like that?

25 A. No involvement with explosives whatsoever.

3931

Juror No. 953 - Voir Dire

you are

1 Q. Okay. And now in connection with the mine where

2 employed, I assume explosives are used there.

3 A. That's correct.

4 Q. And do you know what explosives they use?

5 A. I do.

6 Q. What -- what do they use?
7 A. Ammonium nitrate, fuel oil, diesel fuel.
8 Q. And as part of your security responsibilities, does
it
9 include making sure people don't steal the explosives?
10 A. No.
11 Q. Do you have anything to do with the explosives?
12 A. No.
13 Q. And have you ever used such explosives?
14 A. Nothing beyond fireworks and as a rather curious
youngster
15 of 15 who discovered the formula for black powder.
That is the
16 way I lost my right hand.
17 Q. At the age of 15?
18 A. Correct.
19 Q. And you were experimenting with putting black
powder
20 together and blowing it off; huh?
21 A. That's correct.
22 Q. And blowing up bottles or things. Tell us a little
about
23 what you did do and how you lost your hand, if you
don't mind.
24 A. I don't mind at all. The formula for basic black
powder or
25 Chinese powder as used in fireworks is probably too
lightly

Juror No. 953 - Voir Dire

1 known against -- for -- or too curious youths. That
2 information is pretty readily available either in the
3 literature or in word of mouth. And in those days, the
three
4 basic components of black powder were available from
5 drugstores, and it wasn't hard at all to set up a home
6 laboratory. And as a youngster, I had had a chemistry
set and
7 pictured myself, I suppose, as a genius who was going
to
8 supplant and build upon everything the DuPonts had done
and --
9 and second guess them.

10 I had made, oh, probably half a dozen
different
11 mixtures, including the three basic ingredients of
black powder
12 plus a little pinch of this. And I would ignite my end
product
13 either open out on a rock or in a little three-quarter-
inch
14 pipe nipple. And one afternoon, shortly after lunch, I
-- in
15 early January, I mixed about a tablespoon -- took about
a
16 tablespoonful of my mixture, placed it in my pipe
nipple that
17 had a piece of cotton in one end to retain it, and then

I made

18 my own fuses. And if I may, I -- I held the pipe in
this

19 manner, of course in this hand, and ignited the fuse
out back

20 in the alley and was watching the color of the smoke,
how fast

21 it was burning and the color of the flame. And it
almost went

22 out, and I shook it. Finished story right there.

23 I was very lucky I didn't -- I shredded my
hand, which

24 had to be amputated. There was nothing to reattach it
if they

25 had had that technology at that time.

3933

Juror No. 953 - Voir Dire

1 Q. Yeah. Was --

2 A. It splattered.

3 Q. Was your body damaged in any way other than your
hand?

4 A. Very fortunate. Nothing got in my eyes because I
was

5 holding it like this. It was the only -- I had no
powder burns

6 anywhere else. Applied pressure, and a clean cloth was
placed

7 over it by my mother.

8 Q. You ended up with the amputation?

9 A. And a few hours later, I woke up.

10 Q. Okay. Well, you remember that very well,
obviously. And

11 why wouldn't you? I mean, that's a very traumatic
thing that a

12 person does remember.

13 A. I'm -- I'm allergic to loud noises.

14 Q. And I was going to ask you that, too. It doesn't
seem to

15 have affected your ears at all?

16 A. No, sir.

17 Q. So it was just your hand?

18 A. Correct.

19 Q. I don't mean to suggest that's not a major thing,
but you

20 seem to be getting along quite well, learned to adapt
to that.

21 A. Never missed a meal, your Honor.

22 Q. Okay. Now, your wife is working for the Cripple
Creek

23 Police Department.

24 A. That's correct.

25 Q. As a dispatcher.

3934

Juror No. 953 - Voir Dire

1 A. Yes, sir.

2 Q. How many people are on the Cripple Creek Police
Department
3 these days?
4 A. There are nine officers, plus supervise --
supervision.
5 The chief, assistant chief, three sergeants, and there
are
6 approximately seven dispatchers that rotate through the
7 24-hours-a-day, three shifts.
8 Q. Is this a city police department that is totally
separate
9 from the Teller County sheriff's people?
10 A. Yes.
11 Q. But they work together on certain things, I
presume?
12 A. Yeah.
13 Q. So your wife dispatches the cars and handles the
14 communications desk, does she?
15 A. Computer work, enter --
16 Q. Does she do the radio dispatch of a car, that kind
of
17 thing?
18 A. That is part of the job as emergency services.
19 Q. Yeah.
20 A. Fire and ambulance.
21 Q. I presume you know personally all of the police
officers
22 down there?
23 A. Actually, no.

24 Q. Oh.

25 A. Only -- only four.

3935

Juror No. 953 - Voir Dire

1 Q. And along in a community that size, almost
everybody knows

2 each other who is a year-round resident. I'm assuming
that.

3 Is that -- isn't that true?

4 A. Don't consider this flippant or strange, but to us
in

5 Goldfield just outside of Victor --

6 Q. Yeah.

7 A. -- Cripple Creek is the big city. And I'm not
particularly

8 fond of big cities anymore.

9 Q. No urban areas for you like Cripple Creek. Of
course, all

10 kinds of tourists come through there in season, too, so
there

11 is -- there are a lot of people around there. Is that
true?

12 A. In more -- more in Cripple Creek than in Victor and
13 certainly in Cripple Creek than Goldfield, which is
population

14 of about 60. I'm not personally -- don't care that
much for

15 the gaming industry. The restaurants are far more than

--

16 better than they used to be, but I like to eat at home
so I am
17 rarely out in Cripple Creek and sometimes will go out
of my way
18 not to go through Cripple Creek and Bennett Avenue.
Too many
19 people.

20 Q. Yeah. Well, gambling has changed it, hasn't it?

21 A. It certainly has.

22 Q. Was there anything about your wife's work for the
police or
23 your, you know, acquaintanceship with some of the
police,
24 anything about that that you see would affect your
ability to
25 sit in judgment of a case in which police officers or
FBI

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Juror No. 953 - Voir Dire

1 agents, law enforcement people testify, their testimony
was
2 challenged on cross-examination or by other witnesses
and you
3 were asked to decide the believability of those people
and what
4 they said?
5 A. I have given a good deal of thought to that, your
Honor,

6 and I see nothing in that -- very limited relationship
or any
7 opinions that I have that would affect my ability to so
serve
8 the court.

9 Q. So you'd treat them like any other witness? Is
that what
10 you're saying?

11 A. I would have to -- I would do that, sir.

12 Q. Okay. Well, that's what I'm asking you. I mean,
all
13 witnesses are to be judged by the same standard
regardless of

14 who they are with certain exceptions that the court
points out

15 when there's an unusual situation. But whether a
person's a

16 police officer or not or an FBI agent or not is not
something

17 to be considered in judging what that person says and
how he

18 says it. Do you understand that?

19 A. I understand.

20 Q. Okay. So you anticipated that question from me.

21 A. I did, sir.

22 Q. Now, you said on page 23, Question 103, that a long
time

23 ago, you knew a person charged with a homicide. Can
you tell

24 us something about that, the circumstances. Not who
the person

25 is, obviously.

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Juror No. 953 - Voir Dire

1 A. Okay. That was in New Orleans. Through a -- an
2 organization of which I am a member, which I would be
willing
3 to name if the Court wishes, it deal -- I would be in
contact
4 with people who had problems, and sometimes that would
be in --
5 to find a place to live. An individual that I knew
through the
6 organization that I was a member of -- actually, her
husband
7 abandoned her and she needed a place for herself and
her
8 teenage daughter to live. I knew an individual in the
9 neighborhood of our hardware store who had recently
lost her
10 husband. She was a double amputee, as he had been, and
was in
11 a wheelchair. She owned her own home. I would not
even call
12 them comfortable financially, but she would, I felt,
need help.
13 I introduced the two, the homeowner in the wheelchair
and this
14 individual who had been abandoned by her husband who
needed
15 housing and perhaps a little help to get on her feet.

16 Q. Uh-huh.

17 A. I introduced them, and then they talked to each
other and

18 decided that that was a -- a good arrangement for both
of them.

19 After a period of time, the woman in the wheelchair was
beaten

20 to death and the person that I had introduced to the
homeowner

21 in the wheelchair was charged with the murder of the
homeowner.

22 Q. What happened to those charges?

23 A. I was contacted by the -- the person who was
charged with

24 the murder several times from jail, and there was
nothing I

25 could do or would do in the case of making bail or
giving any

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1 further help to someone where the crime of murder had
been

2 alleged to have occurred. I stayed pretty much clear
of the

3 entire case except that the pet dog that the homeowner
had, we

4 found a home for it, my wife and I. And then I was
called to

5 testify in court. And about all that was asked of me
was to

6 repeat what I had before this court today.

7 Q. How you brought these two people together.

8 A. Yes.

9 Q. Well, what was the outcome of the trial?

10 A. The -- the accused was determined to be guilty of
the

11 murder of the homeowner; and if I ever knew what the
sentence

12 was, I cannot recall it at this time.

13 Q. All right.

14 A. Nor do I remember what degree of murder --

15 Q. Of murder?

16 A. -- charge.

17 Q. Now, that was in New Orleans?

18 A. Correct. If you'd like the date, it was --

19 Q. We've got the date here, I think, in your papers.

20 A. Yes. About 1983. I'll confirm that.

21 Q. Right. Speaking of organizations, you belong to
one now?

22 A. Right.

23 Q. That is the purpose of it, is promoting mining?

24 A. Natural resources. That would include timber,
grazing, oil

25 and gas production, natural resources.

Juror No. 953 – Voir Dire

1 Q. The basic point of it is that the environmentalists
have

2 gone too far in restricting these things?

3 A. There --

4 Q. Is that the point?

5 A. Yes, sir.

6 Q. Okay. And you've got a bumper sticker that says
that,

7 essentially?

8 A. A belt buckle.

9 Q. And a belt buckle, too. Are you an officer or
active in

10 the work of that group?

11 A. Yes, sir. I was probably the leading person in the
effort

12 of forming a local chapter and was elected president of
that

13 chapter.

14 Q. Being Teller County or what?

15 A. Primarily, the mining district of -- that end of
Teller

16 County. Their membership is quite widespread in many
natural

17 resource industries as well as the business people.
The

18 chapter has grown very successfully. I wished only to
be

19 president for a short time; but as things work out, I
am still

three 20 president of that chapter. It was so successful, that
directors 21 months ago, I was elected to the national board of
the West, 22 and I was elected as state chairman of the People for
directors of 23 and that qualified me as a member of the board of
Lands 24 the parent organization, National Coalition for Public
25 and Natural Resources, based in Pueblo.

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1 Q. Have you done anything like lobbying in the
Congress or in 2 the executive agencies for more favorable regulations
or laws 3 for the extraction industries?
4 A. I have made two trips to Washington D.C., one in
1997 5 and -- '6 and one in 1998 (sic). Because of demands by
my job, 6 I was unable to join groups going to our legislators,
but I did 7 participate in the information sessions in Washington.
I have 8 attended two Western States Coalition Summits, one in
Casper, 9 Wyoming, and one in Salt Lake City. The membership of
that is

10 primarily county commissioners, school boards, that --
people
11 of that ilk. But it was more for me to get information
about
12 how to be effective in working with both bureaus and
elected
13 officials.

14 I have testified before on behalf of the mine
where I
15 work at the county level, at the planning commission
and the
16 county commissioners. I did testify before one mine
land
17 reclamation division action or hearing here in Denver
while the
18 company was pursuing its present permit, which is the
Crescent
19 permit. I have written letters to --

20 Q. Has it been as the -- has the company you work for
been the
21 subject of controversy about this? Have there been
22 environmental groups trying to shut them down and that
kind of
23 thing?

24 A. Yes, sir.

25 Q. I'm told that at times, some groups will go out and

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1 demonstrate and sort of try to block entrance to the

mine or

2 something like that. Has anything like that happened
to your

3 place?

4 A. No.

5 Q. So it's been a matter, mostly, with the licensing
or the

6 regulatory bodies and -- is that right? I mean, am I
right

7 about that?

8 A. That and contacts of -- on one side or the other of
the

9 issue to media. Reporters would interview individuals
on one

10 or both sides and then present that to the public.

11 Q. Okay. Now, you mentioned here among your
activities on the

12 same page as this People for the West and National
Coalition --

13 page 15 is where I am -- leisure-time interests and
activities.

14 You've got reading, gardening, sometimes play the sport
of

15 paint ball. Now, is that shooting pellets of paint?
Is that

16 what you're talking about?

17 A. Yes.

18 Q. So that you choose up sides, use firearms, and
shoot paint

19 balls instead of -- instead of live ammunition?

20 A. Basically, it wouldn't be considered a firearm.

The paint

air, 21 pellets are propelled by carbon dioxide -- compressed

22 carbon dioxide.

it? I 23 Q. Okay. But the other part of it is -- is right, is

24 mean, you choose up sides and have kind of a play war?

"Capture 25 A. Very -- very near -- mostly, we play a game called

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Juror No. 953 - Voir Dire

1 the Flag," attempt to take the --

tagging 2 Q. Just like kids used to play, except instead of

3 them, you hit them with a paint pellet?

4 A. Uh-huh.

down there 5 Q. Is that an organized thing? I mean, do you have

6 near where you live identified groups --

Victor 7 A. There are commercial fields, and there was one near

so 8 which never got in the black; and I enjoyed the sport

need 9 much -- and the youngsters up in Victor and Goldfield

play at 10 things to do -- that we have obtained our own place to

the 11 a local ranch. And one or two Saturdays a month during

12 summer, three or four of the adults will pick up five
or six of
13 the kids and we'll go up and, as you say, choose sides
and --
14 Q. Yeah.
15 A. And play this game.
16 Q. There are certain shields and things for that, like
17 shielding the face for the eyes and that?
18 A. Absolutely. Safety is our No. 1 priority.
19 Q. Something of a helmet cover and --
20 A. Yes.
21 Q. Do you also -- and I think this varies among
groups, but do
22 you wear uniforms, combat fatigues, things like that?
23 A. Some do. Some wear street clothes -- comfortable
shoes,
24 because there's some running in a wooded area involved
and
25 we --

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1 Q. Some dress up as if they were in the army?
2 A. Yes. Surplus camouflage, hunting gear seems to
help in
3 getting cover and making tactical maneuvers to capture
the flag
4 at the other end of the field.

5 Q. Okay. And then if you get shot with a -- and
there's a
6 paint splash on you, you're wounded accordingly?
7 A. You're eliminated for the rest of that game.
8 Q. You're completely out?
9 A. Which takes 30 to 45 minutes, and then we play
again.
10 Q. Yeah. Just like in Capture the Flag, where you
touch the
11 other --
12 A. Uh-huh.
13 Q. -- team's person.
14 Okay. Now, I want to go back to jury service
and what
15 is involved in jury service in a trial of charges of
the type
16 that are involved in this case. And I'm going to be
talking
17 about punishment and the issue of the death penalty.
And this
18 is something we asked you about on the questionnaire.
Do you
19 recall that?
20 A. Yes.
21 Q. And if you turn to page 27 and then 28 -- 27 is the
22 introduction to it. It's where we give you an
explanation
23 about why certain questions are being asked. Do you
remember
24 this part?

25 A. I remember it.

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1 Q. And then 28 is where we asked you some specific
questions
2 and you gave some answers. When you came to this part
of the
3 questionnaire last month in answering all these things,
did it
4 surprise you to see these questions?

5 A. No, sir.

6 Q. You anticipated, did you, that there would be some
7 questions about this?

8 A. I did.

9 Q. And why is that?

10 A. Understanding the nature of the offense that was by
someone
11 committed that the death penalty would be one of the
penalties
12 that would be considered by the court.

13 Q. All right. So you were already aware of that?

14 A. I was.

15 Q. And before addressing these questions in this
16 questionnaire, is the death penalty something that you
thought
17 much about? I know you've been politically active here
on

had a 18 several fronts. Is that something in which you have
19 policy interest?
20 A. It has crossed my mind, except with the case that I
21 described with the two ladies.
22 Q. Yeah.
haven't been 23 A. I -- I haven't been in -- policy interest, I
24 exposed to it other than just as one would live the
number of 25 years that I have lived and -- and known of certain
Supreme

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penalty 1 Court decisions where there was much less of the
2 imposed and --
3 Q. Well, you know, there was a time --
4 A. Trying to determine my --
penalty 5 Q. There was a time when there wasn't any death
6 anywhere in this country.
7 A. Would you repeat that?
8 Q. I said you know there was a time when there wasn't
a death 9 penalty anywhere in this country.
10 A. I did not know that, your Honor.

11 Q. Okay. Well, at least the statutes may have been
providing
12 for it; but because of a Supreme Court decision,
nothing was
13 being done. And then some changes were made. Have you
read
14 any of those Supreme Court opinions about the death
penalty?

15 A. No.

16 Q. You've read about them --

17 A. Yes.

18 Q. -- in the papers when they came out?

19 And going back to that homicide in Texas where
you

20 were a witness --

21 A. Louisiana.

22 Q. Excuse me. New Orleans. Yes. Louisiana. Were
you -- do

23 you know whether the death penalty was a potential in
that

24 case?

25 A. I do not know.

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Juror No. 953 - Voir Dire

1 Q. And you don't know what -- what actually happened
in the

2 sentence?

3 A. I do not know.

4 Q. Well, what -- you know, what we asked you here is
about as

5 broad a type of question as we could; and that is in
terms of

6 if you could decide what the law is, what would you
decide

7 about the possible punishments of life in prison, with
no

8 opportunity ever to get out of there, and death. And I
take it

9 your answers recognize that.

10 A. Yes.

11 Q. And what I understand your answers to say is you're
ready

12 to go along with the law as it is. Is that what you
have told

13 us here?

14 A. That is what I told you.

15 Q. So we'll talk about the law as it is. If you'll
follow

16 along with me, I'll try to explain it.

17 In federal courts -- and there are still
states that

18 do not have the death penalty because people in the
state are

19 opposed to it, you know, through the legislature; and
there are

20 states that have the death penalty but decide on the
issue

21 differently from the way I'm going to talk about it.
But now

the
federal

22 we're under federal law, national statutes created by
23 Congress; and we must follow that law here. We're in a
24 court. These are federal crimes charged. Follow?
25 A. I follow.

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1 Q. So in the ordinary criminal case -- and I probably
2 shouldn't use the word "ordinary." Every case is
special, of
3 course, to the people involved in it. But in cases
that do not
4 involve the possible punishments that we're talking
about,
5 sentencing is a matter for a judge. So the jury
obviously
6 tries the case, listens to the evidence, decides
whether the
7 particular crime charged has been proved beyond a
reasonable
8 doubt or not, and if not, not guilty verdict, end of
it. In
9 the event that there's a guilty verdict, still the end
of it
10 from the jury's standpoint; and it goes to the judge to
make a
11 decision.
12 And the judge doesn't decide right then and

there just

13 on the basis of, well, they found him guilty of this
crime, X,

14 Y, Z, so the punishment is 10 years, or something like
that.

15 It has to be an individual judgment. And before judges
make a

16 selective particular sentencing decision, more needs to
be

17 presented to the court than just that which was
evidence at the

18 trial. So information is gathered about the defendant,
the

19 person who has just been found not guilty (sic). And
that's

20 information that goes to all of his life's background,
history,

21 all of the things that have happened to him or that he
has done

22 in his life, beginning with early family, family
relationships,

23 relationships with brothers and sisters, marriages,
divorces,

24 job history, whether there's any prior crime. All
kinds of

25 things, you know, that affect us and who we are and
what we do.

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Juror No. 953 – Voir Dire

1 Follow me?

2 A. I follow you.

3 Q. So these are the experiences and characteristics of
this
4 person as an individual human being, different from all
others.
5 And then also, the circumstances of the crime, what
happened.
6 And the circumstances of the crime can include the
effect on
7 others as a result of it, consequences in the community
if
8 there are any. And they can also include, in a
situation where
9 more than one person was involved in committing the
crime,
10 relative roles, how much -- who did what. And even if
they
11 together created the particular crime, like a murder,
it is --
12 if there is no death penalty involved, it is a matter
for the
13 court. Let's say a burglary or a bank robbery or
something
14 like that where nobody was killed: Then in cases like
that,
15 all of these things get presented to the judge. And
the judge
16 also hears arguments from both sides and then says:
All right;
17 here's what happens to this individual for this crime,
even
18 though if that judge may be sentencing two or more
people for

19 the same robbery, for example, the sentences may well
be
20 different. Understood?
21 A. Understood.
22 Q. Now, under the statutes that are involved here, the
23 possible punishments for a defendant found guilty are
life in
24 prison with no possibility of ever getting out -- they
die in
25 prison, a natural death -- or a death penalty, a
sentence to

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1 death, or the jury can decide something less than these
two, in
2 which event it goes back over to a judge to decide.
Follow me?
3 A. I follow you.
4 Q. But the life-or-death decision, Congress says we're
not
5 going to have judges make decisions like that. That's
6 something where the system requires 12 people coming
out of the
7 community to decide it. And there's no yardstick as to
how
8 they decide it. They have to decide it as sort of
9 representatives of the conscience of the community.
10 And when a jury finds a person guilty of one
of these

11 crimes, then they must hear more as the second trial on
the
12 question of punishment, because there's no -- again, a
crime
13 doesn't equal a particular punishment. There's an
individual
14 sentencing determination to be made.

15 And so what happens at a second trial or
penalty phase
16 hearing is that both sides bring in witnesses, bring in
17 documents, bring in information that was not heard or
seen
18 during the evidence trial, the question of guilt. And
that
19 really comes in in two ways. I mean, the prosecution
brings in
20 things that they think aggravate the offense and
suggest that
21 death should be the sentence as a just punishment. And
that
22 will include, you know, the crime itself plus the
consequences,
23 that kind of thing that would be considered by a judge.
And we
24 refer to that kind of information or evidence as
"aggravating
25 factors," things that suggest death is the deserved
punishment.

1 The defense, of course, would bring in things going the
other
2 direction, suggesting that despite the crime and no
matter what
3 the jury may think of the crime as a horrible crime or
4 something like that, they still have to consider the
person.
5 And they have to consider these same kinds of things
that a
6 judge would consider and that are presented by the
defense, the
7 life history of this person, who he is, what he is,
what he's
8 made out of, what his attitudes are, the things that go
to
9 whether this person deserves to live. Follow me?
10 A. I follow you.
11 Q. And when the hearing is over, whether -- when that
second
12 trial is over, the court instructs the jury and kind of
sums it
13 all up and says, Well, this is what you heard: You've
heard on
14 the one hand these aggravating factors. You've heard
on the
15 other hand these mitigating circumstances or factors.
Now,
16 consider them all. And it'll give some questions that
sort of
17 help to analyze that. But there's no formula, there's
no
18 yardstick, there's no chart. You have to consider it

all; you,

19 the jury, if you were on this jury that we're talking
about.

20 And we can't talk about this case because we
don't

21 know what the evidence is going to be. We don't know
whether

22 there would ever be a punishment phase and we don't
know what

23 would be presented in it. Do you understand that?

24 A. Yeah.

25 Q. So we've got to talk about these sort of in the
dark. But

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1 the nature of the information, we can talk about. And
that's

2 what I've tried to review with you, the aggravating and
the

3 mitigating. And then talk it over -- the 12 people
will talk

4 it over and answer these questions. But then the final
5 question to be answered by the jury for which there is
no

6 outside help: It depends on the judgment of these
people and

7 it amounts to a moral judgment that each individual has
to make

8 with respect to the person being sentenced. Should
that person

9 live or die? That's the question. You understand?

10 A. I understand.

11 Q. Now, under those circumstances, having now -- you
know,

12 this is the current law that you were wondering about
here and

13 saying that you would follow it. Now, I simply want to
know,

14 and we all want to know, given this explanation of what
happens

15 if it should get that far, are you able to hear all of
these

16 things and then make a life-or-death decision based not
only on

17 what you hear about the crime and the circumstances of
it but

18 also using the information that you heard about the
defendant

19 himself as an individual human being and then make a
fair

20 decision?

21 A. I am able to do that, your Honor.

22 THE COURT: All right. Now, we have lawyers,
as I

23 told you -- one lawyer for each side gets to ask you
some

24 additional questions.

25 So Ms. Wilkinson?

Juror No. 953 – Voir Dire

1 MS. WILKINSON: Thank you, your Honor.

2 VOIR DIRE EXAMINATION

3 BY MS. WILKINSON:

4 Q. Good afternoon, sir.

5 A. Good afternoon.

6 Q. How are you doing so far?

7 A. I got up early, but I'm doing all right.

8 Q. You had a long drive, didn't you?

9 A. I do live a distance away. Not too bad.

10 Q. I'm not sure --

11 THE COURT: Let me just interrupt. You know
you won't
12 have to do that every day if you serve on the jury.

13 JUROR: I understand.

14 THE COURT: We'd put you up here through the
week and
15 then you go home on the weekends.

16 JUROR: I understand.

17 BY MS. WILKINSON:

18 Q. That's the good news. The bad news is you'll be in
Denver.
19 Since you don't love the big city, would that be okay
with you
20 that just for the purposes of this trial that you were
here
21 during the week to sit as a -- as a juror?

22 A. I could do that.

23 Q. Okay. I want to ask you a little bit about some of
the
24 things that you put on the questionnaire, if you
wouldn't mind.

25 One is I saw that you've read quite a bit. And some of
the

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1 books that you've read deal with your interest in
mining and --

2 and land use; is that right?

3 A. Yes. That's right.

4 Q. You've read this book called Politically Correct
5 Environmentalism?

6 A. Yes.

7 Q. Can you tell me just briefly what that's about?

8 A. Actually, it's rather comical. It uses political
editorial

9 cartoons with some snappy little -- little comebacks,
some

10 double meaning. I wouldn't want to say it was Mad
Magazine but

11 on the focus point of what some of us consider to be
rather

12 ridiculous actions on the part of some activists on the
other

13 pole of this whole issue. It was neat reading. Not in
-- it

14 doesn't -- it's not real deep with a lot of facts and
figures,
15 but it -- it is sort of a recreational reading along
the lines
16 of this interest of mine.

17 Q. Can you explain to me -- and I'm not familiar with
your
18 organization or much about the environmental movement;
but in
19 your organization, do you see that some of these kind
of
20 motivated
21 by the
22 government?

23 A. More by the private sector and people who are just
as
24 committed to their viewpoint as I am to mine. Perhaps
a good
25 example there is I had asked people, "Are you an
environmental

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1 activist," and they say yes. And I say, "Yes, well,
I'm an
2 active environmentalist. I work in this environment
and know
3 what the requirements, permitting requirements,
regulations,

4 reclamation bonds, testing, reporting, the rules and
5 regulations that we work under. I wish you would take
time to
6 find out what rules and regulations we work under and
the
7 company that I work for before you make some of these
8 statements that you make which are politically correct
9 sometimes."

10 Q. And I take it your organization's job is to lobby
11 legislatures and public officials to inform them of
those
12 issues so they don't just hear one side of the story
from these
13 activists?

14 A. From the grass roots standpoint. The people
involved on
15 the ground doing the work are probably much more
familiar with
16 what we do and how we do it than someone in an ivory
tower.

17 Q. So it's fair to say -- I mean, you're right in the
middle
18 of the process. You're trying to influence it but in a
proper
19 way. You're trying to get information to people?

20 A. Absolutely in a proper way.

21 Q. And I take it your organization has no interest in
22 advocating any kind of violent activity or any kind of
protests
23 of that form --

24 A. Not --

25 Q. -- in that form?

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1 A. Not in the least.

2 Q. And would it be fair to say that your organization
would be

3 opposed to that kind of activity?

4 A. Absolutely.

5 Q. And even though it's frustrating sometimes, I'm
sure,

6 working with the government on these issues, does your
7 organization feel like that's the only way to really
effect any

8 change in this area?

9 A. We do work one-on-one, more from an educational
standpoint.

10 I, myself, am available at almost any time to work with
one

11 person or a group and explain to them some things that
they may

12 not know, knowing that they may have only gotten one
side of

13 the story from various publications and media
sometimes; that

14 perhaps I could at least offer them another viewpoint.

15 Q. Well, we asked you a real general question about
the

mean, I 16 government in the questionnaire where we asked you -- I
the role 17 don't even know how effective it is, but we asked you
in your 18 of the government and whether the government interfered
around 19 life. I don't know if you remember that. It's back
20 page -- I think it's 29. Do you see that on your
21 questionnaire?
22 A. Uh-huh. 125?
23 Q. Yes, sir. And down there at 127, it asks you how
24 intrusive, and you say "about a 7." Can you explain
that to me 25 a little bit?

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case, 1 A. I guess I'm a bit Jeffersonian in my thinking about
when I 2 government. Sometimes -- often, I think that in this
city 3 less is better at -- there are a lot of decisions that
respect to 4 was younger used to be made by me and the family and my
5 and my county and my state. And speaking mostly in
6 the federal government, I think they have gotten a bit
7 overgrown; that they are micromanaging both my life and

micro-

8 managing the governments of states, counties,
municipalities.

9 Q. And are there certain topics where you think or
certain

10 areas where they are more intrusive than others? Do
you think

11 they have a proper role, for example, in the military
in

12 keeping and equipping -- training and equipping the
military in

13 our country?

14 A. I -- I believe that is very definitely a
responsibility of

15 the federal government.

16 Q. What kind of things do they do that you think they
are kind

17 of overreaching or micromanaging or --

18 A. That goes to the various bureaus and in the area
that I'm

19 involved with now, the Department of the Interior.

20 Q. Where they issue hundreds of regulation and all
that stuff?

21 A. Regulations without congressional review. As I
understand

22 it, if Congress doesn't like some of these regulations,
all

23 they can do is pass legislation saying that they can't
enforce

24 their regulation, and then sometimes that gets vetoed;
so it

25 kind of leaves the Congress out of the picture

sometimes.

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1 Q. Now, what about do you -- what are your feelings on
federal
2 law enforcement and the federal government's
involvement in
3 investigating and prosecuting federal crimes?

4 A. I'm very comfortable with statutes as enforced by
the court
5 at the federal level and by the bureaus involved in --
in
6 enforcing those regulations, statutes, laws.

7 Q. So that's not an area that troubles you?

8 A. In very few -- very, very few instances do I feel
that as
9 far as law enforcement investigation, national security
and the
10 court system on the federal level do I see any problem
with it.

11 Q. Okay. Well, one incident where I think a lot of
people
12 have some questions is the incident down in Waco. Do
you have
13 any opinion about what happened there?

14 A. Other than acting a little prematurely rather than
letting
15 time take its course, I cannot see any other outcome of
--

16 particularly when they -- it was involving a cult group
which
17 changes the philosophies and psychologies of -- of
people,
18 oftentimes to the negative side.

19 Q. Okay. If we could, I'd like to turn to the
question of
20 penalty which you discussed with his Honor briefly.

21 A. Yeah.

22 Q. And you said that basically, your view was you
would have
23 no problem following the law. Is that correct?

24 A. That is correct.

25 Q. Have you had any views -- personal views. I'm not
asking

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1 about the law. You told us you'll follow that, and we
2 understand that. But have you had any personal views
about the
3 appropriateness of the death penalty in our country?

4 A. My personal view is that there are cases where it
is
5 appropriate.

6 Q. And I take it from your answer, trying to read
between the
7 lines, that it depends on the case, the facts, the
8 circumstances --

9 A. Yes.

10 Q. -- to make that decision?

11 A. Yes.

12 Q. So you accept what his Honor told you that there
was no
bad the
circumstances
13 automatic death penalty in our system. No matter how
14 crime is, you have to listen to all the facts and
circumstances
15 before you could make a penalty decision. Is that
true?
16 A. That is true.

17 Q. So if we asked you hypothetical questions about a
terrible
that you
18 crime like blowing up a plane, would it be fair to say
19 couldn't answer what kind of penalty you would give for
someone
20 who committed that crime until you knew everything
about that
21 person and what they had really done, what their role
was and
22 everything about the crime?

23 A. My -- my feeling is that I could only be
comfortable in
24 that after hearing the evidence as presented in court.

25 Q. Okay. I take it, then, you understood what his
Honor told

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1 you; that there's really two phases to any case like
that. Did

2 you follow -- or were you aware at the time of the
McVeigh case

3 and what happened in that case?

4 A. I will state that during that -- both the media
aftermath

5 of the Oklahoma City bombing and during the trial here
at the

6 Federal District Court in Denver, I was very
preoccupied with

7 the things that we've already mentioned. I consider
myself a

8 fairly well-read or average or above on national events
and

9 media things of this nature. At that time, I was just
very

10 busy.

11 Q. So it would be fair to say you didn't hear what
kind of

12 evidence was presented in this courtroom?

13 A. Very, very little of it.

14 Q. Okay. Were you aware of the verdict in the case?

15 A. Yes.

16 Q. And do you also recall when it was announced what
sentence

17 the jury had recommended for Mr. McVeigh?

18 A. Yes.

19 Q. And do you recall that there was some time period

between

20 those two decisions, between the verdict of guilty and
the

21 sentence of death?

22 A. Yes.

23 Q. That, I think, is what his Honor was explaining
about, that

24 second phase of the case, where you have to -- once a
decision

25 is made as to guilt, there's still a whole 'nother, you
know,

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1 trial where you would hear evidence on all the things
you just

2 told me you want to hear about, everything about the
case. And

3 I guess the only thing I'd like to ask you is, could
you listen

4 not just to the evidence, because we kind of used that
word to

5 describe what happened, the facts of the case or the
crime --

6 but could you also listen to information about the
defendant

7 and his background and the circumstances surrounding
the crime?

8 A. As -- since that is required by the statutes in
this court,

9 I could listen to it, I feel, objectively and work with

other

10 members of the jury to arrive at what -- consensus was
that

11 would be the proper sentencing.

12 Q. Okay. Then let me turn to the publicity
surrounding this

13 case, which even if you've been busy, like you said,
you can't

14 but help avoid (sic) a little bit of it, and especially
at the

15 time of the bombing. Do you remember seeing images or
pictures

16 on TV or reading the newspaper shortly after the
bombing?

17 A. Yes.

18 Q. And what are the memories that you have from that
time back

19 in 1995?

20 A. I remember feeling that -- to me, it was senseless,
21 counter-productive to any -- trying to achieve any
sociological

22 change; that it was one mother of a bomb. I felt
personally

23 injured as part of the world society, American society.
I felt

24 my personal security had been violated. My sense of
serenity

25 was reduced. I remember feeling that I hoped they
catch the

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1 perpetrators quickly and proceed according to the --
whatever
2 laws of justice would apply. And I didn't know them as
well as
3 they are -- as I know them right now, setting (sic)
here.

4 Q. I take it from what you're telling us then, that
even

5 though you had this emotional and kind of strong
reaction to

6 the crime that you understand that once the legal
system, the

7 legal process starts, the rules of justice have to
prevail and

8 that the rules that his Honor explained to you,
especially the

9 burden of proof for the Government to prove beyond a
reasonable

10 doubt and the presumption of innocence for the
defendant, have

11 to apply?

12 A. Absolutely.

13 Q. And you have no problem with that?

14 A. I have no problem with that.

15 Q. Okay. You said it was a big bomb. And I take it
you have

16 some knowledge of explosives because of your work in
the mining

17 industry.

18 A. That's correct.

19 nitrate/fuel

Q. Do you -- are you familiar with how ammonium

be

20 oil, or ANFO as I think it's commonly referred to, can

21 detonated, how it's detonated?

22 A. Yes, I am.

23 Q. And how is that? What's your understanding of that

24 process?

are

25 A. That it's very stable even after the two components

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simply a

1 mixed; and it actually takes an explosive charge, not

takes an

2 little blasting cap or shoot at it with a gun. It

oxidation

3 explosive charge to get the reaction of expansion and

4 started.

--

5 Q. So you know it needs a booster to actually detonate

6 A. That is exactly what is used.

with

7 Q. -- that mixture. And are you -- are you familiar

high

8 things that are used as boosters for ANFO, the types of

9 explosives that can be used?

10 A. Yes. As required by the law, Mine Safety and

Health

11 Authority, we have to go through annual refresher
training in
12 safety at a mine site. OSHA does not apply to mining
because
13 it is different than construction trades and most heavy
14 equipment, that type thing. And we are not annually
but
15 regularly shown boosters, det. cord, things that we
should be
16 aware of in our workplace, out on the road so that we
would
17 recognize them. We see them; they are dummies. But
it's --
18 it's that. It's a refresher. Some people are much
closer to
19 that portion of the operation than I am or ever have
been in my
20 twelve years with the mine.
21 Q. Good. You said you've seen blasting caps, also, I
take it?
22 A. I have seen blasting caps.
23 Q. Are you familiar with a nonelectric blasting cap
system
24 called Primadet?
25 A. Non-el.

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1 Q. Pardon?

2 A. Non-el and Primadet, yes.

3 Q. Do you have that type of high explosive at the mine
where
4 you work --

5 A. Yes.

6 Q. -- in security? And do you have specific security
7 procedures you follow for storing those type of
explosives?

8 A. Yes, we do.

9 Q. And do you store them in magazines?

10 A. (Juror nods head.)

11 Q. And do you know what type of license you need to
purchase
12 those type of high explosives?

13 A. Vaguely.

14 Q. And what is your understanding generally of what it
takes
15 to purchase a high explosive?

16 A. A person who is knowledgeable enough to pass any of
the
17 tests in the use, storage, of the product; and I'm, of
course,

18 quite sure that it is a federal license through federal
19 firearms, Bureau of Alcohol and Tobacco. But the
actual

20 application and/or permit isn't -- is not in my -- in
my
21 knowledge.

22 Q. So is it your understanding that to purchase

something like

buy it 23 Primadet, you have to have a license, you can't just go

24 at a hardware store?

25 A. Yes.

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your 1 Q. Did you ever sell anything like a blasting cap in

2 hardware store?

hardware 3 A. In the early 20's, my family, who was in the

They did 4 business, did. But this was before I was ever born.

central 5 work there -- the business was in the oil fields of

heard 6 Texas, and it was also a farming community. And I've

did at 7 that my father and grandfather in the hardware business

that 8 one time sell stick powder or dynamite; and naturally,

useful. But 9 would include cap and fuse in order to make them

of high 10 personally, I have not been involved in the sale or use

11 explosives.

work of any 12 Q. Have you ever had a theft at the mine where you

13 explosives?

14 A. One time.

15 Q. Could you describe that for us, briefly, please.

16 A. Boosters were taken after a very strange entry into
the

17 mountain of the -- of what we call accessories
magazine; that

18 the lock was opened as though a key had been used. The
lock

19 was on the ground, and the door was still closed. And
a very

20 careful inventory of those products is kept. And a
small

21 amount of boosters were missing. I think it was half a
dozen,

22 perhaps, or less. And those were found in a park under
a tree

23 in Colorado Springs three days later.

24 Q. And that's the only theft you've had?

25 A. That's it.

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1 Q. Since you've been working there?

2 A. To my knowledge.

3 Q. As to the boosters, do you use some kind of gel or
4 emulsion?

5 A. That is used sometimes; and as I understand it, it
depends

had been 6 on conditions such as moisture in the blast hole which
7 drilled into the rock.

shot 8 Q. Okay. So it depends on where you're doing the ANFO
9 what type of booster you would use?

10 A. That, ma'am, I couldn't say.

right -- in 11 Q. Okay. You worked on a farm or several farms --
12 your -- during your earlier days?

13 A. Yes. As a very youngster. Let's say
preadolescence and
14 early teens.

15 Q. Did you ever see high explosives used on a farm?

16 A. No.

17 Q. Never?

18 A. No.

answering my 19 MS. WILKINSON: Thank you very much for
20 questions, sir.

21 THE COURT: Mr. Tigar.

22 VOIR DIRE EXAMINATION

23 BY MR. TIGAR:

24 Q. Good afternoon again, sir.

25 A. Good afternoon.

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with Ron
District
him out

1 Q. As you know, my name is Michael Tigar; and along
2 Woods, we were lawyers appointed by the United States
3 Judge in Oklahoma to represent Terry Nichols to help
4 when the charges were filed.

that may
described the

5 And I do have a few -- few more questions --
6 be difficult to believe -- but you were -- you
7 town where you live as a "ghost town"?

8 A. Semi.

9 Q. Semi ghost town.

10 A. There you go.

Texas? I
through

11 Q. And you -- is it a little bit like Lukenbach,
12 mean, not many people there or -- have you ever been
13 Lukenbach?

14 A. No.

Texas?

15 Q. All right. You -- you were born in Rising Star,

16 A. That's correct.

17 Q. And went to school just up the road in Abilene?

18 A. Yes.

19 Q. Up Highway 87?

20 A. I believe you're right. Or you could go up and

then go --

21 Q. Go -- yeah. And when -- when you were living in
Midland,

22 what kind of work were you doing?

23 A. In Midland, I was almost exclusively employed at
our family

24 hardware store.

25 Q. Oh, I see. And then you moved to Tarrant County,
Fort

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1 Worth?

2 A. Yes.

3 Q. And was that in the hardware business, also?

4 A. Worked with a distributor in Fort Worth of turf and
5 irrigation supplies. That would be golf course
equipment,

6 fungicides, pesticides, fertilizer, and the fountain --
7 decorative water fountain business.

8 Q. Now, when you dealt with fertilizer, did the golf
courses

9 there prefer any particular kind of fertilizer?

10 A. They -- they liked the premixed blends, including
nitrogen,

11 phosphorous, potash, sometimes trace elements, iron,
sulfur.

12 Q. Did -- for instance, did they like ammonium nitrate

13 fertilizer, which I think is 34/ought/ought, or did
they prefer
14 something that was more across the board like ten/ten/
ten or
15 something?
16 A. The premixed, pelleted. Do it all with one
application.
17 They might occasionally specify higher phosphorous
content or
18 higher nitrogen content.
19 Q. And then in New Orleans, you worked in other
hardware
20 stores. Were those family businesses; that is, owned
by
21 members of your family?
22 A. Not members of my family, but family businesses.
23 Q. I see. I understand. And then you started your
own?
24 A. That's correct.
25 Q. And was that in Orleans Parish?

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1 A. Yes.
2 Q. Okay. Now, this incident that you talked about
where you
3 had referred somebody to, you know -- for a place to
live: You
4 said that was part of an organization of which you were
a

5 member.

6 A. And still am.

7 Q. And still are. All right. And this is -- I don't
want to

8 get into your personal life. This is an organization
which one

9 of the objectives is to help other people who may be in
the

10 same situation.

11 A. Exactly.

12 Q. Okay. And in helping this, you -- you have this
person --

13 you referred this person to a place to live and then
there was

14 this killing; right?

15 A. That's correct.

16 Q. How -- how well did you -- and I'm obviously not
trying to

17 criticize your decision or to second-guess it in the
least.

18 But how well did you feel you knew the person that you
referred

19 to -- to the lady?

20 A. I had known the woman who had been abandoned by her
21 husband. I'd known her for about a year, or a little
more. I

22 knew that there were situations in the home that
couldn't be

23 considered favorable, stable, the picture of a family;
that it

24 was tempestuous at times. It was not unexpected to me
that she
25 was abandoned. I saw the need and had no reason in my
own mind

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1 to suspect that there would be any -- the conclusion --
or any
2 possibility of what happened occurring.

3 Q. I understand. Now, was this a situation where the
woman
4 that you had befriended, that you referred, had had a
problem
5 with a substance abuse?

6 A. Yes.

7 Q. Okay. And did you feel somehow betrayed by this
person you
8 had befriended when you found out about this?

9 A. Not betrayed, sir. Disappointed, in that it seemed
from
10 what I was hearing in the media, reading in the media,
that
11 substance abuse may have returned, which fueled the
episode.

12 Q. Now --

13 A. I will add this, that it's something that would
never occur

14 again. I simply did what my conscience and judgment at
that

15 time led me to do.

16 Q. And I wasn't suggesting for a moment, you know --

17 A. I understand.

18 Q. In that perspective. I'm just asking, you know, is
that an

19 instance in your life that you had where you -- you had

20 befriended somebody and then things turned out
differently than

21 you expected?

22 A. That was such an instance.

23 Q. You mentioned when the prosecutor was talking a
view about

24 the government's behavior at Waco. Did you have an
opinion

25 about what happened to the Weaver family up in Ruby
Ridge? Did

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1 you follow that?

2 A. Only very peripherally. I was aware that it had
happened

3 and again, that it was more or less a standoff, or it
wasn't a

4 hostage situation, but that law enforcement was unable
to

5 apprehend and -- and properly charge persons who had
been

6 accused of the infraction, the crime.

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1 Q. Now, do you remember talking to people in the break
room or

2 at home when the -- when the situation happened?

3 A. Yes.

4 Q. And I remember you saying that when you saw or
heard the

5 situation happened, that you -- you had a hope that
somebody

6 would be caught; right?

7 A. Yes.

8 Q. And that justice would be served?

9 A. Right. I did.

10 Q. Do you remember folks talking about what that
meant, what

11 should happen to who -- whoever was caught?

12 A. Yes. Some had definite opinions along those lines.

13 Q. And what kinds of opinions did you hear?

14 A. Oh, everything from the vigilante mind-set to
hoping that a

15 finality could be arrived at soon; that it didn't drag
on for

16 years and years and years as some cases have of
necessity, I

17 suppose, in the past; that it would occur soon.

18 Q. And whatever the method was people are talking
about,

19 whether vigilante or through the justice system, was
there a

to 20 consensus about what punishment ought to be meted out
21 whoever got caught?
22 A. I would have to say yes.
23 Q. And what was that consensus?
24 A. That they deserved to be executed.
25 Q. And how did you feel about that?

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true 1 A. Be very careful. That justice, if it were to be
has to go 2 justice as we are -- we know it in the United States,
conclusion. 3 through the steps necessary to arrive at the
4 Q. Okay.
court and 5 A. That it definitely should be in the hands of the
carefully, 6 that -- that statutes, laws should be followed very
7 as I was confident that they would be.
about 8 Q. I understand. You heard public officials talking
9 that?
10 A. No.
11 Q. How the law would be followed?
12 A. No. More individuals.

13 Q. Yeah. And did you in your mind -- can you remember
14 thinking, gee, if -- if -- if they catch somebody and
they are
15 proved to have had a part in this beyond a reasonable
doubt,
16 that any appropriate punishment would be proper?

17 MR. MACKEY: Judge, objection.

18 JUROR: Yes.

19 THE COURT: Overruled.

20 BY MR. TIGAR:

21 Q. And what punishment did you think that was?

22 A. Did the judge rule on that?

23 Q. He said you can answer.

24 THE COURT: Don't pay any attention to these
little
25 side --

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1 JUROR: Repeat the question.

2 BY MR. TIGAR:

3 Q. Oh, sure. Do you remember at the time thinking
that if
4 somebody is caught, having had something to do with
this, and
5 they are proved to have had a criminal role in it
beyond a

6 reasonable doubt, what the appropriate punishment would
be for
7 such a person?

8 A. I did arrive at -- I did think about it and arrive
at a
9 conclusion.

10 Q. And what -- what was your conclusion, sir?

11 A. That if the death penalty were appropriately
applied to
12 such a case, under the law, that the -- proved beyond a
doubt,
13 the perpetrator be executed.

14 Q. Now, I understand your comment about vigilante
justice.

15 They have a lot of stories about that in Texas; right?
I mean,

16 meaning -- there's a sense in which Texas law
enforcement
17 prides itself in being able to go out there and handle
18 whatever.

19 A. One might say southern.

20 Q. Southern.

21 A. Okay.

22 Q. You remember the saying, "One riot, one ranger"?

23 A. Uh-huh.

24 Q. Well, we're clearly not talking about that. We're
talking

25 about a process in the criminal justice system, and you

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1 understand that that -- it's a jury that has a role in
that.

2 A. Yes.

3 Q. Okay. I wonder if you could turn over the page,
sir, to

4 page 34; and you checked off names of people that you
had heard

5 of; right?

6 A. Yes.

7 Q. Okay. And can you tell me what you had heard about
James

8 Nichols? There's five in a row there. I'm going to
start at

9 the bottom.

10 A. I believe that I had heard that that is the brother
of

11 Terry Lynn Nichols.

12 Q. All right. And anything more about him?

13 A. That he was a farmer. And I could not definitely
say what

14 state.

15 Q. Okay.

16 A. That he was a farmer.

17 Q. How about Michael and Lori Fortier?

18 A. That they had been associated with or friends with
and I

19 believe lived with and/or furnished some of life's

necessities

20 to Timothy McVeigh.

21 Q. And when do you remember the first time that you
heard --

22 when is the first time you can remember hearing about
Michael

23 and Lori Fortier?

24 A. During the trial.

25 Q. And did you -- do you remember generally what
Michael

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1 Fortier was testifying to?

2 A. Conversations that he had -- had had and close
associations

3 with Timothy McVeigh.

4 Q. Okay. Do you remember reading during the trial of
evidence

5 about a break-in at a quarry where ANFO was stored --
or

6 explosives were stored? Excuse me.

7 A. Yes, I did.

8 Q. Did that have special interest to you because of
the

9 security responsibilities that your company has?

10 A. Not really. And do you wish to know the reason?

11 Q. Sure.

12 A. Because I'm aware of how many operations of that
type that
13 do use explosives are scattered around the country and
that
14 generally, they are not under 24-hour guard. They are
usually
15 behind a locked fence in a locked magazine. Very
rarely do
16 they have any electronic surveillance or unusual
security
17 measures. I wouldn't be surprised but what it happens
probably
18 around the country on a monthly basis.

19 Q. Now, you mentioned that you know the brand name
Primadet;
20 correct?

21 A. Yes.

22 Q. Do you know the brand name Tovex?

23 A. No.

24 Q. All right. And in your operations up there, they
use -- do
25 they mix the ammonium nitrate and fuel oil on site?

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1 A. Yes. Right out in what we call the powder truck.

2 Q. And when you -- do you have to take some sort of
3 examination whereby you display some knowledge to the
4 authorities about blasting and blasting safety?

5 A. I believe I would in order to be certified.

6 Q. Okay. But you -- and in your work then, how is it
that you

7 have the familiarity that you do with explosives and
explosive

8 safety procedure?

9 A. I began working for the mining company in one
department

10 and very shortly then became the purchasing agent and
after

11 that became the warehouse manager. Now, the warehouse
had no

12 contact with -- with -- control over, use of the
explosives.

13 That was the blasting department's job and safety
department's

14 job in entirety. I did, as purchasing agent, issue the

15 purchase orders for these products, both the
accessories, the

16 diesel fuel, and the ammonium nitrate and would
occasionally

17 meet with salespersons from the suppliers, the vendors.

18 Q. So if you were a juror in the case and people were
talking

19 about that process, they'd be talking about something
with

20 which you already had some familiarity based on your
work?

21 A. The qualifier "some" is very fitting. Not on-hands
-- or

22 hands-on.

Oklahoma 23 Q. I understand. Well, let me then turn back to this
injured; 24 City situation. You said that you felt personally
25 correct?

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1 A. (Juror nods head.)
2 Q. And that you're -- it affected your serenity;
correct?
3 A. (Juror nods head.)
4 Q. Can you tell me a little more about that? What was
it
5 that -- that -- that you saw or read that affected you
in that
6 way?
7 A. Just the general overall photos of both television
taping
8 and some print media of the magnitude of it, the
feeling that
9 this has got to be a terrorist act from offshore, how
could
10 this be happening, what a stupid and senseless act;
that it was
11 so over -- overdone that I -- I just couldn't get
around it;
12 that my -- if anyone felt that this was necessary,
possible --
13 even that -- why didn't it happen at night when the
building

And I 14 was unoccupied or virtually unoccupied, how senseless.
myself, 15 felt less secure and serene, myself, in the safety of
-- what 16 my family, my friends, our whole country. Where have
17 has brought us to this point. May it be the last.

you 18 Q. And when you say it affected your serenity, were
sense 19 thinking of the term -- did you use the serenity in the
contact? 20 used by some organization with which you've had

21 A. Both.

talk 22 Q. Okay. Well, then, let me turn in light of that and
grew up in 23 about this question of punishment, if I might. You
death 24 Texas. You know that Texas, for a long time, had a
didn't 25 penalty. And then for a while, as the Judge said, they

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Then you 1 have executions, and then prosecutions began again.
penalty 2 lived in Louisiana. And you're aware they have a death
3 there?

4 A. I believe that's correct.

5 Q. Okay. And so how long have you -- when's the first
time in

6 your life you can remember thinking, you know, about
the death

7 penalty as an issue?

8 A. At a very young age. We had radio in those days.
That was

9 about it.

10 Q. Yeah.

11 A. I don't remember any particular person executed;
but

12 certainly, it wasn't graphic.

13 Q. Uh-huh.

14 A. Also movies.

15 Q. Right.

16 A. They would show a cell, the long walk down to the
door

17 opening to the -- I can remember thinking I'm going to
be a

18 good boy. I am going to not start steps in any
direction that

19 might lead me in that direction.

20 Q. I understand. And in your questionnaire, you
answered in

21 terms of "as allowed by current law." And I wanted to
go

22 behind that just one step if I might to talk about your
-- your

23 attitudes because your -- you know, if -- if you could
make the

24 law, right, if you could say for the federal
government, there

25 are certain kinds of crimes that would always carry the
death

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1 penalty, would -- would you put any crimes in that
category?

2 A. Define a little more carefully any crime. Are
there some

3 crimes that I would put in that category?

4 Q. Yes. And I'm just asking you, this is a free --

5 A. Okay. I want -- yes.

6 Q. And what -- what would that be?

7 A. Treason, massive acts as epitomized by the Oklahoma
City

8 bombing. Probably would have to consider
premeditation. I

9 don't believe I would add or delete any of the crimes
that

10 covered under that penalty that -- as are currently --

11 Q. All right. No -- I'm not trying to -- to, you
know,

12 exclude or to -- to, you know, to get any complete
list; but

13 starting with that, if you were writing the law, would
you have

14 a provision in there that someone who had committed one
of the

based on 15 crimes you just listed could still get a life sentence
life, 16 facts about their growing up or -- and their family
17 things like that --

18 A. Yes. I believe I would.

what 19 Q. All right. And in your law that you would write,
20 would that be?

21 A. I believe insanity would be one.

22 Q. All right.

one. 23 A. And as I now feel, that would probably be the only

put in 24 Q. All right. So you -- just to make sure, would you
on 25 your law that somebody could have a life sentence based

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before 1 proof that they had never been in trouble with the law
done? 2 or based on other, you know, good works that they had

don't 3 A. I'm not certain that I would put it in my law. I
4 believe I would put it in my law.

-- 5 Q. Well, then, I'm -- I have to ask the question about

6 about the federal statute. The Judge discussed the way
the
7 situation works. The first thing that'll happen in
this case,
8 there will be 12 jurors sitting in that box, that place
where
9 you are right now. And we have to presume as we sit
right here
10 that there will never be a punishment phase, that it
won't
11 happen. The reason we presume that is that Mr. Nichols
is
12 presumed innocent.

13 A. Correct.

14 Q. Okay. And we certainly don't concede otherwise.
We're
15 going to cross-examine their witnesses and present
evidence of
16 our own. But if there is a punishment phase in the
case, this
17 is our only chance to talk to you. When you were
living either
18 in Tarrant County or out in Midland, did you ever go
down to
19 criminal court and watch cases or read about them?

20 A. No.

21 Q. Because in Texas --

22 A. Let me qualify that. I did not go to criminal
court.

23 Surely, I read about them.

24 Q. Sure. And in Texas, it happens in every case,
every major

25 criminal case, the jury assesses punishment; but
generally in a

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1 noncapital case, they do it in the same hearing.
Anyway, in
2 these federal cases where there's the possibility of a
death
3 sentence, if the jury finds the defendant guilty -- all
4 right -- of these charges -- of the charges, then there
is a
5 second hearing. The jury's already found this person
guilty
6 beyond a reasonable doubt of intentional murder. And
at that
7 second hearing, the Government presents evidence as to
8 additional things, aggravating factors. And the
defense
9 presents evidence of mitigating factors, you heard the
Judge
10 say. What kinds of things did you think the Judge was
talking
11 about when he talked about mitigating factors?
12 A. It would have to be in -- to my thinking,
environment,
13 past -- as the Judge mentioned, past history, and as
you
14 mentioned, good deeds. Clean record.
15 Q. All right.

16 A. Public service. Military service.
17 Q. Uh-huh.
18 A. Things of the like.
19 Q. Okay. Now, that evidence, these mitigating
factors, the
20 jury hears that. And then the lawyers make arguments
and then
21 the jurors deliberate. And no juror is required to
give up his
22 or her, you know, view conscientiously arrived at that
they
23 talk about and they make a decision. And the question
comes
24 down to this, do you -- do you -- do you see or in your
view
25 the law that you would write, you know, as to what
would be the

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1 basis for assessing proper punishment might be
different from
2 the law the way it really is?
3 A. Would this be as in spirit of the law?
4 Q. No. I'm talking about the letter. That is to say
if -- as
5 I understood it, the law that you would write, this
6 environment -- the environment and background wouldn't
be

7 something that should be considered in mitigation of a
person
-- is 8 convicted of certain very terrible crimes. Is that the
9 that -- did I hear you right?

10 A. Yeah. I believe you did.

11 Q. Okay. In -- in the federal law, there is no such
thing as
12 an automatic death penalty.

13 A. Understood.

14 Q. That is to say, even if a person is convicted of
treason,
15 levying war against the United States of America, our
country,

16 still, if -- even if they are convicted of it, there
would be a

17 hearing. And there might be evidence about what that
person

18 did in their background and what deeds they had
conducted

19 and -- and so on. And a jury -- a juror would be asked
to

20 consider with an open mind -- to be open to the
possibility

21 that life imprisonment, that's a satisfactory
punishment.

22 Now, do you think that even though that might
be

23 different than the way you would do it if you'd write
the

24 law -- but if you were judging a person in that
circumstance,

like 25 that you could be open to a life sentence for somebody

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1 that?

probably 2 A. I believe I could. I would be -- take -- that's

coming to 3 not a good comment, and I would have to consider in

And in 4 an answer to that that I would be one of 12 jurors.

I could 5 deliberation, I can see that it would be possible that

reference to the 6 be moved to one position or the other as -- in

parole. 7 death penalty, life in prison without possibility of

those 8 Q. Would you start out leaning in favor of one of

9 options as a working hypothesis?

Honor. 10 MR. MACKEY: Excuse me. Objection, your

11 THE COURT: Sustained.

12 BY MR. TIGAR:

completely 13 Q. Would -- would you start out your deliberation

punishments was 14 without any preconception about which of the

15 appropriate?

16 MR. MACKEY: Same objection, your Honor.

17 VOIR DIRE EXAMINATION

18 BY THE COURT:

19 Q. Well, the question is would you start out with --
with
20 considering what you had heard at the sentencing
hearing?

21 A. I can only say that an answer to that would only
come to me
22 after hearing the evidence presented in that hearing.

23 Q. That's what we're trying to ask you, whether you're
open to
24 that evidence --

25 A. Very well.

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1 Q. -- at that hearing.

2 A. I'm more clear on that now. I believe I am open.

3 VOIR DIRE EXAMINATION

4 BY MR. TIGAR:

5 Q. And if the Judge -- and when you say "open," that
is to say
6 open-minded about all the possibilities?

7 A. Right.

8 Q. All right. And if the Judge were to instruct you
and as
9 the Judge instructed you on the law, could you follow

the

10 Judge's instructions about how to view the evidence,
even if it

11 was different from your own views?

12 A. I could and would very carefully.

13 Q. Now, do you -- and -- and is that -- when you say
you could

14 and would, is that -- is that -- no. All right. I'll
-- I

15 think I've asked enough about that. I understand your
view.

16 One -- one last area very briefly. You
mentioned that

17 you have some reservations about the degree of federal
18 regulation where you work; is that right?

19 A. Yes.

20 Q. Okay. Now, in your -- do you have the sense that
people

21 that work for these federal bureaus sometimes don't
understand

22 the problems of the people that actually have to do
things?

23 A. I believe it's very difficult to write regulations
for

24 Florida that would be enforced at the federal level in
Alaska.

25 I feel that it should be more the state's
responsibility, the

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1 state's job. It gets it more down -- down home.

2 Q. Uh-huh.

3 A. And they understand many areas of the conditions,
4 environmental conditions, potential for problems,
economic
5 conditions, etc., etc.

6 Q. Yeah. Yeah.

7 A. That would be in their state than the federal
government.

8 Q. Do you ever -- it has been your experience, have
you ever
9 seen it: Somebody who works for one of these federal
agencies
10 jumps to a conclusion before they ever heard all the
evidence?

11 MR. MACKEY: Objection.

12 JUROR: Yes, sir. Yes, sir.

13 THE COURT: Asked and answered, so the
objection is
14 moot.

15 BY MR. TIGAR:

16 Q. Can you -- as you sit there today, sir, can you
look Terry

17 Nichols in the eye and say that you can give him a -- a
fair
18 trial?

19 A. I can give Terry Nichols a fair trial.

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

21 THE COURT: Well, we appreciate your coming
this

22 distance, being here and answering all of these
questions. And

23 we're not going to be able to tell you whether you will
serve

24 on this jury, not now, and I don't know when. There
will be a

25 delay as we go through this same process with a good
many

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1 people. I trust you understand the need to do that.

2 JUROR: I do.

3 THE COURT: So what we ask of you now -- and
you're

4 excused now, of course -- that you go from here with
the

5 understanding that you're going to be back here at some
later

6 day and serve on this jury. And that means you're
going to

7 have to so conduct yourself as to be able to do what
you just

8 said here that you could do, and that's give a fair
trial to

9 both sides in this case. Will you do that?

10 JUROR: I can do that.

11 THE COURT: So be very careful in
conversations with

12 others, in reading, seeing, hearing publicity that may
relate
13 to it so that you wouldn't be influenced or affected by
it so
14 that, to put it plainly, you could come back in the
same frame
15 of mind as you are now and if there are -- if there is
any
16 change in your circumstances, if you got called out of
town on
17 some emergency or a family problem or something, you
know, that
18 called you out of town, get in touch with us right
away. We
19 want to be really within daily contact of you if we
need be.
20 Understood?

21 JUROR: I can do that.

22 THE COURT: Okay. You can go home. You're
excused.

23 JUROR: Thank you. Thank you.

24 THE COURT: I'm inclined to go ahead with
another one

25 and do the motions on Monday morning. We're going so
slowly

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1 here. We've got people waiting. We could do the
motions at

2 8:00 Monday morning, so we'll take a recess now. I
don't mean
3 to just jump right into the next one, but I'd like -- I
hate to
4 have these people wait and wait and wait when we could
pick up
5 some time by talking about these motions on Monday
morning. So
6 we'll do that.

7 MR. MACKEY: That's fine. Thank you.

8 THE COURT: 20 minutes. I guess I said 20
minutes. I
9 have to stick with it. All right.

10 (Recess at 3:56 p.m.)

11 (Reconvened at 4:12 p.m.)

12 THE COURT: Be seated, please.

13 58, it is; right?

14 MR. MANSPEAKER: 577.

15 THE COURT: Yes. Sorry.

16 Would you please raise your right hand and
take the
17 oath from the clerk.

18 (Juror No. 577 affirmed.)

19 THE COURTROOM DEPUTY: Thank you.

20 THE COURT: Please be seated there by the
microphone.

21 VOIR DIRE EXAMINATION

22 BY THE COURT:

23 Q. And you've been waiting all day to come in and talk

with

24 us, and we appreciate that. And let's get to what we
want to
25 talk about.

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1 Under this oath that refers to "the case now
on
2 trial," you know that's about United States vs. Terry
Lynn
3 Nichols?

4 You have to answer out loud --

5 A. Yes, I do.

6 Q. -- so your answers can be taken down.

7 A. Yes, I do.

8 Q. And that you received a summons a couple months ago
9 advising you of the fact that you have been called in
for jury

10 service in this case. Then you sent back a
questionnaire,

11 short one, came out to Jefferson County a month ago
today, and

12 then met with me and people who were with me and
answered a

13 longer questionnaire. And I want to reintroduce the
people you

14 met there on that day, because they're here again and
15 participating in this process.

16 And here at the first table are Mr. Lawrence
Mackey
17 and Ms. Beth Wilkinson, who were with us as attorneys
for the
18 Government. They're joined now by Mr. Patrick Ryan and
19 Mr. Geoffrey Mearns.

20 And you also recall Mr. Michael Tigar and Mr.
Ronald
21 Woods, attorneys for Terry Nichols. Mr. Nichols is
present.

22 And before asking you to complete this long
23 questionnaire, I gave you some background explaining
things
24 that you probably already knew and you probably
remember, too;
25 but I just want to go over them briefly here to give us
sort of

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1 a backdrop for the questions that we'll be talking
about this
2 afternoon.

3 I explained, of course, that this case arises
out of
4 the explosion that destroyed a federal building and an
office
5 building in Oklahoma City, Oklahoma, on April 19 of
1995, with
6 deaths and injuries resulting to the people in the

building;

charging 7 that there were then charges filed by an indictment, a

charging 8 document, in Oklahoma City in the Federal Court there,

Terry Lynn 9 a man named Timothy James McVeigh and Mr. Nichols,

persons not 10 Nichols -- and then the indictment says "and other

building, 11 named" -- with the crime of conspiring to bomb that

12 to kill and injure people in it.

or 13 And then the indictment includes other charges

carried 14 counts, 11 in all. The other charges include that they

they 15 out such a bombing and that with intention to kill,

the 16 murdered in the bombing eight law enforcement agents of

the 17 federal government who were in the building and died in

18 explosion.

19 You understand these points?

20 A. Yes, I do.

happened, the 21 Q. And then I explained that procedurally what

because of a 22 case got moved from Oklahoma City here to Denver

and then 23 concern about asking people there to serve on a jury;

24 after it came to Denver, I separated the defendants for

trial,

evidence 25 ordering that there would be separate trials for the

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may 1 as it may relate to Mr. McVeigh and the evidence as it

not be 2 relate to Mr. Nichols on the conclusion that it would

there -- 3 fair to either of them to be tried together so that

evidence as it 4 it's just as two cases, so a jury would hear the

be 5 may relate to each of them, considering differences to

6 expected in that evidence. Understand?

7 A. Yes, I do.

8 Q. And there has been a trial here with respect to the
9 evidence relating to Mr. McVeigh, and a jury was
selected there

evidence, 10 just as we're selecting a jury here. That jury heard

The 11 determined that the evidence showed Mr. McVeigh guilty.

phase or 12 jury was then required to hear more in a sentencing

this 13 stage because jury sentencing is involved in cases of

14 type, and the jury recommended a sentence of death for

15 Mr. McVeigh.

16 None of that can be considered now, you
understand?

17 A. Yes, I do.

18 Q. Nothing that anybody may have -- well, you know, I
was in

19 the courtroom, so I heard the evidence; but I can't
consider

20 that evidence in any way in making my rulings with
respect to

21 this trial. And so, too, any jurors in this case who
may have

22 heard, read, or seen something about what was done at

23 Mr. McVeigh's trial must disregard that now and not
consider it

24 at all in Mr. Nichols' trial. You understand that?

25 A. Yes, I do.

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1 Q. To do so would violate the very purpose of the
separate

2 trials, obviously; and in addition to that, jurors are
not

3 permitted to consider things that are not seen or heard
as

4 evidence at the trial. You understand that concept?

5 A. Yes, I do.

6 Q. And then I went over some of the fundamental
principles of

7 the criminal law and the Constitution of the United
States,
8 which, of course, tell us -- the constitutional
commands are
9 that all persons accused of crimes in the United
States, no
10 matter who they are or what the crimes charged are, are
11 presumed to be not guilty, innocent of those crimes.
That
12 presumption carries throughout the trial and entitles
that
13 person to an acquittal, a finding of not guilty, unless
12
14 fair-minded persons coming in as jurors, considering
only the
15 evidence received at the trial and following the law,
determine
16 that the evidence shows guilt and does so beyond a
reasonable
17 doubt. You've heard me say those points, and I suppose
you
18 heard them somewhere before that.
19 A. Yes, I have.
20 Q. And that's a very real requirement, of course, of
the law.
21 And no person who is charged with any crime has any
burden or
22 duty at his or her trial to prove anything. They don't
have to
23 come in with the evidence. It's the charging
government that
24 does through the lawyers, whether it be state or local

or

25 national. And no person charged is required in any way
to take

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1 the witness stand and answer any questions or to
explain
2 anything to the jury. They can simply remain silent
and
3 require the prosecutors to come in and prove the case
and to
4 challenge that evidence through cross-examination of
the
5 witnesses and objections under the rules to the
admissibility
6 of any evidence.

7 And then at the end of the trial, in a case in
which a
8 defendant does not testify as a witness, the jury is
9 instructed: Consider the evidence that you did hear.
Do not
10 give any consideration to the fact that a defendant
does not
11 testify, because that cannot be taken as some kind of
an
12 admission or an admission by silence or the suggestion
that
13 he's hiding something. He doesn't have to testify. It
can't
14 be considered.

with the

7 people who are with us here in front of you for the
limited
8 purpose of this proceeding. We recognize that we've
asked you
9 things that are personal in nature. Your privacy is
important
10 to us, and we try to protect that as much as possible,
11 balancing it against the public interest in this case.

12 And it is for this reason that we don't use
your name
13 here. We're cautious about the questioning to try to
avoid
14 things that would clearly identify you, you know. And
even you
15 go and come from the courthouse in ways that press
16 photographers can't photograph you and the like.

17 But what we do now in open court is just that:
It's
18 in open court and public. And you understand that?

19 A. Yes, I do.

20 Q. Now, if I may -- you have your questionnaire there
with
21 you; right? I would like to go through just a few of
these
22 things. It isn't going to be a situation where we go
question
23 by question. You've answered these questions. But on
a few of
24 those things, we simply want you to expand a bit or
perhaps

25 explain a bit.

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were 1 I understand from what you've told us that you

2 born in the state of New York.

3 A. That's right.

4 Q. And went to high school in the state of New York?

5 A. I did.

Michigan? 6 Q. And then you went over to Albion College in

7 A. I did.

8 Q. And you got a degree from that school.

9 A. Yes, I did.

Michigan? 10 Q. And then you taught for a while in the state of

11 A. I did.

12 Q. In Livonia?

13 A. I taught in Garden City, lived in Livonia.

14 Q. They're next to each other?

15 A. Yes.

16 Q. Or very close?

17 A. Yes, they are.

there? 18 Q. And that was, what, about four years of teaching

19 A. Three.

20 Q. Three. What did you teach?
21 A. I taught language arts, social studies and home
economics.
22 Q. At what level?
23 A. Seventh and eighth grade. Seventh, eight, and
ninth grade.
24 Q. Was that a middle school?
25 A. It was called junior high school back in those
years.

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1 Q. Seven, eight, and nine?
2 A. Uh-huh.
3 Q. And you -- were you married at that time?
4 A. Yes, I was.
5 Q. And as I understand it, your marriage ended in a
divorce?
6 A. That's right.
7 Q. Which was difficult for you and the children?
8 A. Yes.
9 Q. And how long ago was that?
10 A. 20 years ago.
11 Q. Now, you have three children?
12 A. Yes, I do.
13 Q. And one of them is in law school?

14 A. Yes, he is.

15 Q. On the West Coast. And you said working as a
clerk. For a

16 law firm?

17 A. Yes.

18 Q. And while he's going to law school? I mean, that's
the way

19 to get some experience and also some income?

20 A. That's right.

21 Q. When you got your jury summons or at any time
since, have

22 you mentioned this to your son?

23 A. Yes. He knows that I was summoned for this.

24 Q. And did he, as law students might, offer you some
advice?

25 A. No. He thought it was -- would be an interesting

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1 experience, but he didn't offer advice. He's pretty
cool.

2 Q. All right. You know, I wouldn't be -- and I'm not
saying

3 this against him, but I wouldn't be surprised that he
would

4 suggest to you that you either want to be on the jury
or you

5 don't want to be on the jury and on either of those how
you

6 might arrange that by the way in which you answered
questions.

7 Anything like that?

8 A. That's not the way we are.

9 Q. Okay. Don't take that as an accusation.

10 A. I didn't.

11 Q. Okay. Good. Have you talked to him since? I
mean, after

12 you filled out the questionnaire and then when you got
notice

13 that you were going to come down here?

14 A. I told him that.

15 Q. And did you talk with him in terms of asking him
what you

16 might expect to happen?

17 A. No, because I don't think he has enough experience
to tell

18 me that.

19 Q. All right.

20 A. He told me that because I'm a teacher, I probably
would not

21 be selected.

22 Q. And I suppose -- I assume that you also talked
about this

23 at the school where you work.

24 A. It was necessary -- yes. It was necessary for some
people

25 to know.

potential 1 Q. Sure, because you've got to alert them for the
2 that you would be away from this work.

3 Now, as I understand it, you now teach seventh
4 graders?

5 A. I do.

6 Q. In language arts?

7 A. That's right.

English? 8 Q. And is that now what years ago we used to call

9 A. That's right.

10 Q. And you also obtained a master's here?

11 A. I did.

12 Q. In special ed?

13 A. From the University of Denver.

14 Q. And does special education mean special teaching
15 methodologies for people who have some learning
disabilities?

16 A. That's correct.

17 Q. Do you do that?

18 A. Absolutely. I mean --

classes 19 Q. I mean, do you have special ed students within the
20 you're teaching?

21 A. Yes, I do.

with 22 Q. They're, for want of a better word, mainstreamed in
23 the rest of the students?
education 24 A. That's correct. That's why I went from special
25 identified into the regular classroom. I've got those that are

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helpful 1 and those that are not identified, and so my skills are
2 there.

course 3 Q. So you're trying to move people along through the
4 material even though they may have different abilities,
5 including some who have special difficulties.

6 A. That's correct.

the people 7 Q. And what response did you get when you talked to

called out 8 at the school about here you are maybe going to be

9 of school and into a court -- from the classroom to the
10 courtroom for several months?

11 A. Often the reaction was, "Oh, no."

classroom 12 Q. Because they don't want to lose you from the

13 obviously?

14 A. That was one reason; but I think that there is some
fear,
15 you know, for a person who is supposed to be doing
this. I
16 mean, that was what I picked up, anyhow.
17 Q. What do you mean "fear"?
18 A. Well, I think it seems like an awesome
responsibility, and
19 I think I'm -- I mean, I think there are two parts to
that.
20 One part is losing me in the classroom and in the
school; but
21 the other part is, "Oh, no, you're going to have to do
that,"
22 or "You might have to do that."
23 Q. Yeah. And how do you react to that? What is your
-- as
24 you sit here today, what is your feeling about if we
said
25 you're going to be on the jury?

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1 A. I think it would be an awesome responsibility. I
think it
2 would be an honor to be chosen.
3 Q. All right. So you don't have the fear, but you do
4 understand that the task is difficult.
5 A. Absolutely.

is where 6 Q. Now, I wanted to ask you a couple of things. This
because we 7 I want to be careful about how I ask and you answer,
intrusive 8 don't want to get into things that are unnecessarily
that, 9 or embarrassing; but on page 22, if you'll turn to
10 please. We asked, "Have you ever called the police?"

11 A. Yes.

I'd like 12 Q. Question 101. And you identified two occasions.
13 to take the second first.

14 A. Okay.

First of 15 Q. And again, if you could tell us in a general way.
16 all, how long ago was this, the age of your son?

had a 17 A. I'm hesitating a moment, because when he was 15 he
getting 18 serious head injury, and that led to problems with him
to take 19 his balance back again; and I think that's what led him
20 drugs and get into that lifestyle.

of some 21 What happened was that he got -- he got hold
22 drugs that were -- it was a very powerful mixture,
mixed 23 inappropriate mixture for, you know -- they'd been
control. 24 inappropriately, I guess; and he certainly was out of

25 And I felt that I was in danger, and I also felt that
he needed

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1 some help; but I knew I couldn't get him out of the
home, so I

2 called. I called to have the police come and help me.

3 I just felt that we needed -- needed more
treatment.

4 He had already had several years of treatment, but it
hadn't

5 ended the problems.

6 Q. Was this in the neighborhood where you lived?

7 A. Yes.

8 Q. And do you know whose home it was --

9 A. Where he got the drugs?

10 Q. Yes.

11 A. I don't know the people, but I did find out where
it was.

12 Q. Do you know what kind of drugs?

13 A. I don't. I really don't know.

14 Q. Do you know whether they were illegal drugs vs.
mixing up

15 prescription drugs?

16 A. They were illegal drugs.

17 Q. Illegal. Okay. You know, we don't want to dwell
on this

18 unnecessarily to your discomfort, but what happened
then? The
19 police did come in and do what?
20 A. They came and they took him to the hospital, and
they kept
21 him for another week and -- and then he went -- he got
more
22 counseling. He had been at Mount Airy for a while. He
had
23 been in a residential situation here, and then we put
him at a
24 school in California. I think they let him go too
soon; and so
25 when he came back, he just wasn't ready to handle life.

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1 I ended up kicking him out of the home; and on
his
2 own, he has straightened himself out. He's now an
electrician
3 and married and doing quite well.
4 Q. This is your younger son?
5 A. This is my youngest son.
6 Q. And he lives here in the area?
7 A. Yes, he does.
8 Q. And as you say, things are straightened out. He's
married,
9 as I understand it.

10 A. Yes. He was married this summer, and he's doing
very well.

11 Q. Okay.

12 A. But a head injury, you know, is still problems -- I
mean,

13 it's still -- there are still things that are minor for
him but

14 still affect his life.

15 Q. How did that happen? How did the head injury
occur?

16 A. He was -- he had been -- he spent the summer in
Wyoming

17 working at a recreational resort; and on the way -- he
was

18 coming back to play football, and the young man that
was

19 driving back who he had been working with all summer
fell

20 asleep. It was about 5:00 in the morning. He was
going to get

21 on the bus to come back, and the truck rolled twice and
he was

22 thrown out. His ear was torn off and he landed on his
head,

23 thrown about 130 feet.

24 Q. What happened to the driver?

25 A. He wasn't injured.

4002

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and that 1 Q. And did that result in some insurance adjustment
2 sort of thing?

3 A. Well, at first, the other young man said that my
son was 4 driving; and so we had to -- we had the accident
reconstructed

5 because it didn't -- it didn't figure for where my
son's

6 injuries were that he would have been driving. And so
we

7 proved that he wasn't driving; but it still left him --
he was

8 in Craig Hospital for a while -- Swedish Hospital,
Craig 9 Hospital.

10 Q. A lot of expense?

11 A. A lot.

12 Q. Did you get any help with that from an insurance
company?

13 A. Yes, we did. And the settlement from the lawsuit
14 because --

15 Q. All right. You anticipated. There was a lawsuit
necessary

16 first, I take it. And you had a lawyer representing
your

17 family?

18 A. Yes, because if my son had been driving, then our
insurance

19 would have to pay for it; and this way the other
insurance

20 company ended up paying.

21 Q. All right. And so there are some -- some
continuing

22 consequences of this injury.

23 A. Yes. I think in terms of a head injury that
probably we're

24 very fortunate. There are some things, such things
such as

25 short-term memory and word retrieval: He gets words
such as a

4003

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1 "farm truck," he may say "truck farm." A compound
word, he

2 will reverse the words.

3 Q. Showing some of the same kinds of things that some
of your

4 students in special education have?

5 A. Well, his are caused by an accident.

6 Q. Well, yes, I appreciate he's not developmentally
7 disabled --

8 A. Yes.

9 Q. But the people you're working with are primarily
10 developmentally disabled.

11 A. Yes.

12 Q. Not disabled but "differently abled," we sometimes
say

13 these days.

14 A. Challenged.

15 Q. Challenged. Thank you.

16 out-of- And the other thing you mentioned here, this

17 control party or whatever it was: That ended up going
to court

18 apparently. Yes?

19 A. Yes, it did.

20 Q. And there was a trial?

21 A. Yes, there was.

22 Q. You testified?

23 A. Yes, I did.

24 Q. Where was the trial?

25 A. Jefferson County -- well, it was the Lakewood
municipal

4004

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1 court.

2 Q. In the municipal court. Okay. And how many people
were on

3 trial?

4 A. Mainly the man of -- from this home in my
neighborhood.

5 Q. This is the same place that you had the trouble
with your

6 son?

7 A. No.

8 Q. It's a different house?

9 A. It's -- the house where he got drugs was maybe a
mile away.

10 It was in the area. I think it's where probably the
high

11 school young people had obtained drugs.

12 Q. And this was right on your block, or whatever?

13 A. This was right on my block. These, you know --

14 Q. And what happened in the trial?

15 A. The people were found guilty. It's a family that
parties

16 constantly and continuously and all night most nights
with lots

17 of drinking and supplying liquor for youngsters; and
I'm pretty

18 patient about it, but on this particular night the
noise was

19 outrageous.

20 Q. They still live there?

21 A. Yes, they do.

22 Q. So you still have a neighborhood problem is what --

23 A. It's better than it was.

24 Q. Okay. Were you satisfied with the outcome of what
happened

25 through the -- through the trial process?

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1 A. Yes, I was; but the man next door refused to accept
the
2 charges. They refused to let the police into their
home and
3 so -- then he filed charges against the police
department for
4 entering their home, so it got beyond me. I was just
-- I was
5 just subpoenaed because I was the one had called
originally and
6 had information about the situation.

7 Q. Yeah. A jury there?

8 A. Yes.

9 Q. And the jury found him guilty?

10 A. Yes, they did.

11 Q. Do you know what happened then, whether there was a
fine or
12 what kind of a follow-up sentence there was?

13 A. Probation for six months, \$600 fine and community
service.

14 Q. But the problem still exists. It didn't change
their
15 behavior apparently?

16 A. Not completely. I think they were alarmed enough
about it
17 to -- it's a lot less than it was, but it still happens
18 occasionally.

19 Q. Okay. And is this one of those where the party
kind of

20 carries out onto the street?

21 A. It has, yes.

22 Q. All right. You have at one time had something to
do with a

23 Citizens' Police Academy, page 19, Question 87.

24 A. Yes.

25 Q. Tell us what that's about.

4006

Juror No. 577 - Voir Dire

1 A. The Lakewood Police Department has a citizens'
academy,

2 where citizens go -- maybe 20, I would say, 20 to 30
citizens

3 go for -- I think it's three or four months, and they
present

4 different aspects of the police department to the
people in the

5 class. It's very well done, and it helps you to
understand how

6 the police department works; and hopefully citizens
will take

7 that back into their own lives. And for me, especially
working

8 with junior high school young people and at that time
with

9 children who had emotional/behavioral problems -- you
know, I

10 could speak to some of the trouble that they were
getting into.

11 I understood the work of the police department better.

12 Q. So as I understand from what you said, it's an
13 informational thing for the citizens?

14 A. Yes, it is; and as a result of that, then often
citizens
15 will do volunteer work in the community or for the
police
16 department.

17 Q. Have you done that?

18 A. I have not.

19 Q. Do you have police stationed in the school where
you teach?

20 A. No, we don't. We have a police officer who spends
Mondays
21 in our school speaking in classes and working with
students,
22 and he's visible in the halls.

23 Q. Uh-huh. You don't have any regular police -- off-
duty
24 police or anybody assigned to patrol?

25 A. No, we don't.

4007

Juror No. 577 - Voir Dire

1 Q. Excuse me. I want to talk now with you a bit about
the
2 issue of punishment. Normally, in criminal trials, the
jury is

3 not involved in this part of the case. What the jury
does is

4 come in and hear the evidence and then judge the
evidence; that

5 is to say -- as we've talked already -- does the
evidence prove

6 the charge beyond a reasonable doubt? If no, not
guilty

7 verdict, end of case; if yes, guilty verdict, but it's
still

8 the end as far as the jury is concerned because then
it's up to

9 the court, the judge, to do the sentencing. You
understand

10 that?

11 A. Yes, I do.

12 Q. And before judges make sentencing decisions,
recognizing

13 that they are very individual decisions which depend
not only

14 on the crime for which the defendant has been convicted
by the

15 jury verdict but also the defendant -- and a lot is
taken into

16 consideration about the defendant, all the things that
make

17 every person individual and unique from others,
including that

18 person's life history, really and including, you know,
the

19 early family, the way in which the family functioned or
didn't,

20 marriage, divorce, employment, military service, good

things

21 done by the person, bad things done to or by him or
her, can
22 include things like injuries, like, you know, what
happened to
23 your son which sometimes affects behavior, so all of
these
24 things that go together to make this person's life up
to the
25 time of the sentence. All of that gets put before this

4008

Juror No. 577 - Voir Dire

1 sentencing judge along with additional things about the
crime,
2 its consequences on people, the effects on the
community if
3 there were such, and all of that.

4 And then the judge holds a hearing, listens to
the

5 lawyers on both sides, prosecution and defense, and
decides for

6 this crime, this person should be sentenced
accordingly:

7 probation, community service, years in prison,
whatever. And

8 in cases where more than one defendant is involved and
found

9 guilty, the sentences certainly may be different
because they

10 depend upon the individual circumstances. So it's

always an

11 issue -- not an issue -- but it's always a question of
the

12 crime and the person who committed it. You follow
that?

13 A. Yes, I do.

14 Q. Now, under federal law, the law that applies in
this case,

15 for certain kinds of crimes, including the crimes
charged in

16 this case, there is the possibility of sentence to
death; also,

17 the possibility of sentence to life in prison with no
chance of

18 ever getting out. It means just what it says: The
rest of

19 your life is spent in confinement.

20 And then it can be, well, neither of those is
right,

21 something less, in which event it goes to the court.
But that

22 life-or-death decision is made by a jury. We don't
have judges

23 make sentencing decisions of life or death in the
Federal

24 Court.

25 Do you understand that?

4009

Juror No. 577 - Voir Dire

1 A. Yes, I do.

2 Q. You knew that, I suppose, before I told you. Did
you?

3 A. Yes, I did.

4 Q. And the way in which it is done, of course, is that
the

5 jury hearing the case must first decide, well, does the
6 evidence prove the person guilty of the charge? And
obviously,

7 at that time, the only issue is the evidence, and the
question

8 of punishment does not come up at all at the trial.
But upon a

9 finding of guilty, then there is more, and that's the
second

10 trial; and that's where these same kinds of things can
come in.

11 Now, we -- because of the possibility of a
guilty

12 verdict and the possibility that a jury in this case
would be

13 asked to make a sentencing decision, we asked you some
things

14 about your attitudes and opinions regarding these types
of

15 punishment, not under the law as it is but under the
law as you

16 would write it if you had the power to do so. You
remember

17 that part of the questionnaire?

18 A. Yes, I do.

19 Q. And your answers are at page 28, the thing that I

just

20 talked about. The sort of prefatory statement is on
27; and I

21 don't mean to exclude that, but your answers are on 28.

22 If you want -- I'd like you to take a moment
to read

23 what you wrote.

24 Okay. You have in mind what you wrote at that
time on

25 September 17?

4010

Juror No. 577 - Voir Dire

1 And these are very difficult questions. And
it's

2 particularly difficult to talk about punishment when
we're here

3 today presuming that Mr. Nichols is not guilty, but we
don't

4 get to do this two times. We have to talk about it in
jury

5 selection so that if it should happen, we have the same
jurors

6 continue on, you see.

7 Is this matter of when the law should provide
for

8 punishment of death or when the law should provide for
true

9 life sentence like this something that you've thought
about at

10 any length before being asked to do so in this
questionnaire?

11 A. Certainly thought about it differently since I was
asked in
12 this questionnaire.

13 Q. And what are you saying?

14 A. Well, because in this case I might be asked to be
part of
15 making that kind of decision; whereas before, you just
-- you
16 have an opinion one way or the other: I absolutely do
not
17 believe in the death penalty and life imprisonment, or
I think
18 it's okay, I think it's appropriate. But it isn't the
same as
19 being part of making that decision, I mean.

20 Q. Recognizing what you've just said as the kinds of
opinions
21 that people have when they're not really on a jury with
a
22 decision to make, what was your opinion in that
context?

23 A. Before?

24 Q. Yes, before.

25 A. I was not opposed to the death penalty before or
life

4011

Juror No. 577 - Voir Dire

1 imprisonment before.

2 Q. Not opposed to it.

3 A. No.

4 Q. Either one.

5 A. No.

6 Q. And as I understand it, that's the way you answered
us

7 here, too.

8 A. Yes, I did.

9 Q. You're open to both.

10 A. I am.

11 Q. And, you know, again, this was in terms of if you
could

12 write the law, not in terms of what the law is, because
we

13 didn't tell you what the law is in any specific way
here.

14 You've thought about it since, I suppose.

15 A. Yes, I have.

16 Q. That's a natural human reaction to the
responsibility that

17 you're facing, if you're on the jury. Do you have any
changes

18 in what you say here; or if I were to ask you these
very same

19 questions this afternoon, would your answers be the
same?

20 A. Yes, they would.

21 Q. Which I interpret to mean it depends on all the

22 circumstances.

23 A. Absolutely. You have to hear the evidence before
you make
24 a decision like that.

25 Q. Now we're talking about -- let's talk about the
process,

4012

Juror No. 577 - Voir Dire

1 just what is involved, because we're sort of separating
out
2 evidence from information in a way so that when I use
the word
3 "evidence," I'm focusing on the trial process leading
to the
4 question of the verdict on guilt or not guilty; but as
we've
5 talked, if there is a guilty verdict, then it goes on
to
6 another trial or hearing, and that's where, to sort of
make the
7 separation, we talk about "information," information in
much
8 the same way as a judge gets information before making
a
9 sentencing decision about number of years, that kind of
10 sentence; information about the crime, again,
circumstances,
11 things that did not come out at the trial, like what is
the
12 effect on the people who were victims of the offense

and that

13 sort of thing. Okay? Follow me?

14 A. Yes, I do.

15 Q. And then all of these things about the defendant,
16 everything about the defendant, so that the jury is
informed

17 fully as to who this person is and what are his unique
and
18 personal characteristics. And this goes just like the
trial.

19 The prosecution comes in with things that they --
witnesses

20 and -- the same process as the evidentiary trial,
witnesses,

21 exhibits, goes through the same process exactly, and
the

22 prosecutors come in with things that they believe
suggest to

23 the jury that death is a deserved punishment for this
person.

24 And the defense comes in with things all about the
defendant

25 that suggest no matter how horrible the crime may be,
death is

4013

Juror No. 577 - Voir Dire

1 not the deserved punishment for this person and is --
again,

2 just as it is the case with judge sentencing, if two or
more

3 persons were involved in the same trial -- excuse me --
in the
4 same conduct but whether it's the same trial or not,
the jury
5 has to consider those persons individually and
separately. One
6 of the things that might be brought forth is, well,
they had
7 different roles in the crime, difference levels of
8 participation, different levels of motivation, and so
forth.

9 Do you recognize those possibilities?

10 A. Yes, I do.

11 Q. And we can't -- you know, I can't sit here and give
you
12 illustration relating to this case, so we can't talk
about this
13 case because we don't know what the evidence is going
to be on
14 the trial leading to the question of guilt or non-
guilt. We
15 don't know what the information would be at the penalty
phase,
16 so we have to talk about it in somewhat an abstract
way.

17 But in the end, after this second penalty
trial, the
18 second trial, which is the penalty trial, is complete,
the
19 court instructs the jury in a way that sort of sums it
all up
20 in terms of here's what you've heard that you can

consider as

21 aggravating factors, things that support a death
sentence;

22 here's what you heard as things that can be considered
by you

23 as mitigating factors, those things which support a
sentence of

24 life in prison, not the death sentence, or even a
lesser

25 sentence.

4014

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1 And then the court gives the jury some
questions to

2 help analyze that, sorting it out, as it were. But
these

3 questions are not formulaic. It's not something where
you can

4 add and subtract and come up with a difference and that
5 controls the sentence or anything like that. There is
no

6 touchstone. There is no guiding star. What is
involved is a

7 moral decision made by jurors coming in as the
conscience of

8 the community; and it has to be a reasoned decision,
reasoned

9 from what has been presented to the jurors.

10 You've been listening very carefully. Do you
have any

11 question about what I've just tried to explain?
12 A. No.
13 Q. And the question that you must answer for us is if
you were
14 to sit on a jury and the jury found a defendant guilty
of
15 crimes that involve the sentence -- possibility of a
sentence
16 to death or life -- murder -- then would you be able,
in making
17 this decision, to consider all that you have heard,
both
18 aggravating, mitigating, and then come to a conclusion
as to
19 whether a person should live or die?
20 A. Yes, I think I could. I know I could.
21 Q. Okay. And it's something you've thought about
before. I
22 feel that that's what you're saying.
23 A. Yes.
24 THE COURT: All right. We have questions from
25 counsel. We'll start with this, anyway.

4015

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1 Mr. Ryan?

2 MR. RYAN: Thank you, your Honor.

3 VOIR DIRE EXAMINATION

4 BY MR. RYAN:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. My name is Pat Ryan, and I'm the United States
Attorney in

8 Oklahoma City. I'm here with my fellow prosecutors to
present

9 the evidence involving Mr. Nichols. I know the hour is
late,

10 and I realize that you've been waiting all day.

11 Did you bring Plum Island with you today?

12 A. No, I didn't.

13 Q. You finished it before today?

14 A. Yes, I did.

15 Q. Have you read other books by Nelson DeMille?

16 A. No, I haven't.

17 Q. When they were handing out which grades to teach,
did you

18 volunteer for the seventh grade?

19 A. I guess, yes, you'd say. At first it was where the
job was

20 available, and I was young and took it; but I also
discovered

21 that I like that age.

22 Q. Have you ever heard anyone suggest that's a
difficult age?

23 A. Absolutely.

24 Q. Let me follow up on a few of the questions his
Honor

25 touched on. With respect to your son who is on the
West Coast

4016

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1 working -- I guess he works part-time for a law firm?

2 A. He works during the day for a law firm. He's a law
clerk

3 and goes to school at night. He's at the University of
San

4 Diego. They have a night program.

5 Q. Do you know what -- without naming the firm -- help
me with

6 protecting your identity a little bit. Without naming
the name

7 of the firm, could you tell me what their general area
of

8 practice is?

9 A. I don't know that, and I don't know the name of the
law

10 firm.

11 Q. That solves that problem.

12 A. It's -- I think it's general law, but I don't know.

13 Q. Has your son talked to you about the work that he's
doing

14 with the firm?

15 A. Not specifically, and I think probably because he
knows

16 that I probably wouldn't understand.

of your 17 Q. Have you ever taught government or civics as parts
18 teaching responsibilities?
19 A. With him?
teacher, 20 Q. No, not in the family; more in your years as a
21 have you taught those courses or subjects?
22 A. No, I haven't.
principles of 23 Q. But you're not altogether unfamiliar with the
24 law that his Honor was talking to you about?
25 A. No.

4017

Juror No. 577 - Voir Dire

criminal 1 Q. Has your son ever indicated that he works on any
2 matters?
3 A. No, he doesn't. That's not what --
as a 4 Q. You indicated earlier that you would regard service
a civic 5 juror in this case as an honor. Are you speaking from
6 responsibility viewpoint?
7 A. Well, I think you're very carefully questioning and
looking 8 at a lot of people to be jurors, and the number that
you're

you're 9 going to choose is a very small number; so certainly
So if 10 being very careful about the people that you do choose.
would 11 I happened to be one of the 12 or six alternates, I
12 consider that an honor.
questions 13 Q. And, of course, you understand from his Honor's
hasn't made 14 all either party wants is someone who is open and
will 15 any determinations or prejudged the case in any way,
16 listen carefully to the evidence and reach a thoughtful
17 decision. And you've told us you can do that.
18 A. Yes.
would 19 Q. Now, you indicated in your questionnaire -- if you
20 turn to Question 158. It's towards the end of the
21 questionnaire.
22 A. What page is it?
23 Q. I think it's like 36, maybe. 158 is the question.
24 A. I'll get it.
25 Q. 36.

4018

Juror No. 577 - Voir Dire

1 A. "Please summarize what you have seen, read, or
heard about

2 the Oklahoma City bombing."

3 Q. Yes. You see at the bottom of that page, you talk
about

4 "investigation seemed to proceed rapidly and
thoroughly." Am I

5 reading your writing correctly?

6 A. Yes, you are.

7 Q. Have you in any way formed any judgments about
whether or

8 not the federal authorities have caught the right
people and

9 whether they're in fact guilty of the crimes?

10 A. I haven't formed an opinion because I have not -- I
have

11 not thoroughly read about the case. At first, when it
first

12 happened, I read the articles in the newspaper; and
then I

13 stopped reading about it.

14 Q. For any particular reason?

15 A. Well, I think it's heavy and it's sad; and as Judge
Matsch

16 said when we were at the fairgrounds, it isn't all
accurate.

17 And I think I realized that, and I saw no reason to
fill my

18 mind with it. I followed the headlines on the
television,

19 followed the headlines in the newspaper to some extent,
and

20 then I got further and further away from it.

were in 21 Q. Was there any particular aspect of the stories that
22 the newspaper that you particularly followed?
what was 23 A. I don't think so. I think I followed in general
24 happening.
and come 25 Q. But as a juror, you're willing to set that aside

4019

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the case 1 into court with a clean slate, if you will, and decide
2 only on what you see and hear in this courtroom?
3 A. I'm sorry. I didn't get the question.
the 4 Q. My question is are you willing to set aside any of
5 publicity or any of the media reports that you've seen
about 6 what occurred in Oklahoma City and decide the case
based solely 7 on what you hear and see in this courtroom?
8 A. Yes, I think I could do that.
9 Q. Now, let me ask you to turn to page 28 of the
10 questionnaire. His Honor already spoke to you a bit
about this 11 page, and I notice that you had carefully read the
answers that 12 you had written there a month ago at the fairgrounds;

but I was

13 a little confused by one thing you said to his Honor.
You said

14 that since the time that you filled out the
questionnaire,

15 you'd given additional thought to this issue of the
death

16 penalty. Did I understand you correctly?

17 A. Yes.

18 Q. Did that additional thought in any way change any
of your

19 views?

20 A. I think when I particularly gave additional thought
to it

21 was Monday night when Gary Davis was being executed.
And I

22 realized -- it hit me again how hard this decision
would be to

23 make and what a serious decision it is.

24 Q. Did you reflect upon the correctness of that jury's

25 decision on Mr. Davis?

4020

Juror No. 577 - Voir Dire

1 A. No, because I don't know -- I don't remember the
case, and

2 I don't know anything about it. And I didn't read in
the last

3 month or so -- I didn't read much about it just because
I

4 didn't want to.

and I'm
5 Q. Do you think that if you were a juror in a case --
any case
6 not talking about this case; I'm just talking about in
to the
7 in which the death penalty was presented as an option
concluded
8 jury and if you deliberated on the death penalty and
9 in your own mind that it was the appropriate form of
arrive at
10 punishment -- do you think that you would be able to
your
11 a sentence of death and come into court and announce
12 verdict?

13 MR. TIGAR: Objection, your Honor.

14 THE COURT: Overruled.

15 BY MR. RYAN:

16 Q. You can go ahead and answer.

17 A. Yes, I think I could.

reflect
18 Q. It just -- the Davis execution simply caused you to
19 about how serious and awesome a responsibility --
saying yes, I
20 A. Yes. It wasn't something where I wasn't just
it on a
21 believe in the death penalty. All of a sudden, I saw
position of
22 different level. I saw it -- I put myself in the
23 having to make that decision and looked at it far more

24 seriously.

25 Q. I understand now.

4021

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B, if 1 Now, in the -- in your answer to subparagraph

2 I'm reading this correctly, you put, "Should not be
3 predetermined." Correct -- I'm reading that correctly?

4 A. Yes, you are. In other words, I shouldn't -- I
haven't

5 come in here today with an idea that this should be the
6 sentence that is given.

7 Q. Then you heard -- You heard his Honor talking to
you about

8 what the federal process is involving the death
penalty. And

9 did you hear the -- you recall the discussion about how
we

10 don't have an automatic death penalty in the Federal
Court

11 system.

12 A. Yes.

13 Q. And that you understood that you have to approach
the

14 sentencing decision with an open mind?

15 A. Yes.

16 Q. Be willing to consider both the option of death and

the

17 option of life?

18 A. Yes.

19 Q. And can you do that?

20 A. Yes, I can.

21 Q. Do you recall what you were doing -- let me strike
that.

22 Do you recall when the jury returned a verdict
of

23 guilty with respect to Mr. McVeigh?

24 A. Yes.

25 Q. Were you with people when you first heard about
that

4022

Juror No. 577 - Voir Dire

1 verdict?

2 A. No, I think I was home alone.

3 Q. And of course, you didn't hear the evidence in that
case?

4 A. No.

5 Q. Did you have any reaction to that verdict?

6 A. I think my reaction was, wow, that's pretty
powerful; but I

7 also felt that the justice system was -- that they had
made a

8 decision and that it -- the justice system was working.

9 Q. You respected that jurors -- that jury's decision,

even

10 though you hadn't heard the evidence?

11 A. Yes, I did.

passed

12 Q. And do you recall that there was some time that

jury

13 after the sentence of guilty between the time that the

14 returned a sentence of death as the sentence?

15 A. Yes.

16 Q. You recall that being about a two-week period?

of

17 A. I don't remember the time period. It was the end

18 school, and it's a very busy time.

19 Q. Well, there was a period of time between those two

time, that

20 verdicts, as you recall; and during that period of

Judge Matsch

21 span of time is when this second trial occurs that

will call

22 was speaking about. And that's when the prosecution

the

23 forward additional evidence about the crime itself and

also has

24 impact it had on some of the victims; but the defense

concerns a

25 the opportunity to present information to you that

4023

1 number of things. It concerns perhaps a defendant's
role in a
2 case, in a crime. It could relate to the defendant's
life, his
3 experiences, factors that came to play on him in his
childhood
4 and the like. We don't know what it will be in this
case
5 because we haven't heard the evidence.

6 Now, do you believe that you would be able to
approach
7 sentencing with an open mind, consider both the
prosecution's
8 evidence and the defense evidence, and arrive at a
decision
9 with respect to the life-or-death sentence?

10 A. Yes, I think I could.

11 Q. And would you be able to approach it, this
presentation of
12 evidence, starting with both options in mind, both life
and
13 death?

14 A. Yes.

15 Q. Not leaning one way or the other until you've heard
the
16 evidence?

17 A. Yes, I think I could.

18 Q. You realize the law requires that of jurors?

19 A. Yes. Yes, I do.

20 MR. RYAN: Thank you. That's all I have, your
Honor.

think 21 THE COURT: Well, the hour is rather late. I
come back 22 we'll -- I know it's inconvenient for you to have to
for 23 and probably have another substitute teacher out there
all day, 24 another day; but at the same time, we've been at this
here. 25 too. And I don't want to, you know, shortcut anything

4024

in a 1 And I certainly don't want to put the defense counsel
opportunity to 2 position of hurry-up. They should have an equal
Monday 3 question you; so I'm going to ask you to come back
in here 4 morning, but I'll make the promise that we'll get you
5 at 8:45 and out soon thereafter.

6 JUROR: Thank you.

7 THE COURT: Thank you very much, and we're
sorry that 8 we couldn't finish it this afternoon; but we can't
program this 9 under any particular time frame, as you already
appreciate.

10 JUROR: I understand.

11 THE COURT: Thank you very much. And, of
course,
12 don't talk about this with anyone in the meantime.
We'll see
13 you Monday morning. You're excused for now.

14 (Juror out at 5:07 p.m.)

15 THE COURT: Well, we're going to do the
motions at 8
16 and pick up with this woman at 8:45; but, you know, I
really
17 don't know how -- the purpose of lawyer voir dire is to
18 supplement and add to and probe from the respective
positions
19 in the case the answers given. And so I don't see that
it
20 advances our process here to go over the very same
questions
21 that I've gone over and particularly as it relates to
22 punishment; so reflect on that. I think we could move
along
23 much faster if you didn't duplicate everything that
I've
24 already done.

25 We'll be in recess till 8:00 Monday morning.

4025

1 (Recess at 5:08 p.m.)

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1 REPORTERS' CERTIFICATE

2 We certify that the foregoing is a correct
transcript from

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

4 at Denver, Colorado, this 17th day of October, 1997.

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6

Paul Zuckerman

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Bonnie

Carpenter

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